

“Bail under Juvenile Justice (Care and Protection of Children) Act, 2015 - an Analysis”

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The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter the Act of 2000) was enacted to consolidate and amend the law regarding juvenile in conflict with law and children in need of care and protection. Articles 15(3), 39(e), 39(f), 45 and 47 of the Constitution impose an obligation on the State to ensure that all the needs of the children are fulfilled and their basic rights are protected. On 20th November, 1989 the United Nations General Assembly adopted the Convention on the Rights of Child, which was ratified by India on 11 December 1992. This Convention prescribed a standard set to be followed by all the member nations. It insisted on a manner consistent with the promotion of the child's sense of dignity and worth, his/her respect for the human rights and fundamental freedoms of others and also of social re-integration, with the child subsequently assuming a constructive role in the society. These objects of the convention encapsulates the legislative intent in the enactment of the Act of 2000, which highlighted the principle of de-stigmatisation of juvenile delinquents by the justice system.

However the discourse around the jurisprudence of juvenile justice underwent a drastic change after the Nirbhaya Gang Rape Case of 2012. Therein the prime accused was seventeen years of age at the time and hence was tried and convicted as a juvenile to serve a sentence of only three years. Thus today, we have The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter the Act of 2015 or the JJ Act, 2015) which goes beyond its reformatory agenda to hone retributive theory.

Through the course of this article we will be investigating into how the current Act of 2015 deals with the liberty of the child found to be in conflict with law, i.e, how the proceedings of bail unfold when a juvenile is arrested. An arrest first and foremost curtails the fundamental right of liberty, as under Article 21 of the Constitution. Hence, the issue of bail become extremely important and central to actualising the reformatory and rehabilitative agenda of juvenile justice while keeping intact child's sense of dignity and worth.

Apprehension of child alleged to be in conflict with law

As soon as a child alleged to be in conflict with law is apprehended, such child is placed under the charge of the special juvenile police unit or the designated child welfare police officer who is required to produce the child before the Juvenile Justice Board without any loss of time and within a period of twenty-four hours. In no case is the child supposed to be

placed in a police lockup or lodged in a jail.¹ If the juvenile is not released on bail he/she will be transferred to an observation home and a place of safety if he completes the age of eighteen years during the period of inquiry.² Hence, it can clearly be discerned that refusal to bail out a juvenile is more in the nature of protective custody rather than penal custody.³

Conditions for Bail

Section 12 of the JJ Act, 2015 lays down the conditions for bail for a “child in conflict with law” which is a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.⁴ This section lays down a non-obstante clause saying notwithstanding the procedure laid down in the Code of Criminal Procedure (hereinafter referred to as the Code or CrPC) for bail a child in conflict with law who has committed a bailable or a non-bailable offence, both, shall be released on bail with or without surety. Further, the proviso to this section says that the bail may be denied if there appear to be reasonable grounds for believing that upon the release there exists a likelihood of: (i) the child being brought into association with any known criminal; or (ii) the child being exposed to moral, physical or psychological danger; or (iii) the ends of justice being defeated.⁵

Burden of Proof

Unlike the usual cases where bail is applied for by an accused and he has to make out a case for grant of bail as under CrPC, the burden of proof shifts onto the prosecution for a juvenile in conflict with law. There is no doubt that even after the coming of the new Act in 2015, the burden is still on the prosecution to show that on the parameters specified in the proviso to section 12(1) of the Act bail should be denied to a juvenile. The principle invoked here is one of presumption of innocence.⁶ This aspect of the jurisprudence of juvenile justice is talked about in the case of *Naisul Khatun v State of Assam*⁷ by the division bench of Gauhati High court. The court held that it is for the arresting authority to satisfy the Juvenile Justice Board that the juvenile should not be released on bail⁸ based on any of the three grounds mentioned in section 12(1) of the JJ Act, 2015 and not for the juvenile to plead a case for himself.

Social Investigation Report

The questions of whether the child would be released into a “criminal habitat” or not and whether he would be exposed to “moral, physical or psychological danger” are answered by the social investigation report provided under section 13. The Juvenile Justice Board directs the Probation Officer, or in case a Probation Officer is not available to the Child Welfare

¹ s.10 of Juvenile Justice (Care and Protection of Children) Act 2015, No. 2, Acts of Parliament, 2016 (India)

² s.6 of Juvenile Justice (Care and Protection of Children) Act 2015, No. 2, Acts of Parliament, 2016 (India)

³ *Naisul Khatun v State of Assam*, 2011 CriLJ 326 (India), para 25.

⁴ s.2(13) of Juvenile Justice (Care and Protection of Children) Act 2015, No. 2, Acts of Parliament, 2016 (India).

⁵ s.12 of Juvenile Justice (Care and Protection of Children) Act 2015, No. 2, Acts of Parliament, 2016 (India).

⁶ *Naisul Khatun v State of Assam*, 2011 CriLJ 326(India), para. 29.

