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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 19th October, 2020

+ **BAIL APPL. 2510/2020**

CCL 'A'

..... Applicant

Through: Mr. R.D. Rana and Mr. Arvind
Sharma, Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr. G.M. Farooqui, APP for the
State.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J.

The applicant, who is stated to be a juvenile less than 17 years of age at the time of the alleged offence, is an accused in case FIR No. 297/2019 dated 08.06.2019 registered under sections 302/201/34 IPC at PS : Khajuri Khas, Delhi. The applicant seeks release on bail from the Observation Home where he is housed since 09.06.2019 i.e. for about 1 year and 3 months.

2. Mr. R.D. Rana, learned counsel for the applicant submits that the essence of the allegation in the FIR, which has since culminated in the filing of a charge-sheet before the Principal Magistrate, Juvenile Justice Board, New Delhi, is that the applicant/child in conflict with law ('CCL-A', for short), alongwith another juvenile and two adult co-accused, caused the death of one Naeem Ansari. The death is

alleged to have been caused by the use of knives. The essential role imputed to CCL-A is that he was present at the spot, where the *other* juvenile alongwith one of the co-accused, made a cellphone-call to the victim calling him to the spot on the pretext of smoking *hookah*, where the victim was subsequently done to death by the other co-accused.

3. Mr. Rana submits that according to the prosecution, the genesis of the incident was certain objectionable photos/videos of the sister of the *other* juvenile, which are alleged to have been in the possession of the deceased; and it was to get these photos/videos deleted that the deceased was called to a certain place; and upon the deceased refusing to delete them, the allegation goes, one of the adult co-accused sprinkled chilli powder in his eyes while the other adult co-accused held the hands of the deceased from behind, whereupon the two adult co-accused and the *other* juvenile attacked the deceased with knives one-by-one.
4. Mr. Rana points-out that the essence of the allegation against CCL-A is summarised in the following portion of the charge-sheet:

“... Azeem caught hold the hand of deceased Naeem from behind, thereafter CCL ‘S’, Muzammil and Azeem attacked Naeem with knives one by one. In the mean time Accused CCL ‘A’ ran away from the spot....”

(names of CCLs redacted)

5. Counsel further points-out that no other or further role is ascribed to CCL-A and nothing other than CCL-A’s clothes were taken into possession during investigation; whereupon CCL-A was produced

before the Juvenile Justice Board ('JJB', for short) and was remanded to the Observation Home.

6. Reference in this behalf is made to the following portion of the charge-sheet:

"... During the investigation, the clothes of both the CCL 'A' and 'S' were also taken into possession, were produce before JJB V and were sent to observation home. ..."

(names of CCLs redacted)

7. Counsel also points-out that the customer application form of the cell-phone connection associated with CCL-A shows that the cell-phone number is admittedly not registered in his name; and the charge-sheet further records that CCL-A's whole family has been using the same cell-phone. In this regard, the following portion of the charge-sheet is relevant :

"... CDR and CAF of CCL 'A' bearing No. 8368352859 was also recovered this phone is registered in the name of brother of CCL 'A' namely BLANK and whole his family has been using the same and BLANK sister of the CCL 'A' has been using this mobile also and there is record of long duration calling from this phone with Naeem Ansari deceased."

(reference to CCL redacted)

8. Although there is an allegation in the charge-sheet that phone-calls were made by CCL-A to the other co-accused, the purport and consequences of such phone-calls are clearly a matter of trial. The charge-sheet further records that the ages of the two juveniles, including the present applicant/CCL-A, were verified; and it was found that the date of birth of CCL-A is 03.09.2002, which would

make him less than 17 years of age as on the date of the alleged offence, which is 07.06.2019.

