
ANALYSIS OF VARIOUS ASPECTS OF BAIL TO JUVENILE IN INDIA

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ABSTRACT

In Indian criminal law, a Child below age of 18 years has a special status as juvenile under the Juvenile Justice Act-2015. The phrase “bail is a rule and jail is an exception” has been made more relevant in case of juvenile under the above Act. The age group of juvenile is a very sensitive age where sometimes they are not well known to the nature and consequences of their act and sometimes circumstances as well as due to their tender age, they do some acts which covers under the definition of offences in respective laws. This article deals with the law of bail to juveniles, the forum who deals bail matters, categorisation of offences, circumstances when bail to juveniles should be granted as well as when the same should be declined. The article throws light on the law of bail to juveniles in the light of applicable laws as well as the laws settled by the courts. Furthermore, this article stresses upon to improve the functionality and approach of judiciary while dealing with bail matters of juveniles. I am sure that the legal fraternity would be benefitted by this article.

“Bail is rule, jail is an exception”

State Of Rajasthan, Jaipur vs Balchand @ Baliay¹

Liberty of a person is foremost priority of the state. When we talk about criminal laws, where liberty of a person is curtailed under certain circumstances, the term which is popularly known for the liberty as well as become synonym of it is “Bail”. The concept of Bail is an age old concept. Generally speaking, a Bail is a provisional release of a person who is accused of an offence. Such release may be on temporary basis which is popularly known as interim Bail and also may be on permanent basis which is popularly known as regular bail. However, there is another unique phenomenon of bail in India. A Bail may be granted in anticipation of arrest and in that case it is known as anticipatory bail. In this article we will understand, in Indian context, who is juvenile, the concept of bail under Juvenile Justice Act-2015, the Courts / forums empowered to grant bail to juvenile and the approach of Indian Judiciary while dealing with the bail matters of juveniles.

ORIGIN AND DEVELOPMENT OF JUVENILE JUSTICE ACT-2015-

In the historic year of 1989, world leaders adopted an international agreement on childhood which is popularly known as **“United Nations Convention on the Rights of the Child” and in short UNCRC**. India was also the signatory of the convention and on 11 December, 1992, India ratified the same. Although, prior to 1989, India had Juvenile Justice Act, 1986. After ratification, old Act, 1986 repealed by the Indian Parliament and a new law Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted to adopt the standards that the UNCRC set. Later on, an improved version of the above Law was enacted by the Parliament in the year 2015 which is in force till today i.e. Juvenile Justice (Care and Protection of Children) Act, 2015.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY (MACR) –

The JJ Act-2015 is a composite code which deals with Children who are in conflict with Law. The age below which a child or juvenile is deemed to incapable of committing a crime is known as the Minimum age of criminal responsibility. It is also known as the defence of infancy. Interestingly, the minimum age of criminal responsibility (MACR) varies from country to

¹ 1977 AIR 2447, 1978 SCR (1) 535

country. For ex. in Australia it is 10 years, in England it is 10, in Germany it is 14 years and in United States of America it is 6 - 12 for 13 states and other 37 states has not set any criteria.

WHO IS JUVENILE UNDER THE ACT-2015?

This is the first question which came in to our mind when we go through the Act-2015. Section 2 sub clause 35 of the Act -2015, clearly says that a child who is below the age of 18 years is come within the definition of Juvenile. The Act-2015 itself also provides for the definition of child. As per the Section 2(12) of the Act-2015, Child is a person who has not completed the age of 18 years. Another question which immediately sparks our mind whether a person who is of exact 18 years of age is covered within the definition? The answer is “NO”. It is because of simple reason that the law has made itself clear that only that child who is below 18 years of age would come under the definition of Juvenile. Therefore, a child who is exact 18 years of age, would be outside the ambit of the definition.

CONCEPT OF BAIL TO JUVENILE

Like an adult person, a juvenile is also entitled for bail. However, where the adult person's bail is moved and heard under the relevant provisions of Code of Criminal Procedure, 1973², the bail is considered under Juvenile Justice Act-2015 and Section 12 of the Act-2015 also deals with bail to juvenile.

