

2025:HHC:45335

IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA

Cr. Revision No. 452 of 2025

Reserved on : 3.12.2025

Decided on : 24.12.2025

ABC

...Petitioner

Versus

State of H.P.

...Respondents

Coram

Hon'ble Mr. Justice Virender Singh, Judge

Whether approved for reporting?

For the Petitioner : Mr. K.S. Gill, Advocate.

For the Respondent : Mr. Varun Chandel, Mr.
Tejasvi Sharma and Mr. H.S.
Rawat, Additional AGs and
Ms Avni Kochhar, Deputy
A.G.

Virender Singh, Judge (oral)

Petitioner ABC (Child in Conflict with Law)
(hereinafter referred to as 'the CCL') has approached
this Court under Section 102 of the Juvenile Justice
(Care and Protection of Children) Act 2015,
(hereinafter referred to as 'the Act'), against the order

dated 13.5.2025, passed by the learned Sessions Judge, Shimla, District Shimla, H.P., (hereinafter referred to as 'the Appellate Court'), in Cr. Appeal No. 17-S/10 of 2025.

2. Vide order dated 13.5.2025, the learned Appellate Court has dismissed the appeal, which has been preferred against the order dated 28.11.2024, passed by the Juvenile Justice Board, Shimla, H.P. (hereinafter referred to as 'the JJB'), has dismissed the bail application, filed under Section 12 of the Act.

3. Brief facts leading to filing of the present petition, as per the record, are as under:

Police of Police Station, Kotkhai had filed a report under Section 173 (2) Cr. P.C., against the CCL on the ground that on 3.5.2024, complainant Sandeep Sawant made a complaint under Section 154 Cr. P.C., disclosing therein, that he is resident of village Jaltar, P.O. Chalner, Tehsil Kotkhai, District Shimla. He is having an orchard, consisting of 600-700 apple plants. In order to look after the said orchard, he has engaged

two Nepalese, Dev, S/o Etaben Bahadur, alongwith his wife and children is residing below his house in temporary shed and Lokesh Dhami, alongwith his family, is residing in a temporary shed, situated above his house. On 2.5.2024, wife of Lokesh Dhami disclosed that her husband had not returned to house, upon which, Lokesh was searched for.

3.1 During search, it was found that on 1.5.2024, during evening, Lokesh alongwith his companions Ganga Ram, Chunu Sharma, CCL and Dev, was consuming liquor together at a tank near Nihari nallah. The CCL is stated to have returned back to his house and after some time, Ganga Ram, Chunu etc. also stated to have left the place. Lokesh had talked to his wife at about 8:30 p.m. Despite the search, Lokesh was not found. Police has also searched for him. The complainant inquired at his own level from Dev, as he and Lokesh were together, but he could not give any satisfactory answer. As such, the complainant has

expressed his suspicion that Dev has killed Lokesh and hidden his body.

3.2 On the basis of above facts, the complainant has prayed that action be taken against Dev, upon which, Police registered FIR under Section 364 of the IPC and criminal machinery swung into motion.

3.3 On 3.5.2024, complainant Sandeep Sawant lodged the missing report of Lokesh Dhami and accused Deval Budha was searched for. However, he was not found at his house. During search, it was found that he was in Kotkhai market, from where, he was arrested.

3.4 During investigation, he has deposed that on 1.5.2024, he alongwith one Lokesh and one other person, (whose name he does not know) had consumed liquor near IPH water tank. Thereafter, his companion, the CCL had gone to bring liquor to them. After taking liquor, Ganga Ram and other Nepali national went to their respective sheds. Thereafter, CCL also returned to his house. He has also deposed

that Lokesh abused the CCL, upon which, accused and CCL caught hold of Lokesh from his neck and killed him. Thereafter, accused and CCL buried the dead body of Lokesh under the stones and the said area was covered with the pieces of woods, upon which, the Police registered the case under Sections 302, 201 and 34 IPC and Section 364 of the IPC was deleted. Accused Deval Budha was arrested at about 8:30 p.m.

3.5 During investigation, accused Deval Budha has disclosed the place, where, he has hidden the dead body, in pursuance of his statement, under Section 27 of the Indian Evidence Act. His dead body was identified by deceased Lokesh's cousin Lachhi Dhami. The dead body was, thereafter, sent to IGMC, for post mortem examination, where, the Doctor opined that the deceased died due to manual strangulation, leading to asphyxia. Thereafter, the team of SFSL visited the spot and physical evidence from there was also taken into possession.

3.6 On 5.5.2024, accused Deval Budha disclosed that deceased Lokesh, who was residing in adjoining temporary shed, used to keep an evil eye on his daughter, as such, he has planned to kill him and associated the CCL by alluring him to pay a sum of Rs.1,00,000/-, in case, he helps to kill him, upon which, CCL agreed to his proposal and both of them had decided to kill Lokesh. Consequently, they killed him on 1.5.2024.

