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

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Reserved on: 03.02.2023**Pronounced on: 09.08.2023**+ **CRL.REV.P. 328/2018 & CRL.M.A. 7006/2018**

CCL M A

..... Petitioner

Through: Mr. Harsh Prabhakar
(DHCLSC) with Mr. Anirudh
Tanwar, Mr. Dhruv Chaudhary
and Mr. Adeeb Ahmad,
Advocates

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with Inspector Rahul
Raushan, P.S. Sarai Rohilla

+ **CRL.REV.P. 1179/2018**

CCL A D

..... Petitioner

Through: Mr. Ajay Kumar (DHCLSC)

versus

STATE (NCT) OF DELHI

..... Respondent

Through: Mr. Manoj Pant, APP for the
State with SI Mohan Lal Delu
P.S. Bawana

+ **CRL.REV.P. 665/2018 & CRL.M.A. 29533/2018**

CCL C K

..... Petitioner

Through: Mr. Nitin Saluja, Ms. Shivani
Luthra Lohiya, Ms. Poonam
Dangi and Mr. Saahil Mongia,
Advocates



versus

STATE (NCT) OF DELHI Respondent
Through: Mr. Manoj Pant, APP for the
State with SI Arvind Saini P.S.
Aman Vihar

+ **CRL.REV.P. 737/2018 & CRL.M.A. 30885/2018**

CCL S S Petitioner
Through: Mr. Harsh Prabhakar
(DHCLSC) with Mr. Anirudh
Tanwar, Mr. Dhruv Chaudhary
and Mr. Adeeb Ahmad,
Advocates

versus

STATE (NCT) OF DELHI Respondent
Through: Mr. Manoj Pant, APP for the
State

+ **CRL.REV.P. 825/2018 & CRL.M.A. 32712-13/2018**

CCL B Petitioner
Through: Mr. Harsh Prabhakar
(DHCLSC) with Mr. Anirudh
Tanwar, Mr. Dhruv Chaudhary
and Mr. Adeeb Ahmad,
Advocates

versus

STATE (NCT) OF DELHI Respondent
Through: Mr. Manoj Pant, APP for the
State with SI Sanjet, P.S.
Mandawali



CORAM:
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

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SWARANA KANTA SHARMA, J.

1. The present batch of petitions primarily assail the orders wherein directions to try the petitioners as adults have been given. The petitioners have been charged with committing heinous offences within the meaning of Section 2(33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter 'JJ Act'*). The legal issue in this batch of petitions pertains to Sections 14, 15 and 19 of the JJ Act, where the petitioners have challenged the orders on the anvil of contravention of the above provisions.

FACTUAL BACKGROUND

(i) **CRL.REV.P.328/2018**

2. By way of this petition filed under Section 102 of the JJ Act read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter 'Cr.P.C.'*), the petitioner seeks setting aside of order dated 07.10.2016 passed by learned Additional Session Judge-01, Central District, Tis Hazari Courts in case arising out of FIR bearing no. 326/2016 dated 08.04.2016, registered at Police Station Sarai Rohilla under Sections 393/397/34 of Indian Penal Code, 1860 (*hereinafter 'IPC'*).

3. Brief facts of the prosecution case are that the present FIR was registered as a consequence of the statement made by the victim who had alleged that on 07.04.2016 at around 10:30 pm, while he was returning home, the accused persons had inflicted knife blows upon him and they had absconded from the spot with his mobile phone and bag. The petitioner was arrested on 26.04.2016. Chargesheet was submitted



before the concerned Juvenile Justice Board on 28.06.2016, recommending charges under Sections 394/397/307/34 IPC against the present petitioner. The Juvenile Justice Board-I, *vide* order dated 25.07.2016, concluded the preliminary assessment in terms of Section 15 of JJ Act and held that the present petitioner was required to face trial as an adult and therefore, the case was transferred to the concerned Children's Court for trial.