STAGES WHEN TO HEAR BAIL PLEA BY JUVENILE JUSTICE BOARD

Now the question arises at which time or stage bail can be granted to juvenile. The answer to this question lies in the Section 12 itself. Sub Clause (1) of Section 12 of the Act-2015 tells the stages when a bail can be granted to juvenile. As per Sub Clause (1) of Section 12, when a child is apprehended by the Police, or where a child is detained by the Police, or where he has been brought before the Juvenile Justice Board³ or where he appears before the Juvenile Justice Board himself, the bail to juvenile shall be heard by the Juvenile Justice Board.

BAIL BEFORE CHILDREN COURT

"Children's Court" means a court established under the Commissions for Protection of Child

² hereinafter referred to as Code-1973

³ hereinafter referred to as JJB

Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012. It also provides that wherever existing and where such courts have not been designated, the Children's Court means the Court of Sessions having jurisdiction to try offences under the above acts. Any person aggrieved by an order made by the JJB under the JJ Act-2015 may, within thirty days from the date of such order, prefer an appeal to the Children's Court. Therefore, an order of the JJB allowing or denying the bail to juvenile is appealable before the Children's Court. However, it is settled that Children's Court shall not hear the bail of a child / juvenile under Section 12 of the JJ Act-2015 as a court of first instance⁴.

BAIL BEFORE HIGH COURT

As per S. 101(5) of the JJ Act-2015, an appeal lies before High Court against order of Children's Court denying bail to juvenile. However, as far as bail matters are concerned, the same can not be heard by the High Court under Section 101(5) of the JJ Act-2015 as held by the Allahabad High Court. However, High court has the power to hear the bail of juvenile under Ar. 226⁵ or in its revision jurisdiction.

COURT, WHO WILL HEAR BAIL WHERE CASE HAS BEEN TRANSFERRED TO CHILDREN COURT FOR TRIAL OF A CICL AS AN ADULT

As per the JJ Act-2015, where a heinous offence is alleged to have been committed by a child who has completed or is above the age of sixteen years and the JJB, after preliminary assessment u/s 15 of the JJ Act-2015, decided that such child shall be tried as an adult, his case file shall be transferred to the Children Court for trial of such child as an adult. In such circumstances, a question come forward before us whether bail application of such child u/s 12 of the JJ Act-2015 shall be heard by Juvenile Justice Board or Children Court.

This question has been answered by the Allahabad High Court in **Radhika (Juvenile) v. State of UP**⁶. It was held by the Allahabad High Court in this case that even though the file has been transferred to Children Court for trial of a CICL as adult, bail application shall be heard by the Juvenile Justice Board as per Section 12 of the JJ Act-2015.

⁴ Radhika (Juvenile) v. State of UP, 2019 SCC OnLine Ori 498

⁵ The Constitution of India, 1950

⁶ Id. 2

IDENTITY OF A PERSON AS JUVENILE

From the bare reading of the Section 12 (1) of the Act-2015, a reasonable question arises in the mind that at the initial stage of apprehension or detention by the Police, or where a person himself appears before the JJB or even brought before the JJB, it may be possible that his age is not confirmed. That is to say, there may be neither any relevant fact nor material evidence, *prima facie*, to establish or prove - whether that person is juvenile or not?. In such a situation bail may be granted to such person.

When we go through the bare reading of the provision of S. 12(1) of the Act-2015, the words used there as **“When any person, who is apparently a child.....”**. Therefore, when a person is apprehended or detained by the Police, or appears or brought before the Board, and he is apparently a child, in the case his bail plea may be heard considering him as a child. There may not be any material available on record so as to determine his age but if the person is apparently a child, his bail plea shall be heard by the JJB. Primarily, when any person is detained or apprehended by the police, the police necessarily inquire into his age.