9. Mr. Rana submits that order dated 01.10.2019 on the preliminary assessment of CCL-A under section 15 of the Juvenile Justice (Care and Protection of Children) Act 2015 ('JJ Act', for short), whereby the JJB has decided under section 18(3) of the JJ Act that "*there is a need for trial of CCL 'A' as an adult*" and has transferred his trial to the designated Children's Court having jurisdiction, was never challenged in any proceeding; whereupon CCL-A came to be sent-up for trial before the Children's Court.
10. Thereafter an application moved under section 12 of the JJ Act seeking CCL-A's release on bail was dismissed on 27.07.2020 by the learned Sessions Court, functioning as the Children's Court; and a subsequent application for the same relief was also rejected by the learned Sessions Court on 11.08.2020.
11. Notice in the present application was issued on 04.09.2020.
12. Status report dated 18.09.2020 has been filed.
13. Nominal roll dated 29.09.2020 has been received from the Observation Home.
14. Mr. G.M. Farooqui, learned APP for the State has, in the first instance, opposed the maintainability of the present application, submitting that since CCL-A did not challenge order dated 01.10.2019, whereby the JJB held that there was need to try CCL-A as an 'adult', the present application filed under section 12 of the JJ Act cannot be entertained since CCL-A ought to have moved a bail application, *as an adult*, under section 439 Cr.P.C.

15. Mr. Farooqui also submits that the application shows that CCL-A is not seeking bail on merits, but *on the ground that he is a child in conflict with law*; but that once CCL-A has been sent-up for trial as an ‘adult’, this plea is not tenable in law.
16. Mr. Farooqui points-out that order dated 01.09.2019 made by the JJB is premised on the fact that the offence committed by CCL-A is heinous, as per section 2(33) of the JJ Act, and in fact the offence in the present case under section 302 IPC is punishable with imprisonment for life or by death. Mr. Rana is quick to dispute this submission on the basis that section 21 of the JJ Act provides that a juvenile can never be awarded imprisonment for life nor death penalty.
17. Relying on the status report, Mr. Farooqui states that as per the evidence on record, CCL-A was present at the scene of the crime; that his sister was also in a friendly relationship with the deceased; that on the date of the crime, CCL-A had had several phone conversations with the co-accused; and that after committing the crime he ran away to his house; and lastly, that the family members of the deceased have filed complaints with the police that they have received threats from the *other juvenile*, pressurizing them to withdraw the case.
18. Mr. Farooqui has further contended that since charges have not yet been framed, CCL-A may tamper with evidence if released on bail.
19. Notably, the status report says that the post-mortem examination of the deceased conducted on 09.06.2019 records the cause of death as hemorrhagic shock resulting from ante-mortem injuries to vital

organs, namely chest and abdomen, produced by a sharp-edged weapon.

20. The nominal roll records that CCL-A has been in the Observation Home for about 1 year and 3 months; that he has been used as ‘help’ in the kitchen; and that his overall conduct is ‘satisfactory’.
21. It bears repetition here that by order dated 01.10.2019, on a preliminary assessment under section 15 of the JJ Act, the JJB has said that “*there is a need for trial of CCL ‘A’ as an adult*” under section 18(3) of the JJ Act; and subsequently, trial of his case was transferred to the designated Children’s Court having jurisdiction in the matter.
22. To address the submissions made on behalf of the State, the following queries need to be addressed :
 - (a) When upon a *preliminary assessment* made by the JJB under section 15(2) of the JJ Act, the JJB is of the opinion that there is need for trial of the child as an ‘adult’ and it transfers the trial to the Children’s Court, does the child in conflict with law *de-juré become* an ‘adult’, to be treated as such in all subsequent proceedings ?
 - (b) Whether an application for bail is maintainable before the High Court under section 439 Cr.P.C. for a child in conflict with law, who is sent-up for trial as an adult before the Children’s Court ?
 - (c) Whether an application for bail is maintainable before the High Court under section 12 of the JJ Act for a child in conflict with law, who is sent-up for trial as an adult before the Children’s Court?

- (d) Whether an application for bail as in (c) above, is maintainable before the High Court as a proceeding of first instance or only as an appellate or revisional proceeding under section 101 read with section 8 of the JJ Act ?