4. Learned ASJ, *vide* impugned order dated 07.10.2016 framed charges against the petitioner under Sections 394/397/307/34 of IPC. The relevant portion of the said order is reproduced herein-under for reference:

“...Arguments heard on the point of charge. The counsel for the accused stated that he is not the person involved in the incident but he has been falsely implicated. On being questioned about the refusal of the accused from participating in the TIP, the counsel could not furnish any explanation. The co-accused who was discharged, whose instance has been given by the counsel is on a different footing since the victim could not identify the co-accused in the TIP.

There are sufficient material on record to make a prima-facie case against accused for the offence punishable U/s 394/397/307/34 IPC, in view of the statement of victim apart from other material on record.

Accordingly charges are framed against the accused and the accused pleaded not guilty and claimed trial...”

(ii) CRL.REV.P.665/2018

5. By way of this petition filed under Section 102 of the JJ Act read with Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 20.11.2017 passed by learned Additional Session Judge-01, North



Rohini, Delhi in case arising out of FIR bearing no. 1002/2016 dated 15.09.2016, registered at Police Station Aman Vihar under Section 302 of IPC.

6. Brief facts of the prosecution case are that on 14.09.2016, the petitioner had allegedly committed rape upon her maternal aunt (*mausi*) and after doing so, he had strangled her to death. The petitioner was arrested on 17.09.2016. During the course of investigation, it was found that the age of petitioner was below 18 years as per both ossification test and his school records and thus, vide order dated 10.12.2016, he was directed to be produced before concerned Juvenile Justice Board. Chargesheet in the present case, recommending charges under Sections 302/376 of IPC, was prepared on 12.12.2016 and petitioner was first produced before the Juvenile Justice Board on 14.12.2016. The Juvenile Justice Board-II, vide order dated 29.07.2017, concluded the preliminary assessment in terms of Section 15 of JJ Act and held that the present petitioner was required to face trial as an adult and therefore, the case was transferred to the concerned Children's Court for trial.

7. Learned ASJ, vide impugned order dated 20.11.2017 framed charges against the petitioner under Sections 376(2)(f) and 376A of IPC and alternatively, under Section 302 IPC. The relevant portion of the said order is reproduced herein-under for reference:

“...Arguments heard on the point of charge. Record perused.

On going through the material, documents and the annexures filed along with the charge sheet and considering the arguments addressed, a prima facie case u/s 376 (2) (f) IPC and 376-A IPC, alternatively u/s 302 IPC is made out against accused/JCL.



Accordingly, charges for the said sections is framed against the accused/JCL, to which he pleaded not guilty and claim trial...”

(iii) CRL.REV.P.737/2018

8. By way of this petition filed under Section 102 of the JJ Act read with Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 20.09.2017 passed by learned Additional Sessions Judge-01/Special Judge POCSO Act, North District, Rohini Courts, Delhi in case arising out of FIR bearing no. 87/2017 dated 20.02.2017, registered at Police Station K.N. Katju Marg under Section 376(2) of IPC and Section 6 of POCSO Act.

9. As per the case of prosecution, the complainant and her friend had gone to excrete in an open ground in Sector 26, Rohini and while they were doing so, the accused had arrived at the spot and had asked the victims to move to some other place. It was alleged that when the victims were moving to some other place, the accused had followed them and after some time, he had grabbed one of the victims and had tried to choke the another one. It was also alleged that the accused had pulled down the trouser of the victims and had sexual intercourse with both of them forcefully. The petitioner was arrested on 21.02.2017 and produced before the Juvenile Justice Board. Chargesheet dated 27.04.2017 was submitted before the concerned Juvenile Justice Board recommending charges under Sections 376(2) of IPC and Section 6 of POCSO Act against the present petitioner. The Juvenile Justice Board-I, *vide* order dated 01.05.2017 called for psychological assessment report of the petitioner and *vide* order dated 24.07.2017, concluded the



preliminary assessment in terms of Section 15 of JJ Act and held that the present petitioner was required to face trial as an adult and therefore, the case was transferred to the concerned Children's Court for trial.