However, if the person himself do not know his age or there are no other materials on record which shows his age, however, he is looking like a child, then on the basis of this provision he shall be treated as child and would be entitled to be heard for his bail. Any person can apply for bail under S. 12 of the JJ Act-2015 who, on his perseverance, looks like a young lad of below 18 years.⁷

BAIL TO JUVENILE: BAILABLE AND NON BAILABLE OFFENCE

As far as bail matters are concerned, The Code of Criminal Procedure has categorically divided the offences into bailable and non bailable one. Under S. 2(a) of the Code-1973, those offences which are shown as bailable in the First Schedule of the Code-1973 or which are made bailable by any other law are called bailable offences and except them all other offences will fall under non-bailable offence. The Act-2015 does not provide for the separate list of bailable and non bailable offences and therefore, whenever an offence has been committed by a child, the reference of category of offence is taken from the definition of bailable and non-bailable offence given in the Code-1973.

⁷ Id.

According to S. 12(1) of the Act-2015, it uses the words “.....is alleged to have committed a bailable or non-bailable offence”. Therefore, whether the offence is bailable one or non bailable one, he is entitled to be heard on bail.

WHETHER BAIL TO JUVENILE IS MANDATORY

When we talk about consideration of bail under the Code-1973 or any other law for the time being in force, the offences has been categorised in to bailable and non bailable offences. The bail in bailable offences can be claimed as a matter of right, however, in non bailable offences bail can not be claimed as a matter of right and bail depends upon the judicial discretion on the basis of facts and circumstances of each and every case.

The situation is totalling different under JJ Act-2015. The difference between bailable & non-bailable offences has been given away by the legislature under the JJ Act-2015. S. 12 (1) of the JJ Act-2015 says that any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, shall notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail. The word used under the provision is “shall”. Therefore, bail to juvenile is mandatory.

Recently, in **Ayaan Ali v. State of Uttarakhand**⁸, Hon’ble Uttrakhand High Court was pleased to discuss this issue and held that the distinction between bailable or non-bailable offence has been done away in case of juvenile.

Therefore, every juvenile is entitled to be released on bail except certain circumstances as mentioned in JJ Act-2015. The nature of granting bail to juvenile seems to be mandatory, however, it is not absolute. There are some specific grounds when bail to juvenile may be refused on the grounds where the release is likely to bring him into association with any known criminal or such release would expose him to moral, physical or psychological danger or where such release would defeat the ends of justice. These grounds will be discussed in detail at later stage of this article.

BAIL TO CHILD WHERE HE HAS BEEN ORDERED TO BE TRIED AS AN ADULT BEFORE CHILDREN’S COURT U/S 18 OF THE JJ ACT-2015

⁸ 2022 SCC OnLine Utt 75

Where a child alleged to be in conflict with law is accused of a heinous offence as categorised in the JJ Act-2015 and is between the age group 16 to 18 years on the date of commission of offence, under S. 15 of the JJ Act, a preliminary assessment of the child is done by the JJB to decide whether such child should be tried as an adult or not. If after the preliminary assessment, the JJB decides u/s 18 of the Act that such child should be tried as an adult, then the question arises whether he is still entitled for bail u/s 12 of the JJ Act.

Since, even in above circumstances, such person is still child under the JJ Act-2015 and therefore he is still entitle to the benefit of S. 12 of the JJ Act-2015. The provision u/s 18 is only for the trial of such child as an adult before the Children's Court though he is still a child under the Act-2015.⁹

CONSEQUENCES WHERE BAIL ALLOWED OR REJECTED

A natural question which hit in our minds that - what would happen to juvenile when his bail is allowed or rejected?. From the bare reading of S. 12(1) of the JJ Act, it would become clear that when the bail to juvenile is granted he may be released on bail with or without surety. Furthermore, he may be released on bail under the supervision of a probation officer. He may also be released on bail under the care of any fit person.

It is to be noted here that for issuing order to release a child on bail taking surety is not essential. Such child may be released on bail even without surety. As per S. 13(2) of the JJ Act-2015, where a child is released on bail, the JJB shall inform the concerned probation officer or the Child Welfare Officer of the District.