23. To address the above queries, it is necessary to refer to the following provisions of the JJ Act:

Section 1(4) :

“1(4) - Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.”

Sections 2(12), (20), (33) and (35) :

“2. Definitions.—*In this Act, unless the context otherwise requires,—*

(12) “child” means a person who has not completed eighteen years of age;”

** * * * **

(20) “Children’s Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

** * * * **

(33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or

any other law for the time being in force is imprisonment for seven years or more;

* * * * *

(35) “juvenile” means a child below the age of eighteen years;”

Section 8(2) :

“8. Powers, functions and responsibilities of the Board.—

(1)

* * * * *

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children’s Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3)

* * * * *

Section 12 :

“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 bailable 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 person’s 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 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.”

Section 15 :

“15. Preliminary assessment into heinous offences by Board.—

(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.”

Section 18(3) :

“18. Orders regarding child found to be in conflict with law.—

(1) * * * * *

(2) * * * * *

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.”

Section 19 :

“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 (2 of 1974) 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 reformatory 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.”

Section 101(5) :

“101. Appeals.—

*(1) * * * * **

*(2) * * * * **

*(3) * * * * **

*(4) * * * * **

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974)."

(emphasis supplied)

Does a child sent-up for trial as an 'adult' *de-juré* become an 'adult' :

24. Interestingly, it is noticed that the JJ Act uses the words "child" and "juvenile" in an interchangeable manner; and in fact these two terms are defined in what is almost a circular definition, as extracted above.
25. The answer to this query is self-evident. Firstly, a child is sent-up for trial as an adult upon a *preliminary* assessment made by the JJB under sections 15(1) read with 18(3) *only* with regard to his mental and physical capacity to commit such offence and his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. This preliminary assessment is further subject to a decision by the Children's Court as to whether there is need for trial of the child as an adult. If the Children's Court so opines under section 19(1) and thereby confirms the preliminary assessment of the JJB, the child is then tried as an adult subject to safeguards *under the Cr.P.C., **but still considering** the special needs of the child, the tenets of fair trial and maintaining a child-friendly atmosphere.*
26. Clearly therefore, even when a child is sent-up for trial *as an adult* before a Children's Court, the *child does not become* an adult or 'major', but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter

treatment of the offender, *though still as a juvenile in conflict with law*. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child's "*mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence*". If the intention of the Legislature was that upon such assessment, the child would *de-juré become an adult*, then the question of there being a separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case.

27. On point of fact, in the present case, the learned Sessions Judge has not yet finally confirmed the preliminary assessment to say that CCL-A is to be tried as an adult.
28. With specific reference to the application at hand, it bears mentioning that even though a child may be sent-up for trial before the Children's Court as an adult, there is no provision in the JJ Act that requires any departure from considering the matter of release of such child on bail under section 12. This court is supported in this view by the judgment of a Co-ordinate Bench of this court in *A.C. v. State of NCT of Delhi*¹.

¹ 2019 SCC OnLine Del 8104 : para 11

Is a child's bail plea maintainable before the High Court under section 439 Cr.P.C. :

29. Now section 12 of the JJ Act, which deals with the grant of bail to a child, expressly contains a *non-obstante* phrase to say that a child 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”. This leaves no manner of doubt that application of the provisions of the Cr.P.C. is excluded in the case of a bail plea of a child. Besides, section 12 is a *specific provision* in a *special statute* that deals with the matter of bail; and accordingly, application of section 439 Cr.P.C. is also necessarily excluded.
30. Moreover, section 5 of the Cr.P.C. also contains a corresponding clause which saves the application of special laws, in the following words :

“Section 5. Saving.

Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

(emphasis supplied)

31. Therefore, in the opinion of this court, a bail application on behalf of a child is not maintainable under section 439 Cr.P.C.