10. Learned ASJ, *vide* impugned order dated 20.09.2017 framed charges against the petitioner under Sections 376(2) of IPC and Section 6 of POCSO Act. The relevant portion of the said order is reproduced herein-under for reference:

“...It is stated that the complete set of charge-sheet and documents, has been supplied to the CCL.

Submission on the point of charge heard. I have gone through the entire charge-sheet and also perused all the documents on record. Ld. Counsel for the CCL submits that the charge be framed against the accused.

A prima facie case u/s 6 POCSO Act and u/s 376 (2) IPC is made out against the CCL. Charge is framed accordingly, to which CCL pleads not guilty and claims trial...”

(iv) CRL.REV.P.825/2018

11. By way of this petition filed under Section 102 of the JJ Act read with Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 24.08.2017 passed by learned Additional Sessions Judge-01/Presiding Officer of Special POCSO Court, East District, Karkardooma Courts, Delhi in case arising out of FIR bearing no. 328/2016 dated 22.08.2016, registered at Police Station Mandawali under Section 376(D) of IPC and Section 6 of POCSO Act.

12. The case of prosecution is that on 21.08.2016 at around 10:00 pm, the complainant along with her children was sleeping outside her



jhuggi in Railway Line, Yamuna Khadar, Delhi. It was alleged that after some time, the complainant had gone inside her *jhuggi* leaving her elder daughter, son and victim 'A' sleeping outside. At around 12:15 am, the victim 'A' had come weeping to her and had told her that she was picked up by one Aamir, CCL 'B' and one another man from the cot and they had taken her to the forest and had committed bad acts with her while putting their hands on her mouth. The petitioner was arrested on 22.08.2016 and chargesheet was submitted before the concerned Juvenile Justice Board. The Juvenile Justice Board-III, *vide* order dated 08.03.2017, concluded the preliminary assessment in terms of Section 15 of JJ Act and held that the present petitioner was required to face trial as an adult and therefore, the case was transferred to the concerned Children's Court for trial.

13. Learned ASJ, *vide* impugned order dated 24.08.2017 framed charges against the petitioner under Sections 363/376(D)/34 of IPC and Section 6 of POCSO Act. The relevant portion of the said order is reproduced herein-under for reference:

“...In the last ordersheet, there is a typing mistake in respect of the offence of gang rape and instead of 376(D) IPC it was mentioned that charge u/s 376(2) IPC be framed. This typing mistake is ordered to be corrected accordingly.

In terms of the last order, charge u/s 363/34, 376(D) and Section 6 of the POCSO Act is framed to which accused persons pleaded not guilty and claim trial...”

14. Thereafter, *vide* order dated 30.01.2018, learned Additional Sessions Judge-06, East District, Karkardooma Courts, Delhi, charge under Section 366/34 of IPC was also framed against the present



petitioner as well as co-accused persons.

(v) CRL.REV.P.1179/2018

15. By way of this petition filed under Section 102 of the JJ Act read with Section 482 of Cr.P.C., the petitioner seeks setting aside of order dated 26.09.2017 passed by learned Additional Sessions Judge-01/Special Judge POCSO Act, North District, Rohini Courts, Delhi in case arising out of FIR bearing no. 217/2017 dated 19.05.2017, registered at Police Station Bawana under Section 302 of IPC.

16. Briefly stated, as per the prosecution, the victim had arrived at the spot for finalization of some arm deal with the accused persons. It was alleged that when the victim had refused to finalize the deal, the CLL along with other co-accused persons had killed him. The petitioner was arrested on 23.05.2017 and produced before the Juvenile Justice Board on 24.05.2017. Chargesheet was submitted before the concerned Justice Juvenile Board on 29.07.2017 recommending charges under Sections 302/120B/34 of IPC against the petitioner. The Juvenile Justice Board-I, *vide* order dated 01.08.2017, concluded the preliminary assessment in terms of Section 15 of JJ Act and held that the present petitioner was required to face trial as an adult and therefore, the case was transferred to the concerned Children's Court for trial.