However, where such child or person is not released on bail in terms of S. 12(1) of the JJ Act-2015, then two situations arises as below:

(1) Where the person apprehended is not released on bail u/s 12(1) of the JJ Act-2015 by Officer-in-charge of Police Station.

(2) Where the person apprehended is not released on bail u/s 12(1) of the JJ Act-2015 by

⁹ Bombay High Court in Shubham @ Bablu Milind Suryavanshi Bail App. No. 2282/2021, Order dt. 21.10.2022; Sandeep Ayodhya Prasad Rajak, Bail Application No.3838 of 2021 decided on 22/08/2022 and Prasad Subhash Khade Vs. State of Maharashtra, Bail Application No.1647 of 2020 decided on 18/03/2021.

JJB.

In the first situation where the person is not released by officer in charge of police station, such officer in charge of police station shall put the person in an observation home until he can be brought before the JJB.

In second situation, where such person is not released by the JJB on bail, the JJB shall by order send such person to an observation home or a place of safety for a period specified in the order pending inquiry against the said person.

WHEN BAIL CONDITIONS COULD NOT BE FULFILLED BY THE PERSON OR CHILD

A situation may arise where bail has been granted to the child or a person who is apparently a child and bail was granted with certain condition/s. Whether non fulfilment of the conditions of bail would keep such person in observation home or place of safety for an indefinite period?

The answer to this question is “**NO**”. For such circumstances, the JJB has been empowered by the JJ Act-2015. S. 12(4) of the JJ Act-2015 provides that when a child in conflict with law (hereinafter referred to as CICL) is unable to fulfil the conditions within seven days of the bail order upon which bail has been granted to him then in such case he shall be produced before the JJB for modification of such conditions. The bail conditions may be modified by the JJB upon the facts and circumstances of the case.

In case of **Lalu Kumar v. State of Bihar**¹⁰, Hon’ble Patna High Court held that u/s 12(4) of the JJ Act-2015, bail conditions may be modified.

DEFAULT BAIL: WHETHER APPLICABLE IN CASE OF JUVENILE OR CHILD IN CONFLICT WITH LAW OR NOT-

In India, the concept of default bail is incorporated u/s 167 (2) of the Criminal Procedure Code, 1973. The question whether a juvenile is entitled for the default bail has been answered by the Supreme Court of India in case of **Barun Chandra Thakur V. Master Bholu & Anr**¹¹. In this case, it has been held that a juvenile has a right for default bail u/s 167(2) Crinal Procedure

¹⁰ 2019 SCC OnLine Pat 1697

¹¹ 2022 SCC OnLine SC 870.

Code, 1973. It means, if prosecution failed to file chargesheet within the time prescribed by law, then juvenile may claim for the default bail.

Further, another question arises, where the charge-sheet and default bail application has been moved before court simultaneously, whether in that case also juvenile is entitled for the default bail. The answer is no. In such situation, it does't matter whether charge-sheet was filed first or application for default bail moved first, in that case juvenile has no right for default bail.

ANTICIPATORY BAIL TO JUVENILE

Anticipatory bail or in other popular term Pre-arrest Bail is another kind of bail. S. 438 of the Code-1973 allows a person to apply for bail even before him being arrested. The power to grant anticipatory bail is given to Court of Sessions or High Court. Now the question is whether anticipatory bail can be granted to juvenile or not. On this issue there are several views on different High Courts which are being discussed below.

K. Vignesh v. State represented by the Inspector of Police¹² Madras High Court held that a child in conflict with law cannot be arrested and thus there can not be apprehension of arrest and therefore an application for anticipatory bail either before the High Court or before the Court of Sessions under Section 438 Cr.P.C. is not maintainable.