Is a child's bail plea maintainable before the High Court under section 12 of the JJ Act ;

Is such application maintainable as a proceeding of first instance or only as an appellate proceeding under section 101 read with section 8 of the JJ Act :

32. Upon a conjoint reading of the provisions extracted above, it is seen that the bare provisions of section 12 read with section 8(2) are clear and express. These provisions say that the powers conferred on the JJB can be exercised by the High Court if a matter comes before it *in appeal, revision or otherwise*. Accordingly the powers of the High Court are co-extensive with those of the JJB *if* a matter comes before the High Court in appeal, in revision or otherwise.
33. But what is the connotation to be given to the words “.... or otherwise” that appear in section 8(2) of the JJ Act ? The question is whether these words are to be construed *ejusdem generis* with the words “... in appeal, revision ...” or are these words to be construed in some other manner. The answer is found in the Constitution Bench judgment of the Hon'ble Supreme Court in ***Lila Vati Bai v. State of Bombay***², in which the Supreme Court held as follows:

*“12. The rule of ejusdem generis is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. **Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But***

² 1957 SCR 721

where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion, in the context of the object and mischief of the enactment there is no room for the application of the rule of ejusdem generis. ”

(emphasis supplied)

34. In interpreting the provisions of the JJ Act, in this case section 8(2), this court reminds itself of another fundamental rule of interpretation of statutes, namely that a beneficial legislation must be so construed or interpreted as to advance the cause of the legislation for the benefit of the subject and not to frustrate its intendment. These words are in fact borrowed from the observations of a Constitution Bench of the Hon'ble Supreme Court in *Pratap Singh vs. State of Jharkhand & Anr.*³, where in the context of the Juvenile Justice Act 1986, the Supreme Court observed as under:

“10. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of the legislation.”

(emphasis supplied)

35. Accordingly, if there are two possible interpretations for the words ‘or otherwise’, the expansive interpretation which also permits of a

³ (2005) 3 SCC 551

juvenile approaching the High Court directly must be adopted, instead of a limiting interpretation which says that a child must necessarily approach the JJB first. Therefore, in the opinion of this court, the rule of *ejusdem generis*, which would limit the meaning of the words, is *not* to be applied in interpreting the words ‘or otherwise’ appearing in section 8(2). These words do not mean that the proceedings before the High Court must only be akin to, or in the nature of, appellate or revisional proceedings.

36. In fact, in the opinion of this court the words ‘or otherwise’ appearing in section 8(2) refer to ‘proceedings’ that may come before the High Court *otherwise than* in appeal or revision. The words ‘or otherwise’ would therefore include a bail plea that is filed before the High Court as a proceeding of first instance, namely *otherwise than* as an appeal or a revision from an order of the JJB or the Children’s Court denying bail.
37. It must be observed that whether a bail application is filed under section 12 of the JJ Act or under section 439 of the Cr.P.C. is of serious consequence under the scheme of juvenile justice law. This is so for the reason that the considerations for grant or denial of bail under section 12 are *completely different and distinct* from those under section 439 Cr.P.C., which latter is the ordinary provision under which the High Court is empowered to grant bail.
38. The provisions of section 439 Cr.P.C. may be noticed at this point:

“Section 439. Special powers of High Court or Court of Session regarding bail.

(1) A High Court or Court of Session may direct,-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”

39. As is seen from a bare reading of section 439 Cr.P.C., while considering a bail plea under section 439 Cr.P.C. the High Court must consider the effect of grant or denial of bail not only on the accused but on the investigation and prosecution of the case, on the victim, on the witnesses as also in the context of the evidence to be collected, amongst several other considerations, including those set-out in section 437(3) Cr.P.C. On the other hand, section 12 mandates that in the first instance when a person, who is apparently a child and is alleged to have committed a non-bailable offence, is brought before the JJB (or the High Court which has co-extensive powers in view of section 8(2)), ***such person shall be released on bail notwithstanding anything contained in the Cr.P.C.*** Section 12 further stipulates that a person may be so released with or without surety, or may even be placed under the supervision of a probation officer or under the care

of any fit person. Though the proviso to section 12(1) does say that a person, who is apparently a child, shall *not* be released on bail

