

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4929 of 2019**

Arising Out of PS. Case No.-55 Year-2018 Thana- MAHILA PS District- Jehanabad

Abhishek Kumar @ Nanhka, aged 17 years, Gender-Male, S/o Shri Ranvijay Prasad @ Nanhku, under the natural guardianship of his father, namely Shri Ranvijay Prasad @ Nanhku, who represented the appellant, R/o Village-Sribigha, P.O.- and P.S.- Sakurabad, District- Jehanabad.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Jeetendra Narayan, Advocate
For the Respondent : Mr. Abhay Kumar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER**

5 06-04-2022 (1) The present appeal has been preferred against the order dated 15.10.2019, passed by learned Additional Sessions Judge-1st, Jehanabad, whereby and whereunder the prayer for grant of bail to the appellant has been rejected in connection with Mahila P.S Case No. 55 of 2018, for the offence registered under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

(2) The prosecution case, in brief, is that the informant submitted a written statement to the S.H.O., Mahila P.S. Jehanabad, on 21.10.2018, wherein he has alleged that the appellant committed rape upon his seven years old maternal grand-daughter in a deserted and lonely place.

(3) Learned counsel for the appellant submitted that



the appellant has been declared juvenile by the learned Additional Sessions Judge-1st, Jehanabad, vide order dated 19.02.2019 (Annexure-4 to the Memo of Appeal). After conducting inquiry, his age on the alleged date of occurrence has been assessed as 16 years and 8 months. It has been also submitted that the appellant is in custody since 22.10.2018.

(4) From perusal of the aforesaid order dated 19.02.2019, it appears that on 31.01.2018, a petition on behalf of the accused having been filed before the learned court below contending that on the date of commission of the alleged occurrence, the accused had not completed eighteen years of age, thus he may be declared juvenile under the Juvenile Justice Act, 2015. Whereupon, the learned court below itself conducted an inquiry and determined the age of the appellant to be 16 years and 8 months on the date of alleged occurrence, thus, declared him a juvenile and also held that the trial of the appellant will also be conducted by itself in capacity of Children's Court.

(5) The relevant part of the said order dated 19.02.2019, passed by learned Additional Sessions Judge-1st, Jehanabad, is extracted hereunder: -

“अभियुक्त अभिषेक कुमार को कारा में प्रस्तुत किया गया।

दिनांक 31.10.18 के तिथि अंकित 2.11.18 को



दाखिल आवेदन कर उभय पक्ष की ओर से प्रार्थना किया गया कि अभियुक्त अभिषेक कुमार का Juvenile के बिन्दु पर जॉच साक्ष्य किया जा चुका है तथा बिहार विद्यालय परीक्षा समिति का अंक प्रमाण पत्र दाखिल किया गया जिससे प्रतीत होता है कि अभियुक्त बाल किशोर है अतः अभियुक्त को Juvenile घोषित किया जाय। सुना Spl. P.P. विरोध नहीं करते है। अभिलेख अवलोकन किया गया। वाद 21.10.18 को प्राथमिकी की गयी है। अभियुक्त को दिनांक 31.10.18 के आवेदन 2.11.18 को दाखिल किया गया वाद U/s- 376 I.P.C. एवं 4 POSCO के प्राथमिक अंकित में जघन्य अपराध है। अभियुक्त के Juvenile के बिन्दु पर माँ-पिता की साक्ष्य कराया गया है पर अभियुक्त का उम्र लगभग 17 बताया गया है तथा अभियुक्त की ओर से बिहार विद्यालय परीक्षा समिति के अंक प्रमाण पत्र के मूल प्रति दाखिल किया गया है जिसमें अभियुक्त का उम्र 6.4.2002 अंकित है घटना की तिथि 21.10.18 है जिससे प्रतीत होता है कि अभियुक्त का उम्र लगभग 16 वर्ष 8 माह है उक्त स्थिति में अभियुक्त को Juvenile घोषित किया जाता है चूंकि उक्त अपराध का विशेष न्यायालय (बाल किशोर) यहीं है उक्त स्थिति में अभियुक्त का वाद विचारण इसी न्यायालय में चलेगा। यथासंभव (अस्पष्ट) की प्रति प्रदान करने की कृपा करें।”

ह. (अस्पष्ट)

(6) Thereafter, the appellant moved before the learned Additional Sessions Judge-1st, Jehanabad, for grant of bail, which was heard and rejected vide order dated 15.10.2019. Thereupon, the present appeal has been preferred for release of the appellant on bail during pendency of trial, setting aside the aforesaid order dated 15.10.2019.

