

**HIGH COURT OF UTTARAKHAND AT NAINITAL****Criminal Misc. Application U/s 482 No. 978 of 2024****10TH July, 2026**

Babli and Another

--Applicants

Versus

State of Uttarakhand and Another

--Respondents

Presence:-

Mr. Prem Kaushal, learned counsel for the applicants

Mr. Pankaj Joshi, learned A.G.A. for the State.
-----**Hon'ble Siddhartha Sah, J.**

By means of the present Criminal Misc. Application under Section 482 Cr.P.C., the applicants have sought quashing of the impugned order dated 06.05.2024, passed by learned Additional Sessions Judge, Khatima, District Udham Singh Nagar in Sessions Trial No.65 of 2012, arising out of FIR No.254 of 2011, 'State vs. Prabhunath & Others under Sections 304, 302 & 201 of IPC, Police Station Khatima, District Udham Singh Nagar.

2. It has been informed that the respondent no.2 has since died.

3. Brief facts of the case necessary for the adjudication of the present Criminal Misc. Application under Section 482 Cr.P.C. are as follows :-



(i) First Information Report was lodged by the respondent no.2, which was registered as FIR No.254 of 2011 for the offence punishable under Sections 147, 148, 302, 201 & 34 of IPC, at Police Station Khatima, District Udham Singh Nagar. Though the applicants were named in the FIR but the charge-sheet was submitted only against three accused persons, namely Prabhunath, Punnalal and Panchanand. It was only during the trial, on an application moved under Section 319 Cr.P.C., which was allowed by the trial court vide order dated 05.07.2014 that the applicants and one Jyoti were summoned as accused under Section 319 Cr.P.C.. After summoning the applicants under Section 319 Cr.P.C., the applicants challenged said the summoning order dated 05.07.2014 before this Court by way of filing a Criminal Revision, but the same was dismissed vide order dated 02.11.2017. However, the applicants were directed to appear before the trial court and move the bail application and the trial court was directed to decide the same as expeditiously as possible. Thereafter, the applicants surrendered before the trial court and moved the bail application and the same was allowed on the same day.

(ii) It is further the case of the applicants that since the applicants were juvenile on the date of incident, therefore, an application dated 01.05.2024 was moved by the applicants along with Jyoti, praying to declare them as juvenile and by separating their files, the same be sent before



Juvenile Justice Board for trial. In the said application, it has been stated that the on date of incident i.e 23.11.2011, date of birth of the accused Jyoti D/o Dilip being 14.06.1997 she was 14 years, 5 months & 11 days old; date of birth of Babli D/o Videshi being 05.07.1995 she was 16 years 4 months 18 days old and date of birth of Pappu S/o Pardeshi being 14.02.1995 he was 16 years 9 months 11 days old and all the three accused were minor on the date of incident.

(iii) The learned Additional Sessions Judge, Khatima, District Udham Singh Nagar vide impugned order dated 06.05.2024 rejected the application on behalf of present applicants, namely Babli Kumari and Pappu. However, co-accused Jyoti has been declared juvenile and her file has been ordered to be separated and sent to the Juvenile Justice Board.

4. Assailing the aforesaid order dated 06.05.2024, the learned counsel for the applicants would submit that on the date of incident, the applicants were 16 years 4 months 18 days and 16 years 09 months 11 days of age respectively. Therefore, the impugned order refusing them to declare juvenile is apparently erroneous and is against the provisions of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as Juvenile Justice Act, 2015). He further submitted that the application of the



applicants has been rejected on the sole ground that they were more than 16 years of age on the date of incident, this cannot be a sustainable ground to reject the application and the impugned order is against the letter and spirit of the Juvenile Justice Act.

5. Referring to the impugned order dated 06.05.2024, learned counsel for the applicants would submit that even from a bare reading of the order dated 06.05.2024, it is clear that the learned Additional Sessions Judge, Khatima did not dispute the respective ages of the applicants to be between 16 & 18 and as per the provision of Section 2 (13) of the Juvenile Justice Act, 2015, the applicants would be 'Child in Conflict with Law'. Section 2 (13) of Act, 2015 is being extracted hereunder for ready reference.

“2(13) “child in conflict with law” means 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”.

6. To buttress his submissions, learned counsel for the applicants would rely upon the judgment of the Hon'ble Supreme Court in the case of **Thirumoorthy vs. State represented by the Inspector of Police**, reported in **(2024) 12 SCC 307**, and in particular has drawn the attention of the Court to para nos. 29,30 and



40 of the said judgment, which are reproduced hereunder for ready reference.

“29. The provisions contained in Section 9(1) stipulate that when a Magistrate not empowered to exercise the power of the Board under the Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

30. Section 9(2) and Section 9(3) cast a burden that where the Court itself is of the opinion that the person was a child on the date of commission of the offence, it shall conduct an inquiry so as to determine the age of such person and upon finding that the person alleged to have committed the offence was a child on date of commission of such offence, forward such person to the Board for passing appropriate orders and sentence, if any, passed by the Court shall be deemed to have no effect.

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are in gross violation of the mandate of the Act and thus, the entire proceedings stand vitiated.”

7. Thus, placing reliance upon the provisions of the Act, 2015, learned counsel for the applicants would submit that the said Act is the beneficial legislation and has to be read in favour of the Child in Conflict with law, whenever the plea of juvenility is raised at any stage.