In case of before Allahabad High Court, **Shahaab Ali (Minor) And Another v. State of U.P.**¹³, the question before the High Court was whether a petition under Section 438 of the Criminal Procedure Code at the behest of a child in conflict with law would be maintainable? It was held by the Allahabad High Court that once an FIR is registered or information is otherwise recorded by the Special Juvenile Police Unit or the Child Welfare Police Officer with regard to CICL, the operation of S. 438 of the Code-1973 stand excluded. However, at pre recordial stage only i.e. pre recordal of information stage with regard to an offense allegedly committed by a child, S. 438 can be held to apply. In this case, Allahabad High Court held that in case of juvenile / CICL anticipatory bail application is maintainable at pre-recordal stage u/s 438 of the Code-1973 before Court of Sessions and High Court.

¹² 2017 SCC OnLine Mad 28442

¹³ 2020 SCC OnLine All 45

This question was also discussed in detail by Madhya Pradesh High Court in **Ankesh Gurjar @ Ankit Gurjar Vs. The State of M.P.**¹⁴. In that case the question before the Madhya Pradesh High Court was that whether benefit of anticipatory bail is available to juvenile? It was held that when there is no arrest followed by police custody, then providing the benefit of anticipatory bail is futile. It was also held that such benefit u/s 438 of the Code-1973 is not available for a juvenile while invoking section 12 of the Act-2015. It was further held that Article 226 of the Constitution of India or S. 482 of the Code-1973 can not be invoked seeking anticipatory bail to juvenile.

In case of **Mohammad Zaid v. State of U.P.**¹⁵, Division Bench of Hon'ble Allahabad High Court reviewed the judgment passed by its single bench in Allahabad High Court, **Shahaab Ali (Minor) And Another v. State of U.P.**¹⁶ and it was observed that the view confining the right of the CICL to seek anticipatory bail before FIR is lodged against him is incorrect and held that a CICL will have an equal and efficacious right to seek his remedy of anticipatory bail under Section 438 of the Code-1973 like any other citizen, however, subject to the restrictions imposed in the said provision itself.

The issue has finally come before Supreme Court in **Yuvraj v. State of Rajasthan**. The issue is still under consideration before Supreme Court. However, in my opinion, a person can not be left remedyless and the view taken by the division bench of Allahabad High Court in **Mohammad Zaid v. State of U.P.**¹⁷, appears to be more appropriate.

BAIL TO JUVENILE AND SECTION 437 AND 439 OF THE CODE OF CRIMINAL PROCEDURE, 1973 (INDIA)

S. 12 of the JJ Act-2015 provides for the provision for bail to the juvenile. The question is whether the provisions of bail under S. 437 and S. 439 Cr.P.C would also applicable for granting bail to the juvenile. This question has been answered by Division Bench of Chhattisgarh High Court in the case of **Tejram Nagrachi Juvenile Vs. State of Chhattisgarh through the Station House Officer**¹⁸, in this case, it has been observed by the High Court that S. 12 of the JJ Act-2015 provides for overriding effect due to use of non-obstante clause. It has been held

¹⁴ 2021 (1) MPLJ (Cri) 403

¹⁵ 2023 SCC OnLine All 230

¹⁶ 2020 SCC OnLine All 45

¹⁷ 2023 SCC OnLine All 230

¹⁸ 2019 SCC Online(Chh.) 24.

by the High Court that CICL is required to be dealt under S. 12 of the JJ Act-2015 and it being special provision for juvenile in conflict with law, it will exclude the operation of S. 437 & S. 439 of the Cr.P.C. Therefore, in case of a juvenile, application for grant of bail would not be maintainable under S. 437 or S. 439 of the Cr.P.C.

WHEN BAIL MAY BE REFUSED TO JUVENILE / CICL

As we have discussed earlier, as a general rule, bail to juvenile shall not be rejected. However, this provision is not absolute and there are certain conditions mentioned in the proviso of S. 12(1) itself the presence of which would result into rejection of bail to person apparent to be child and therefore may not be released on bail. These conditions are as below:

1. if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal, or
2. expose the said person to moral, physical or psychological danger, or
3. Person release would defeat the ends of justice.

Atleast any one of the above circumstances should be present for refusing the bail to such person.