“... 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 and psychological danger or the person’s release would defeat the ends of justice”

it is important to note that the considerations for denial of bail are to do with the interests and welfare of the child. Section 12 also requires the JJB, and therefore also the High Court, to *record reasons for denial of bail and the circumstances leading to a decision to deny bail.*

40. In section 12 the Legislature has in the first place mandated the grant of bail to a child; and has said that the only grounds on which bail may be denied to a person, who is apparently a child, are (i) the danger that the child’s release is likely to bring the child in association with a known criminal; or (ii) there is risk to the moral, physical or psychological safety of the child itself; or (iii) if the child’s release would defeat the ends of justice.
41. The thrust of the proviso to section 12(1) and the aspects to be considered for denial of bail under that provision are not the usual and ordinary considerations that weigh with the court when considering a bail plea under section 439 Cr.P.C. It bears reiteration that section 12(1) specifically excludes application of anything contained in the Cr.P.C. to a bail plea of a child.

42. Section 101 of course provides that any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Cr.P.C.; and upon a conjoint reading of section 101 and section 8(2), in particular its closing words 'in appeal, revision or otherwise', it is clear that the provisions expressly include an appeal against denial of bail by the Sessions Court; but the provisions do not preclude a fresh bail plea filed after bail has been declined by the Sessions Court.
43. It may only be noticed in the passing that the JJ Act is a special statute, which deals exhaustively *inter alia* with how a child in conflict with law must be dealt with when the child is apprehended and seeks release on bail. The special dispensation contained in the JJ Act cannot be diluted, stunted or modified by applying the conditions and restrictions contained in section 439 Cr.P.C. since that would defeat the very intent, purpose and mandate of the Legislature in enacting a special statute to deal with juveniles.
44. In formulating the above position, this court finds support in the view taken by the Division Bench of the Chhattisgarh High Court in ***Tejram Nagrachi Juvenile vs. State of Chhattisgarh Through the Station House Officer***⁴, where the Division Bench has opined that an application for grant of bail under section 437 Cr.P.C. or 439 Cr.P.C. would not be maintainable in the case of a juvenile. The relevant paras of the judgment are as under:

⁴ 2019 SCC OnLine Chh 24

“7. A conjoint analysis of the provisions contained in Sections 437 and 439 of the Code viz a viz Sections 8, 10 and 12 of the Act, 2015 would discern that while there are certain general guidelines under Sections 437 & 439 of the Code, power in respect of grant of bail to a juvenile is more liberal in the nature of command under Section 12(1) that whenever an apparent juvenile alleged to have committed a bailable or non-bailable offence is detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code 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. The only rider for not releasing the apparent juvenile is that whenever there appears reasonable grounds for believing that the release is likely to bring that person (Juvenile) into association with any known criminal or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances that led to such a decision. This rider as contained in proviso to Section 12(1) requires the Board to record reasons for denying the bail. It would mean that ordinarily the bail is to be allowed to a juvenile. The denial being exceptional on certain reasons to be recorded by the Board as provided in the proviso. This special provision is not contained under Section 439 of the Code.

“8. While there is no denial of the fact that when the Court of Sessions exercises appellate power under Section 101(2) and the High Court exercises revisional power under Section 102 of the Act of 2015, it shall exercise power of the Board provided under Section 8(2), but this power of the Board would also be available to the Court of Sessions or to the High Court when it proceeds to examine the plea of juvenile for grant of bail whenever such occasion arises on account of bail application of juvenile being rejected under Section 12 of the Act of 2015. Therefore, by use of the term “otherwise” in Section 8(2), jurisdiction under Section 439 of the Code would not be attracted which is otherwise excluded by use of the term “notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force”, as occurring in Section 12 (1).”