(7) At this stage, in the facts and circumstances stated above, before delving into the merits of the case for the purpose of considering bail of the appellant, this Court would primarily like to consider the issues involved, incidentally, in this case,



which are as under:

(i) Whether the learned Additional Sessions Judge 1st, Jehanabad, after determination of age of the appellant, thereupon, holding him 'child in conflict with law' was under statutory obligation to forward the appellant to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2015 ?

(ii) Whether the Children's Court established under the Commission for Protection of Child Right Act, 2005, or the Special Court designated under the POCSO Act, in absence of any order regarding preliminary assessment of a child by the Juvenile Justice Board as contemplated under sub section (3) of Section 18, of Juvenile Justice (Care and Protection of Children) Act, 2015, can proceed for trial of the child as an adult as per the provision of Cr.P.C and pass appropriate orders ?

(8) In order to consider the issues indicated above, it would be worthwhile to first take notice of the relevant provisions of law, as well as decisions of the Hon'ble Supreme Court and other High Courts.

(9) Section 34 of the POCSO Act, lays down the procedure to be followed, in case of commission of any offence under the POCSO Act, by a child. It also deals with the power



of determination of age of a person by the Special Court under POCSO Act. The same is quoted hereunder:

“Section 34 - Procedure in case of commission of offence by child and determination of age by Special Court.

(1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions [the Juvenile Justice (Care and Protection of Children) Act, 2015 (2 of 2016)]

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reason for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that age of a person as determined by it under sub-section (2) was not the correct age of that person.”

(10) A bare perusal of Section 34 (1) of the POCSO Act makes it clear that in case of commission of an offence under the POCSO Act, by a child, he shall be dealt with under the provisions of the Juvenile Justice Act, 2015. However, Section 34 (2) of the POCSO Act, stipulates that if any question regarding the age of a person arises, it shall be determined by the Special Court after satisfying itself about the age of such person recording reasons for such determination.

(11) At this juncture, it is also pertinent to discuss the relevant provisions of the Juvenile Justice Act, 2015. Section



9 of the Juvenile Justice Act, 2015, reads as under:

Section 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 on 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 recognized 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.

The aforesaid provisions of law as contained in subsection (2) and (3) of Section 9 of the Juvenile Justice Act, clearly indicate that if the issue regarding age of a person accused of an offence arises, and he claims to be a child, before a court other than a Board constituted under the Juvenile Justice Act, 2015, the said court is required to make an enquiry by taking evidence as necessary for determination of age of such person, and if, it is found that the person who committed the offence was a child on the date of commission of such offence, it shall be incumbent upon such court to forward the child to the Board for passing appropriate orders.

(12) It is worth to explain here that later part of Section 9 (3) of the Juvenile Justice Act further clarifies that once the court finds that offender was child on the date of commission of offence, in that case, the sentence, if any, passed by the court, shall be deemed a nullity. Therefore, this Court of the considered view that any order relating to a juvenile passed by any court shall have no effect in the eyes of law, if the same be passed, in non-conformity with the provisions of Juvenile



Justice Act, 2015. Therefore, the order dated 15.10.2019, rejecting the prayer for bail of the appellant by learned Additional Sessions Judge-1st, Jehanabad, shall be deemed to have no effect.

(13) It is of utmost importance to discuss here the provision of preliminary assessment into heinous offences alleged to have been committed by a child, which has been stipulated in Section 15 of the Juvenile Justice Act, 2015.

“Section 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.”

(14) This Court would gainfully refer and quote the observations made by the Hon’ble Supreme Court, regarding Section 15 of the Juvenile Justice Act. The Hon’ble Apex Court in paragraph 16 of the judgment rendered in ***Shilpa Mittal Vs. State of NCT of Delhi and Ors reported in (2020) 2 SCC 787; 2020 (1) PLJR SC 352***, observed as under:

“This Section provides that if the child offender has committed a heinous offence, the Juvenile Justice Board shall conduct a preliminary assessment with regard to the mental and physical capacity of such child to commit such offence, the ability of the child to understand the consequence of the offence and the circumstances in which the said offence was allegedly committed. The Board is entitled to take the help of experienced psychologists, psychosocial workers or other experts in the field. The explanation makes it clear that the preliminary assessment is not to go into the merits of the trial or the allegations against the child. The inquiry is conducted only to assess the capacity of the child to commit and understand the consequence of the offence. If the Board is satisfied that the matter can be disposed of by the Board, then the Board shall follow the procedure prescribed in summons cases



under the Code of Criminal Procedure.”

(15) In view of the provisions stipulated under sub-section (1) of Section 34 of the POCSO Act, any offence committed by a child under the Act, shall be dealt with under the provisions of Juvenile Justice Act, 2015. The Special Court POCSO Act, has been conferred power to determine the age of a person, whether he is a child or not.