When the release of the person is refused under S. 12(1) of the JJ Act-2015, the JJB shall record the reasons for denying the bail. The order would also mention therein the circumstances that led to such a decision of denying the bail.

Here, it is important to mention here that before refusing bail to the juvenile, it is required to be ensured that prima facie these grounds exist. There should some evidence on record as to show existence or presence of these ground/s.

It has been held by the Allahabad High Court in **Sanjay Kumar's case**¹⁹ that every juvenile shall be released on bail irrespective of the offence he committed but he may, however, be refused bail if there appears reasonable ground for believing that the release is likely to bring him into association with the any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. It was also held by

¹⁹ 2003 1 AllCJ 443 ; 2003 0 CrLJ 2284

the Allahabad High Court that the existence of such ground should not be merely guesses work of court. It should be substantiated by some evidence on record to show existence of these grounds.

In case of **Manmohan Singh v. State of Punjab**²⁰, Hon'ble Punjab and Haryana High court held observed that the reasonable grounds for believing that release of juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice, such belief should be based upon some material or evidence available on the record of the case. There must be objective assessment and not subjective satisfaction for the existence of such ground while declining bail to the juvenile on the said ground.

Allahabad High Court in case of **Mr. 'X' Minor vs State Of U.P. and 3 Ors.**²¹, held that bail to juvenile can not be refused on the basis of unfounded apprehension.

WHO ARE THE “KNOWN CRIMINALS”:

The grant of bail may be refused where it appears to the JJB that there are some reasonable grounds which show that if the child / person / juvenile is released on bail, he would come in contact with known criminals. However, this provision does not elaborate who will be covered within the words “known criminals”.

Delhi High Court in **Nand Kishore (in JC) v. State**²² discussed the term “known criminal” and held as below:

1. The expression known criminal is not without significance when the liberty of a juvenile is sought to be curtailed.
2. The exception must be construed strictly.
3. The prosecution must identify the 'known criminal', and

²⁰ PLR (2004) 136 P & H 497

²¹ Neutral Citation No. - 2023:AHC:22845, DoJ: 30 January, 2023

²² (2006) 4 RCR (Cri.) 754

4. Court must have reasonable grounds to believe that upon released juvenile would associate with this 'known criminal'.
5. There must be prima facie finding on nexus between juvenile and such criminal.

The term defeat the ends of justice is a very broad term. The Board or the courts are required to apply their judicial minds while determining what would be the ends of justice. Where a girl of 6 years of age was raped by a minor of the age of 15 years in a planned manner, in such case considering the plight of such a girl of short age who has no knowledge of the gravity of the act as well as the plight of her parents, the justice demands such child not to be released on bail. In a similar situation, Allahabad High Court observed and held that if the release of juvenile would defeat the ends of justice, bail may be denied to him.²³

SERIOUSNESS OR GRAVITY OF AN OFFENCE: WHETHER A GROUND FOR DENYING A BAIL?

S. 12 of the JJ Act provides certain grounds for denying bail to the child / juvenile. The JJ Act empowers the JJB to try all type of offences and categorised offences in to simple, serious and heinous offences. This give rise to a question whether bail to juvenile can be denied on the ground of seriousness or gravity of the offence committed by him. Through various pronouncements, the law on this issue has already been settled. Now, it is a settled law that the gravity and seriousness of the offence is no ground or a relevant consideration to reject the bail of a child or juvenile.²⁴

In **Lalu Kumar v. State of Bihar**²⁵, the question before the Hon'ble Patna High Court was that whether seriousness of the offence alleged is a ground for rejecting the bail in case of a child in conflict with law ?” It has been held by the Patna High Court that seriousness of the offence cannot be made a ground for rejecting bail in case of a CIL.

In **State of U.P. Vs. Shiv Kumar & Ors**²⁶, Supreme Court held that the gravity of the offence is not relevant consideration for refusing grant of bail to child.