(emphasis supplied)

45. It may be noted that in the present case however, the Sessions Court, functioning as the Children's Court, has denied bail to CCL-A; whereupon he has approached this court under section 12 of the JJ Act. Regardless of how it is captioned or titled, the present bail application may even be considered as an appellate proceeding under section 101(5).
46. To be clear, insofar as the exercise of inherent powers under section 482 Cr.P.C. is concerned, this court is of the view that since a 'child' is a separate category of persons governed by a special statute, in respect of which specific, detailed provisions are contained in the JJ Act, there is no reason, and it would be impermissible, for the High Court to exercise its inherent powers under section 482 Cr.P.C. The need to exercise inherent power arises if there is a void in the legislation on a given matter. Confining oneself to the issue of bail, since section 12 sets-out the provisions to deal with it, there is no warrant for the High Court to exercise its powers under section 482 Cr.P.C. This view has also been taken by the Division Bench of Madras High Court in *K. Vignesh vs. State rep. by The Inspector of Police*⁵, endorsing the view of the learned single Judge of that court in *Ajith Kumar vs. State*⁶, whereby the learned single Judge has observed as under:

⁵ 2017 SCC OnLine Mad 28442

⁶ 2016 SCC OnLine Mad 4351

“12. Finally, I am of the view that a direction under Section 482 Cr.P.C., as prayed for, cannot be given, as the source of power for grant of bail to a juvenile in conflict with law is not traceable to the Code of Criminal Procedure, but to Section 12 of the Act. Section 1(4) of Act 2 of 2016 reads as under:

** * * * **

*“13. Section 12 of Act 2 of 2016 also has non obstante clause, indicating the legislative intent, that the source of power to grant bail under this Act is independent from that of the Code. Section 5 of Code of Criminal Procedure indubitably protects the procedures laid down in special statutes from the onslaught of the provisions of the Code in the absence of a specific provision to the contrary in the Code. This rests on the principle *Generalia Specialibus Non Derogant* (special law prevails over general law). The non obstante clause used in Section 1(4) and Section 12 of the Juvenile Justice Act cited supra denudes the power of this Court to issue such directions under Section 482 Cr.P.C. Section 482 cannot be used to foreclose the power of the Board to conduct a full fledged enquiry under Section 12 of the J.J. Act.”*

(emphasis supplied)

47. Reference in this regard may also be made to the judgment of the Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar***⁷ :

*“54. The provisions of Section 482 CrPC closely resemble Section 151 of the Code of Civil Procedure, 1908 (hereinafter called “CPC”), and, therefore, the restrictions which are there to use the inherent powers under Section 151 CPC are applicable in exercise of powers under Section 482 CrPC and one such restriction is that there exists no other provision of law by which the party aggrieved could have sought relief. (Vide *Janata Dal v. H.S. Chowdhary*.)”*

(emphasis supplied)

48. Since this court has opined that a bail plea filed in this court may be entertained as a proceeding of first instance seeking bail under section

⁷ (2011) 14 SCC 770

12 of the JJ Act directly; or, if the applicant has been denied bail by the JJB or the Children's Court, as an appeal under section 101, either way the necessity for invoking the inherent powers under section 482 Cr. P.C. does not arise.

49. In conclusion therefore, this court is of the opinion that:

- (i) Section 482 Cr.P.C. has no application to the matter of grant or denial of bail to a juvenile since there are specific provisions contained in section 12 of the JJ Act, the powers under which section are also available to the High Court;
- (ii) Section 439 Cr.P.C. has no application to the issue of grant or denial of bail to a juvenile since, again, a juvenile is to be dealt with by a *special* statute, namely the JJ Act, which contains a *specific* provision for bail, namely section 12 of the JJ Act;
- (iii) If a juvenile has been denied bail by the JJB and/or the Children's Court, it is available for the juvenile to file an application before the High Court under section 12 of the JJ Act seeking bail; and it is not necessary that the bail plea be styled as an appeal under section 101(2) of the JJ Act. The words " or otherwise" appearing in 8(2) are wide enough to include any bail proceeding filed before the High Court, *whether directly or after* having been denied relief by the JJB and/or the Children's Court; and the High Court is empowered to entertain a bail plea as a proceeding of first instance, without having to treat it as an appellate or revisional proceeding;

(iv) A bail plea filed on behalf of a juvenile *must always and only be considered* on the criteria and parameters set-out in section 12 of the JJ Act, and the general principles for grant or denial of bail under section 437 or section 439 Cr.P.C. have no application in such a case.