3.7 Thereafter, they returned back to the temporary shed of CCL, where cash of Rs. 20,000/- was given to the CCL by accused Deval Buddha. On 5.5.2024, the CCL was associated in the investigation. During inquiry, the age of the CCL was found to be 17 years, 2 months and 13 days, as his date of birth was found to be 22.2.2007. He was inquired in the presence of his brother Tek Bahadur.

3.8 The CCL was thereafter handed over to the custody of his brother and was produced before the Principal Magistrate, Juvenile Justice Board, Shimla,

on 6.5.2024, from where, he was sent to Correctional Home, Hiranagar.

3.9 Thereafter, the CCL has moved the application for bail, before the Principal Magistrate, Juvenile Justice Board, Shimla. However, his application was dismissed, on 28.11.2024. Thereafter, appeal under Section 101 of the Juvenile Justice (Protection and Care of Children Act), 2015, was filed before the learned Sessions Judge, Shimla, H.P., however, the same was dismissed, on 13.5.2025.

4. Now, the CCL is before this Court, by way of present Revision Petition. The present Revision Petition has been filed mainly on the ground that approach of both the Courts below is against the object of the Act. In this regard, the petitioner has relied upon the provisions of Section 3 of the Act. According to the petitioner, both the Courts below have not considered the mandate of the Act, as legislature in its wisdom has used the word “shall”, in Section 12 of the Act.

5. According to the petitioner, Section 12 of the Act is self-contained and complete code and non-obstante clause. The grounds, upon which, the relief of bail has been denied, are also stated to be not sustainable in the eyes of law.

6. As per the petitioner, relief has been declined only on the basis of vague apprehensions, about the seriousness of the crime in question. The CCL is stated to be in Observation Home, since 3.5.2024 and the same is stated to be against the legislative intent.

7. On the basis of above facts, Mr. K.S.Gill, Advocate, appearing for the petitioner, has given certain undertakings, on behalf of the petitioner, for which, he is ready to abide by, in case the present petition is allowed. Hence, a prayer has been made to allow the petition.

8. Perusal of the orders passed by the Principal Magistrate, Juvenile Justice Board, Shimla, H.P. shows that relief of bail has been declined on the ground that this case falls within the exceptional

circumstances, as defined in proviso to Section 12(1) of the Act.

9. Similarly, the learned Sessions Judge, Shimla, declined the relief of bail to the CCL on the ground that he has committed heinous offence and also relied upon the proviso to Section 12 of the Act, by holding that the juvenile shall not be released, if there appears reasonable grounds for believing that the release is likely to bring juvenile into association with any known criminal or expose such juvenile to moral, physical or psychological danger or that release of the juvenile would defeat the ends of justice. This has been held on the ground of seriousness of the allegations against him.

10. In this case, the CCL has moved before the Principal Magistrate, Juvenile Justice Board, Shimla, H.P., under the provisions of Section 12 of the Act. Provisions of Section 12 of the Act are reproduced as under:

“Section 12- Bail to a person who is apparently a child alleged to be in conflict with law.-

(1) When any person, who is apparently a child and is alleged to have committed a available or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home 1[or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

11. As stated above, the application has been rejected mainly on the ground that heinous offence has been committed and the guardian of the CCL has no effective control over the CCL and there is possibility of recurrence of the offence after his release.

12. The Legislature, in its wisdom, has used the word 'shall' in Section 12(1) of the JJ Act. The use of word 'shall' by the Legislature, in its wisdom, raises the presumption that a particular provision is mandatory.

13. As per provisions of Section 12 of the Act, the JJB is under the legal obligation to release the CCL with or without surety. However, as per the latter part of Section 12(1) of the Act, certain circumstances have been provided, under which, there is prohibition for releasing the CCL on bail. Those grounds are : (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological danger and (c) that release of the juvenile is in conflict with law, would defeat the ends of justice.

14. Merely, reiterating the above three grounds do not fulfill the ingredients of the term 'reasonable grounds', as from the language of Section 12 of the Act, it appears that intention of the Legislature is to grant bail to the CCL, irrespective of the nature or gravity of the offence, alleged to have been committed by him.

15. The exceptions, under which, the bail can be denied, have elaborately been discussed by the Punjab and Haryana High Court at Chandigarh in ***Manmohan Singh v. State of Punjab***, reported in ***PLR (2004) 136 P & H 4***. Relevant paragraphs 7 and 8 of the judgment are reproduced, as under:-

"7....The reasonable grounds for believing that his release is likely to bring 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, should be based upon some material/evidence available on the record. It is not a matter of subjective satisfaction but while declining bail to the juvenile on the said ground, there must be objective assessment of the reasonable grounds that the release of the juvenile is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice..."

*8. In **Sanjay Kumar**'s case (supra) it has been held by the Allahabad High Court that every juvenile whatever offence he is charged with, shall be released on bail 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 and that the existence of such ground should not be mere guess work of court but it should be substantiated by some evidence on record."*

16. Even, considering the non obstante clause, the provisions of the Act will override the provisions of

Cr.PC, regarding bail and the JJB is bound to release the person on bail or put him under the supervision of a Probation Officer or under the care of any fit person.