²³ X v State of UP, Criminal Revision no. 1036/2022 date of judgment 21.10.2022

²⁴ Ref: Amit v State of UP and Ors, 2016 (2) JIC 388 (All), Juvenile 'X' through his father Vs. State of U.P. & Anr., Criminal Revision No. 2318 of 2021, Allahabad High Court

²⁵ Id. Pg. 8

²⁶ 2005 Latest Caselaw 264 SC

In **Manoj Vs. The State of Karnatka**²⁷ it has been observed by the Karnatka High Court that concession of bail can not be denied on the ground of gravity or seriousness of the offence.

Allahabad High Court in **Amit Yadav Alias Monu Alias Bebo vs State Of U.P. And Another**²⁸ observed and held that gravity of the offence is not a ground to deny bail to a juvenile accused unless the conduct of the accused is such to indicate that in all likelihood, if he be released on bail, he will indulge into more crimes or offences.

Prakash Vs. State of Rajasthan²⁹), Supreme Court of India observed that at the time of consideration of bail the merit or nature of offence has no relevancy. The bail to juvenile is mandatory, however, with exception to release him on bail if there are reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Prosecution is required to bring on record such material to make out any of the above grounds which may persuade the Court not to release him on bail.

BAIL TO JUVENILE WHEN SIMILARLY SITUATED ADULT CO-ACCUSED HAS BEEN GRANTED BAIL

An issue often comes before the JJB or Children's Court whether bail should be granted to the juvenile where similarly situated co-accused has been granted bail. This question was dealt by the Hon'ble Allahabad High Court in **X (Minor) v State of UP and Anr.**³⁰ it was held by the Allahabad High Court that where the adult co-accused has been granted bail there seems no justification to again test the case of juvenile u/s 12(1) of the JJ Act-2015.

ROLE OF SOCIAL INVESTIGATION REPORT (SIR) ON HEARING BAIL PLEAS OF JUVENILE

JJ Act-2015 is a beneficial legislation. One of its prime objects is to look into the social circumstances responsible for his alleged conduct or act. It is only for this reason; the provision of preparation of Social Investigation Report has been incorporated in the JJ Act-2015. S. 13

²⁷ <https://www.verdictum.in/court-updates/high-courts/karnataka-high-court-gravity-of-offence-not-relevant-consideration-for-denying-bail-to-juvenile-1485687#:~:text=It%20has%20been%20further%20held,Act%2C%202015%20is%20available%E2%80%9D.>

²⁸ <https://indiankanoon.org/doc/93673636/>

²⁹ 2006 Cr.L.J. 1373 ; <https://indiankanoon.org/doc/414862/>

³⁰ Criminal Revision no. 860/2022; AFR, DoJ 21.03.2022.

of the JJ Act provides that where a CICL is apprehended, the Child Welfare Police Officer (hereinafter referred to as CWPO) or the special juvenile police unit (hereinafter referred to as SJPU) shall inform the probation officer for preparation of a social investigation report. Such report shall contain the details or informations as to the antecedents and family background of such child. It shall also contain other material circumstances. Such report shall be prepared and submitted before the board within two weeks from the date of such apprehension.

Social Investigation Report (hereinafter referred to as SIR) plays an important role in disposal of the bail application of juvenile / child alleged to be in conflict with law.

Rule 2(xvii) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (hereinafter referred to as Model Rules – 2016) defines the SIR as it is a report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors, and the recommendation thereon.

Allahabad High Court in **Mr.X (Minor) vs State Of U.P. And Another**³¹, observed that the purpose behind the provision of SIR is to enable the JJB to get a glimpse of the social circumstances of the child before passing any order regarding bail or of any other nature. It was held in this case that it is incumbent upon the JJB to take into consideration the SIR and make an objective assessment as to the reasonable grounds for rejecting the bail application.