⁷ *id.*

⁸ *supra* note 6, para 25.

Officer or a social worker undertakes social investigation and submits the report within a period of 15 days from the date of first production before the board. The social investigation report contains information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry. The report constitutes of an inquiry into the socio-economic and domestic background of the juvenile which are scrutinised in the lights of the rider to the provision of bail given in section 12(1) of the JJ Act, 2015 to see to it whether his/her rehabilitation in the family would prove counterproductive to his/her reformation⁹. For example in the case of Prashant Mishra v The State of MP¹⁰ the Madhya Pradesh high court while denying the provision of bail to a juvenile gave the following reasons in the view of the report of the Probation officer: (i) That the juvenile is addicted to various kinds of intoxicants and is more than likely to indulge in criminal activities to raise money. (ii) His guardians i.e. mother and the grand - father are clearly not in a position to exercise any disciplinary control over him. (iii) The victims may be inclined to retaliate at some point, putting the juvenile in physical danger.

Hence, the social investigation report by the probation officer of the child in conflict with law assumes great importance to the court¹¹. If there is an absence of any such ground appearing, the applicant is entitled to grant of bail. It is important to note that nothing contained in S.12 of the Act of 2015 allows the Juvenile Justice Board or the appellate authority to carry out any comparative assessment of atmosphere of the observation Home and outside it, to decide the application for grant of bail under S.12 of the Act of 2015. It is relevant to consider that in reality the objectives of juvenile justice by denying bail are left in a lurch due to the poor condition of the places of safety or observation homes set up by the government and private parties¹², despite the addition of provisions in the act of 2015 to ameliorate the conditions.

Gravity of the Offence

There are three categories talked about in the Act of 2015 distinguished by the nature or degree of crime committed and age of the child in conflict with law. Section 18 lays down two categories and Section 15 the third. (i) The first consists of a child, irrespective of age, who has committed a petty or a serious offence; and (ii) the second consists of a child below the age of sixteen years who has committed a heinous offence; (iii) the third category deals with children who have completed or are above the age of sixteen years and have committed a heinous offence. Section 15 lays down the procedure for preliminary assessment into heinous offences. The board, with the help of social and psychological experts, assesses the child's (i) mental and physical capacity to commit such offence, (ii) ability to understand the consequences of the offence and (iii) the circumstances in which he allegedly committed the offence. If they're satisfied that the child was mature enough then under sub-section (3) of

⁹ Shani Birbal v. State of Chhattisgarh, 2017 CriLJ NOC 65 para 10 (India).

¹⁰ 2016 CriLJ 2294 (India).

¹¹ *supra* note 9, para 10.

¹² Nisha Nambiar, 214 pvt observation homes face closure for poor grades, THE TIMES OF INDIA (Mar. 26, 2017, 07:02 IST), <https://timesofindia.indiatimes.com/city/mumbai/214-pvt-observation-homes-face-closure-for-poor-grades/articleshow/57834453.cms>

section 18 the board can pass an order for the juvenile to be tried as an adult. In this context section 12, 18, 15 and also other relevant provisions that find place in chapter IV are part of an integrated scheme.¹³

To be tried as an adult would mean to be tried as under the CrPC wherein the accused must satisfy his application for bail before the court based on merits and with the assurance of full co-operation during the period of trial. But the bail proceedings for a juvenile don't proceed on similar considerations. So far, it may seem that the juvenile can be only be denied bail if it is feared he/she may be going back to a criminal habitat or may be exposed to psychological, physical, moral danger. Or that if the child is found to have completed the age of sixteen and committed a heinous offence, he may be tried as an adult. But does that mean the gravity of offence has no bearing on the considerations for bail under the JJ Act, 2015 (and previously 2000)? This brings us to the interpretation of the phrase in the proviso to section 12: "such person shall not be so released if there appears reasonable grounds for believing that the release is likely...would defeat the ends of justice".

The courts for construing the consideration "would defeat the ends of justice" have looked into the merits of the case. In other words, the courts found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor.¹⁴ The Allahabad High Court in the case *Raju@Ashish v. State of U. P. & Another* 2018 held that in the opinion of the court the nature and gravity of the offence are not the only considerations while applying the last condition but other factors such as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child that are spoken of under section 18 of the Juvenile Justice Act, 2015 are relevant and would act as a good guide while considering the above mentioned condition.¹⁵

Conclusion

The law demands that justice should not only be done to the accused but also to the accuser. It can be concluded that merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. Therefore though the Act of 2015 look after the benefit of the child in conflict with law, the legislature still manages to preserve larger interest of society even in cases of bail to a juvenile.

¹³ *Raju@Ashish v. State of U. P. & Another*, Criminal Revision No. 2492 of 2017 (High Court of Allahabad), 7/07/2018, para 31.

¹⁴ *supra* note 13, para 24.

¹⁵ *supra* note 13, para 30.