17. The Hon'ble Apex Court in ***Criminal Appeal (arising out of Special Leave Petition (Crl.) No.9566/2024)***, titled as ***Conflict with Law V versus The State of Rajasthan and Anr.***, decided on 14.08.2024, has elaborately discussed the proviso to sub-section (1) of Section 12 of the JJ Act. Relevant paragraphs 6 to 10 of the aforesaid judgment are reproduced, as under:

“6. From the phraseology used in sub-section 1 of Section 12, a juvenile in conflict with law has to be necessarily released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person unless proviso is applicable.

7. We have perused all the orders passed earlier by the JJ Board, Special Court and High Court and specially the order dated 11th December, 2023 passed by the JJ Board. There is no finding recorded that the proviso to sub-Section 1 of Section 12 is applicable to the facts of the case. Without recording the said finding, bail could not have been denied to juvenile in conflict with law.

8. Our attention is invited to Psychological Assessment Report of the Juvenile. The report records that the juvenile does not belong to high risk category and against the column “worry list of child” it is mentioned that there was “no worry”. The report is signed by a qualified Clinical Psychologist.

9. Though none of the courts at no stage have recorded a finding that in the facts of the case, the proviso to sub-Section 1 of Section 12

was applicable, the juvenile in conflict with law has been denied bail for last one year.

10. Hence, the impugned orders are set aside. The appeal is accordingly allowed.”

18. While deciding such type of question, the provisions of Section 3 of the Act assume significance.

Those provisions are reproduced, as under:-

“3. General principles to be followed in administration of Act.— *The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:—*

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child’s views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or

maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalization as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

19. The cumulative effect of the above provisions, contained in Section 3 of the Act, is that the CCL shall be presumed to be innocent of any *mala fide* or criminal intent up to the age of 18 years and all decisions, regarding the CCL, shall be based on the primary consideration that they are in the best interest of the child and to help the child in developing full potential.

20. Although, as per Section 18 of the Act, the child above the age of 16 years, who has committed heinous crime, has been made a class apart from the cases of petty offences, but, merely on that ground, the relief to the CCL, cannot be declined. There is nothing on the file to demonstrate, at this stage, that case of the CCL falls

within the exceptional circumstances, as defined in proviso to Section 12(1) of the Act.

21. It has rightly been argued by learned counsel for the CCL that without recording the findings, qua the fact that in case, the CCL is released on bail, the CCL would come in contact of any known criminal or expose such juvenile to moral, physical or psychological danger, the approach of the learned Principal Magistrate, Juvenile Justice Board, Shimla is not sustainable in the eyes of law. Even, the learned Sessions Judge, Shimla has fallen into the error.

22. As per Section 12 of the Act, relief can only be declined, if the material is before the Juvenile Justice Board to decline the relief, as per proviso added to Section 12(1) of the Act.

23. At the time of deciding the application for bail, ,the Juvenile Justice Board is not supposed to discuss the merits/de-merits of the case to ascertain the guilt/innocence of the CCL. In the absence of any material to justify in bringing the case of the CCL under the definition of 'exceptional circumstances', as defined in

proviso of Section 12 of the Act, the said order is not sustainable, in the eyes of law.

24 With these observations, this Court is of the view that the order passed by the Juvenile Justice Board, as upheld by the learned Sessions Judge, Shimla, is not sustainable in the eyes of law, and orders, under challenge, set aside for correctness and legality.

25. Consequently, the present revision petition is allowed and the order, passed by the learned JJB, as upheld by the learned Appellate Court, is set aside and the CCL is ordered to be enlarged on bail, subject to the following conditions:-

(i) Natural guardian/father will furnish an undertaking that upon release of the CCL on bail, he will not permit him to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger

ii) Natural guardian/father will ensure that the juvenile will not repeat the offence.

(iii) Natural guardian/father will further furnish an undertaking to the effect that the CCL will pursue his studies at the appropriate level.

(iv) CCL as well as the natural guardian/ father will report to the Probation Officer on 3rd day of every calendar month commencing from January, 2026, and if during any calendar month the 3rd day falls on a holiday, then on the following working day.

(v) The Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the concerned Juvenile Justice Board,

on such a periodical basis as the Juvenile Justice Board may determine.

(vi) The CCL, through his guardian, is directed not to leave the jurisdiction of the Court, and in case, he intends to leave the jurisdiction of the Court, for any purpose, he will seek permission of Principal Magistrate, Juvenile Justice Board, Shimla, H.P.

26. With these observations, the petition stands disposed of, so also the pending application(s), if any.

27. Any of the observations made herein above shall not be taken as an expression of opinion on the merits of the case as these observations are confined only to the disposal of the present bail application.

28. Record be returned to the quarter concerned under proper receipt.

(Virender Singh)
Judge

December 24 , 2025
(Kalpana)