EFFECT OF REJECTING BAIL APPLICATION WITHOUT CALLING SOCIAL INVESTIGATION REPORT (SIR)

Social Investigation Report has been given prominence in the JJ Act – 2015. In earlier legislation i.e. JJ Act- 2000 the role and prominence of the SIR was the same. Whether the bail to juvenile / Child alleged in conflict with law can be denied in absence of the SIR has been answered by the Patna High Court in *Rakesh Kumar Singh v State of Bihar* 2016 SCC OnLine Pat 5778. In this case without calling SIR, JJB and the Children's Court rejected the bail of the Juvenile. While granting bail to juvenile and setting aside the orders, it was held by the Patna High Court that JJB and Children's Court did not summon any SIR from the Probation Officer

³¹ Criminal Revision No. 4102 of 2022 (Date of Judgment 02.03.2023)

and the opinion formed by them is based on hypothetical presumption that the release would not be in the interest of CICL.

CONCLUSION

The JJ Act-2015 is a beneficial legislation for the benefit of the Children. The innocence, adolescence, social back ground, education, poverty and social environment generally play an important role in their conduct and acts in society. The JJ Act is more inclined to reformative and rehabilitation aspects of the child in conflict with law rather than retributive theory of the criminal jurisprudence.

The JJ Act -2015 provides for the mandatory bail to the juvenile irrespective of the offence he has committed or alleged to have committed. However, there are only three specific grounds on whose presence grant of bail may be refused. Except these three grounds, grant of bail can not be refused to the child or CICL.

It is generally observed that Juvenile Justice Boards or the Children's Courts are reluctant to grant bail to the juveniles when it comes to the serious and heinous category of offences. In case of offences like murder, rape, dacoity etc., Juvenile Justice Boards or the Children's Courts prevents themselves in granting bail although the law has been settled in this regard that seriousness of the offence is no ground to deny the bail. It is often seen that where the District Courts refused to grant bail, High Courts or Supreme Court grants bail in the same matter. Moreover, Social Investigation Reports³² prepared and submitted by the concerned Probation Officer are generally found on printed format and sometimes proper research lacks proper research work. Though SIR is an important consideration to decide a bail application of a child or CICL, however these reports are how much reliable is a question still to be answered. Allahabad High Court in **Minor Son of Moolchand through his natural guardian Grandfather Ved Prakash v State Of U.P. & Anr.**³³, observed that a social background or a social investigation report are more than often very superficial and unscientific. It is a common knowledge that SIR are usually prepared on printed formats and without proper research.

However, JJ Act-2015 is silent on an important aspect. While granting bail to the juvenile, the Act ask for looking into the aspect of reformation and rehabilitation of the juveniles but it do

³² SIR

³³ 2022 SCC Online All. 647

not discusses the aspect of justice to the victim. Today is the time of technology. Mobile phones and internet facility are available 24x7 to everybody. If we go through the cases, we found that the juveniles were in access of mobile phones and internet. The gadgets are making them mentally full mature although they are yet to attain majority as per Indian law. In case of heinous and serious offences where the offence alleged are attempt to murder, murder, rape and dacoity etc., such acts are of the nature which the doer knows the consequences. Sometimes, these acts are committed in a planned way. Sometimes, these acts are committed by a child who is though below the age of 16 years but have sufficient maturity to understand the nature and consequence of the act. Few years ago, in the year 2012, India faced a public outrage where, in capital of India New Delhi, a girl was brutally raped in a bus by some boys in which some of them were minors. During rape, they even inserted outer objects in the private parts of the girl and damaged the organs as well. The case was popularly known as “Nirbhaya case”. Recently, one of the Indian High Court of Madhya Pradesh observed that JJ Act-2015 is inadequate and ill equipped and legislature has not learnt anything from the Nirbhaya Gand Rape case, 2012³⁴. The shelter of this beneficial legislation would promote the unscrupulous person to get the crime done through the minors and juveniles. Therefore, there is a need to review the law of bail and it should be more detailed. There should be some other categories of the offences as well as age group for the child. This would definitely leads to the justice to victims of the offences as well.

³⁴ theprint.in/judiciary/juvenile-justice-act-inadequate-allows-delinquents-to-commit-heinous-offences-says-mp-hc/688862/

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