Sub-section (3) of Section 9 of Juvenile Justice Act says that if a court other than the Board finds that a person was a child on the date of commission of the offence, it shall forward the child to the Board for passing appropriate orders. In the case of heinous offence committed by a child, who is above the age of 16 years, the Board shall conduct a preliminary assessment in terms of Section 15 of the Juvenile Justice Act, thereupon the Board may pass an order in accordance with the provisions of sub-section (3) of Section 18 for the purpose of trial of the said child as an adult and may transfer the case to the Children Court having jurisdiction to try such offences. Thereafter only the Children Court may exercise its power as provided under Section 19 of the Act. It is worth to quote Section 18 and 19 of the Juvenile Justice Act, 2015 which read as under:

Section 18-Orders regarding child found to be in conflict with law.(1) Where a Board is



satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special



home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(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 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 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.

(16) This Court would also like to refer a judgment delivered by the Hon'ble Karnataka High Court in ***Criminal Appeal No. 1597 of 2018 (Puneet S. vs. State of Karnataka)*** reported in 2019 SCC OnLine Kar 1835; (2020) 1 KCCR 649, wherein a similar issue had cropped up. The said appeal was filed before the Karnataka High Court assailing the order of learned Sessions Judge, vide which, the learned Sessions Judge



had without taking into consideration the provisions as enunciated in Sections 15 and 18 (3) of the Juvenile Justice Act, proceeded with trial of the appellant on the ground that the age of the appellant after inquiry was determined to be between 16 to 18 years and the said alleged offence was heinous in nature. The Single Judge Bench of Karnataka High Court, while allowing the appeal by setting aside the order under challenge, passed by learned Sessions Judge, held as under: -

“11. Be that as it may, as could be seen from the above said provision, the learned Sessions Judge or the Special Judge or the Child Friendly Court, presided over by the learned Sessions Judge have absolutely no power to pass any order u/s. 15 of the Act. It is the statutory power vested with the Board. This has completely lost the sight of the Sessions Judge as could be seen from the order itself.

12. Once the Board (sic) comes to the conclusion that the Board has got jurisdiction then the Board shall follow the procedure as contemplated u/s. 15 of the JJ Act and to proceed with the trial against the accused. If the Board come to the conclusion otherwise than the above, and after inquiry, the Board is of the opinion that the accused after the preliminary inquiry as contemplated u/s. 15, feels that there is a need for trial of the child as an adult, then by giving reasons to the effect that the accused/juvenile is between the age of 16 and 18 years, and he was mentally and physically competent to commit such an offence and he was able to understand the consequences of the offence and also the circumstances in which he has committed the offence, then only the Board shall pass order



of transfer of the case to the Children's' Court/Sessions Court having jurisdiction to try such offence, as specified under section 18(3) of the said JJ Act.

13. Looking from the above said angle, considering the provisions of Sections 15 and 18 of the JJ Act, the II Addl. Sessions Judge, Kolar, had absolutely no jurisdiction to pass order u/s. 15 of the JJ Act. The Sessions Court has not even cared to look into the provisions of the Act, but in an over enthusiasm appears to have passed the above said order. Under the above said circumstances, the order is not sustainable either in law or on facts.”

(17) Now, considering the provision of law and the decisions referred above, this Court is of the considered opinion that the learned Additional Sessions Judge 1st Jehanabad, after arriving at the finding that the appellant was a child on the date of commission of the alleged offence, was under statutory obligation as per Section 9 (3) of the Juvenile Justice Act to forward the appellant along with the records of the case to the Board. However, from the order dated 19.02.2019, it is apparent that the court below did not forward the appellant and the records of the case to the Juvenile Justice Board, rather exceeded its jurisdiction and usurped the power vested in the Board under Section 15 of the Act and retained the matter before itself and held that the appellant be tried by the court itself, which is in gross contravention of Section 15 and 18 (3)



of the Juvenile Justice Act, 2015. It is to be borne in mind, that the Special Courts created under special laws, gain power from the various provisions contained in the enactments. They cannot and should not transgress the jurisdiction prescribed under the special laws. It is settled law that an order passed by a court beyond its jurisdiction is a nullity.

(18) In the present case, a very peculiar situation having been arisen that the learned Additional Sessions Judge-1st, Jehanabad, determining the age of the appellant, thereupon holding him 'juvenile', did not forward the appellant to the Juvenile Justice Board but retained the matter before it and held that the appellant will be tried as an adult by itself and also refused the prayer for bail made on behalf of the appellant vide its order dated 15.10.2019, passed in connection with Mahila P.S Case No. 55 of 2018. Thus, the proceedings going on before the learned Additional Sessions Judge-1st, Jehanabad, requires to be interfered with to secure the ends of justice.