50. Having answered the jurisdictional objections raised by the State, and coming back to the factual backdrop of the present case, what weighs with the court at this stage is *firstly*, that the only specific role attributed to CCL-A is that he was present at the spot, where the *other* juvenile alongwith one of the co-accused, had made a cellphone-call to the deceased, calling him to the spot on the pretext of smoking *hookah*; where the deceased, as per the allegations, was done to death by knife blows. To be clear, the allegation is that the two adult co-accused and the *other* juvenile attacked the deceased with knives one-by-one. *Secondly*, no weapon was even sought to be recovered from CCL-A and the only articles recovered from him were his own clothes, after which he was produced before the JJB and remanded to the Observation Home. *Thirdly*, even the cell-phone number from which certain calls are alleged to have been made has not been associated with CCL-A exclusively, inasmuch as it is admittedly not registered in his name and the charge-sheet says that CCL-A's whole family has been using the same cell-phone. *Fourthly*, even as per the allegations, after allegedly committing the crime, CCL-A is stated to have run away to *his own house*, which belies the allegation that CCL-A was attempting to evade the law. *Next*, there is no allegation

that any threats have been received on behalf of CCL-A pressurizing the complainant to withdraw the case; CCL-A has been in the Observation Home for about 1 year and 3 months, where his overall conduct is stated to be 'satisfactory' and he is being used as 'help' in the kitchen. *Next*, though the JJB has made a preliminary assessment that there is need for trial of CCL-A as an adult under sections 15 and 18(3) of the JJ Act, no final decision in this regard has been taken by the Children's Court as required under section 19 so far; and therefore the objection taken by the State that since CCL-A has been sent-up for trial as an 'adult', he must apply for bail as an 'adult' is even otherwise baseless. *Lastly*, since the present application has been filed before this court after the bail plea was rejected by the learned Sessions Court/Children's Court, and as held above, a bail plea under section 12 is maintainable before this court as an appellate, revisional or even as a proceeding of first instance, it is irrelevant whether the present application is treated as a bail application of first instance or as an appeal or revision from rejection of bail by the Sessions Court under section 101(5) of the JJ Act.

51. Most importantly, the mandate of section 12 cannot be diluted, which says that a CCL-A *shall* be released on bail, with or without surety, or placed under the supervision of probation officer or under the care of any fit person; and accordingly, there must be good reason not to do so and such reason must relate back to the welfare of CCL-A. In the present case this court does not find any such reason.

52. Upon a conspectus of the foregoing facts and circumstances, this court is persuaded to admit CCL-A to *regular bail* pending proceedings against him, subject to the following conditions:

- (a) The CCL-A shall furnish a personal bond in the sum of Rs.15,000/- (Rs. Fifteen Thousand Only) with 01 surety in the like amount from his father, to the satisfaction of the learned Children's Court; and
- (b) A probationary officer shall be appointed for CCL-A, who shall maintain general oversight and supervision over CCL-A, including by visiting CCL-A from time-to-time as may be deemed necessary, to ensure that CCL-A does not fall into any undesirable company and is not exposed to any moral, physical or psychological danger; or that his release, in any manner, defeat the ends of justice.

53. Nothing in this judgment shall be construed as an expression on the merits of the case.

54. The bail application is disposed of in the above terms.

55. Other pending applications, if any, also stand disposed of.

56. A copy of this order be sent to the Superintendent of the concerned Observation Home.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 19, 2020/uj