8. In reply to the submissions of the learned counsel for the applicants, Mr. Pankaj Joshi, learned AGA would very fairly submit that in the present case,



the relevant provisions of the Act, 2015 would be Section 9(2) & (3). Section 9 of the Act, 2015 is extracted hereunder for ready reference.

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act :-

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has



ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

9. The learned AGA, has also referred the provision of Section 19 of Act, 2015, which is abstracted hereunder for ready reference.

“19. Powers of Children’s Court :- (1) After the receipt of preliminary assessment from the Board under section 15, the Children’s Court may decide that— (i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere; (ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.



(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail: Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

10. Placing reliance upon the aforesaid provisions of Section 9 (3) as well as Section 19 of the said Act, 2025, the learned AGA very fairly submits, that if a court finds that a person has committed an



offence and was a child in conflict with law on the date of commission of such offence, it shall forward the child in conflict with law to the Board for passing appropriate orders and after the receipt of preliminary assessment of the court under Section 15, the Children's Court may decide that there is need for trial of child as adult as per the provisions of the Cr.P.C. and pass appropriate orders.

11. Learned AGA would further submit that the provisions of Section 15 and Section 18(3) of the Act, 2015 relating to preliminary assessment, were enforced with effect from 15th of January, 2016 and will have no applicability to the offence which is allegedly committed on 23.11.2011. There is no corresponding section of section 15 and 18(3) in the former Act of 2000, i.e. the Juvenile Justice (Care and Protection of Children) Act, 2000 and that there is no provision for retrospective applicability of the Juvenile Justice Act, 2015.

12. After hearing the learned counsel for the parties at length and after going through the record, it is clear from a bare perusal of the impugned order dated 06.05.2024 that the learned Additional Sessions Judge, Khatima, though having noted that all the three applicants have raised the plea of juvenility and had



sought reference to the Board were found to be below 18 years of age, however, and only since the applicants were found to be above 16 years of age, the learned Additional Sessions Judge declined to separate their file and refer the same to the Juvenile Justice Board.

13. On one hand, the learned counsel for the applicants would submit that in view of the provisions of Section 2(13) of the Act, 2015, the applicants were child in conflict with law, and thus, as per provisions of Section 9(2) and (3) read with Section 19, the trial court was under an obligation to refer them to the Juvenile Justice Board after separating their files, particularly in view of the judgment of the Hon'ble Supreme Court in the case of Thirumoorthy (Supra) and particularly paragraph numbers 30 and 31 thereof.

14. On the other hand, the learned AGA, though not strictly opposing the said submissions on behalf of the applicants per se, but his only objection would be that the Juvenile Justice Act, 2015 does not have a retrospective effect and therefore, it is doubtful whether the applicants could have been declared juvenile.

15. After hearing the rival submissions of learned counsel for the parties and after going through the record, it is clear that provisions of Section 9(3) of the



Juvenile Justice Act, 2015 make it clear that if the court finds that a person has committed an offence and was a child in conflict with law on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders.

16. Thus, once the learned Additional Sessions Judge had recorded the finding that the applicants were child in conflict with law, i.e. they were above 16 years and below 18 years of age, it could not have declined to refer them to the Juvenile Justice Board.

17. So far as the plea of the learned AGA is concerned that the Act does not have a retrospective effect. It is clear from the impugned order dated 06.05.2024 that the learned Additional Sessions Judge has himself relied upon the provisions of Section 15(1) of the Juvenile Justice Act, 2015 and the provisions of Section 18(1) of the Juvenile Justice Act, 2015 and has recorded the reasons that the offences committed by the applicants and Kumari Jyoti, were serious offences and since the applicants were above 16 years of age, they had the ability to understand the nature and consequences of the offence and the circumstances in which they allegedly committed the offence, and



therefore, it would be as per law to try them as adult by the said court.

18. The provisions of Section 9(3) of the Juvenile Justice Act, 2015 are mandatory in nature, and there is a mandate that once the court finds that a person has committed an offence and was a child in conflict with law on the date of commission of such offence, it shall forward such a child to the Board for passing appropriate orders. The Court finds that pari-materia provision is there under provisions of Section 7-A(2) of the Juvenile Justice (Care and Protection of Children) Act, 2000 containing similar mandate.

19. Hence, the said provision would oust the jurisdiction of the learned Additional Sessions Judge before whom the trial was pending, and the order dated 06.05.2024 was thus absolutely without jurisdiction after making assessment of the applicants as juvenile but declining to separate the file of the applicants from the others and refer it to the Juvenile Justice Board.

20. Hence, this Court finds substance in the submissions made on behalf of the learned counsel for the applicants, and in view of the aforesaid facts and circumstances and the position of law as enunciated by the Hon'ble Supreme Court in the case of



Thirumoorthy (Supra) and the provisions of Section 9(3) read with Section 2(13) of the Juvenile Justice Act, 2015, the impugned order is unsustainable and deserves to be quashed.

21. Thus, the present Criminal Miscellaneous Application under Section 482 Cr.P.C. is allowed. The impugned order dated 06.05.2024 passed by the learned Additional Sessions Judge, Khatima, District Udham Singh Nagar in Sessions Trial No.65 of 2012, arising out FIR No.254 of 2011, 'State vs. Prabhunath & Others under Sections 304, 302 & 201 of IPC, Police Station Khatima, District Udham Singh Nagar is hereby quashed, and the file of the applicants shall also be separated and sent to the Juvenile Justice Board for further proceedings.

(Siddhartha Sah, J.)
10.07.2026

JKJ/