(19) Section 482 of the Code of Criminal Procedure, preserves inherent power of the High Court, which can be exercised ex-debito justitiae, i.e., for doing real and substantive justice. Section 482 of the Cr.P.C. starts with the expression "Nothing in this Code", which means this having been an



overriding provision. The language of this section is quite explicit and the expressions used leaves no doubt that none of the provisions of the Code can limit or restrict such inherent powers. Since no legislative enactment dealing with procedure, however, exhaustive, provide solution of all questions and situations that can possibly arise. The legislature is not able of contemplating all possible circumstances which may arise in future. The saving of the High Court's inherent power is designed to achieve a salutary purpose of securing justice and to prevent abuse of process of law. It cannot be said that courts having no power to do justice or redress a wrong simply because there is no express provision in the Code. Thus, inherent powers are in addition to the powers specifically conferred by the legislation. Section 482 of the Cr.P.C is self-explanatory that High Courts are not merely courts of law, but also courts of justice and possess powers to undo injustice.

(20) In the case of *State of Punjab Vs. Kasturi Lal* (2004) 12 SCC 195, the Hon'ble Supreme Court of India observed that it cannot be disputed that no law can foresee all the contingencies which may arise in future and in spite of all precautions, there may be situations never contemplated by the law makers and a court of law is called upon to deal with them.



In such exceptional cases, a High Court exercises inherent powers to do justice. These powers, on the other hand, provide claws to laws to prevent abuse of process of law, and on the other hand, they seek to secure the ends of justice. It is settled law that powers under this section are required to be exercised to do real, full and complete justice between the parties for the administration of which alone court exists.

As held by the Hon'ble Supreme Court in the case of ***State of Karnataka Vs. Muniswamy, A.I.R. 1977 SC 1489***, the saving of High Court's inherent powers, both in civil and criminal matters, is designated to achieve a salutary public purpose that court proceedings should not degenerate into a weapon of harassment and persecution. The ends of justice are higher than the ends of mere law, though justice has to be administered according to laws made by the legislature.

In the case of ***Popular Muthia Vs. State represented by Inspector of Police, (2006) 7 SCC 296***, the Hon'ble Supreme Court of India, considering the issue regarding suo motu exercise of power under Section 482 of the Cr.P.C. by the High Court while exercising its criminal appellate jurisdiction, held as under:

“While exercising its appellate power, the jurisdiction of the High Court although is



limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefore is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.

In certain situations, the court exercises a wider jurisdiction, e.g., it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved.

The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:



(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefore.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.”

In the case of ***Rajiv Thapar & Ors. Vs. Madan Lal Kapoor (2013) 3 SCC 330***, the Hon’ble Supreme Court of India held that the discretion vested in the High Court under Section 482 of the Cr.P.C. can be exercised suo-motu to prevent the abuse of process of a court, and/or to secure the ends of justice.

(21) Looking into the facts and circumstances of the present case, this Court is also of the view that self-restraint can be lifted for suo-moto exercise of inherent jurisdiction contemplated under Section 482 of the Cr.P.C as to secure the ends of justice by giving effect to the above referred provisions of the POCSO Act and Juvenile Justice Act.

(22) In view of the discussions undertaken



hereinabove, this Court is of the considered view that the learned court below i.e., Additional Sessions Judge-1st Jehanabad, after determining the age of the appellant and holding him 'juvenile' was under statutory obligation in terms of Sections 9 (2) & (3) of the Juvenile Justice Act, 2015, to forward the appellant to the Juvenile Justice Board for passing appropriate order, and only after preliminary assessment by the Board as stipulated under Section 15 of the Juvenile Justice Act, if the Board would have passed an order transferring the trial of the case to the Children's Court in terms of Section 18 (3) of the Juvenile Justice Act, thereupon, the Children's Court could have proceeded and decided in terms of Section 19 of the Juvenile Justice Act. Thus, the issues indicated above and involved in this case are answered accordingly.

(23) This Court would further proceed to test the propriety of the order dated 15.10.2019 by which the prayer for bail made on behalf of the appellant having been refused by learned Additional Sessions Judge-1st, Jehanabad.

(24) In view of the foregoing observations, made above, especially in the background that the appellant who was a child on the date of commission of the alleged offence, has not been dealt with under the provisions of the Juvenile Justice Act,



2015, and the learned Additional Sessions Judge-1st, Jehanabad, while passing the order dated 15.10.2019, has not taken into consideration the conditions envisaged under Section 12 of the Juvenile Justice Act, 2015, therefore, the order dated 15.10.2019 is not sustainable in the eye of law, and is accordingly, quashed.

(25) Further, the learned Additional Sessions Judge-1st, Jehanabad, is hereby directed to forward the appellant forthwith to the Juvenile Justice Board, so that appropriate orders may be passed by the Board.

(26) With the aforesaid observation and direction, this appeal is disposed of.

(Sudhir Singh, J)

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