17. Learned ASJ, *vide* impugned order dated 26.09.2017 framed charges against the petitioner under Section 120B, and 302 read with 120B of IPC. The relevant portion of the said order is reproduced herein-under for reference:



“...It is stated that the complete set of documents and charge-sheet has been supplied to the JCL.

Submissions on the point of charge heard. I have gone through the entire charge-sheet and also perused all the documents on record. Ld.Amicus Curiae for the CCL submits that the charge be framed against the JCL.

A prima facie case u/s 120 B IPC and u/s 302 IPC r/W section 120B IPC is made out against the CCL. Charge is framed accordingly, to which CCL pleads not guilty and claims trial...”

LEGAL ISSUES RAISED BEFORE THIS COURT

18. For brevity, the issues have been formulated and clubbed as per the nature of each petition and are dealt with separately in this judgment. The questions of law culled out from these petitions are as follows:

- I. The First Issue for consideration arising in all the petitions is whether a Children's Court, upon the receipt of preliminary assessment from the Juvenile Justice Board in terms of Section 15 of JJ Act, can straightaway proceed to conduct the trial of the juvenile as an adult without passing a judicial order reflecting application of mind as envisaged under Section 19 of JJ Act?
- II. The Second Issue for consideration, arising in CRL.REV.P. 665, 737 and 825 of 2018, is whether the proceedings were vitiated upon failure of the Juvenile Justice Board in completing the preliminary assessment of the petitioners within three months as mandated under



Section 14(3) of JJ Act?

**MANDATE OF SECTION 19(1) OF JUVENILE JUSTICE ACT
AND DUTY OF THE COURT**

(i) **ARGUMENTS ON BEHALF OF PETITIONERS**

19. Learned counsels for the petitioners have argued in unison that the learned Children's Courts failed to follow the mandate of Section 19 of JJ Act, which ensures a valuable safeguard for the juveniles, and the Children's Courts were required to pass a judicial order reflecting conscious application of mind so as to arrive at a decision as to whether the juvenile deserves to be tried as an adult or not.

20. Learned counsels for the petitioners have taken this Court through the provisions contained in Section 14, 15 and 19 of the JJ Act as well as Rule 10, 10A and 13 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (*hereinafter 'JJ Rules'*). It is argued that Section 19(1) of the Act provides a significant safeguard in favour of juveniles by placing the assessment, arrived at by the Juvenile Justice Board, subject to affirmation of the Children's Court which is a Court of superior jurisdiction. It is argued that when a statute prescribes that power must be exercised in a particular manner, then the same must be exercised strictly in accordance thereof. It is the case of all the petitioners herein that the learned Children's Court/Court of Sessions had failed to follow the mandate of Section 19(1), which has resulted in a fundamental defect vitiating the further proceedings and warranting



interference by this Court. In CRL.REV.P. 328/2018, it is submitted by learned counsel that an order as per Section 19 was passed later by the same Court in case of co-accused i.e. CCL M, but it was not passed in case of present petitioner i.e. CCL M A.

21. It is argued that this scheme of JJ Act provides a procedure of double-check since trial of a child or juvenile before a regular court can have drastic consequences. It is also stated that the importance of this double-check and protections in favour of juvenile assumes utmost significance because in a given situation, if a person is tried as a juvenile, then the maximum imprisonment he or she can get is of 3 years, however, if the same person is to be tried as an adult, he or she can be given life imprisonment also.

22. In support of these arguments, reliance has been placed upon decision rendered by Hon'ble Apex Court in *Shilpa Mittal v. State (NCT of Delhi)* (2020) 2 SCC 787 wherein it has been held that Children's Court has to determine whether there exists any need for conducting trial of the child as an adult under the provisions of Code of Criminal Procedure or not. It is stated by learned counsels that these contentions also find favour with the judgment passed by Co-ordinate Bench of this Court in *CCL LK v. State* 2019 SCC OnLine Del 9075 wherein it has been held that in view of statutory scheme and relevant rules framed under the JJ Act, it is incumbent upon the Children's Court to independently take a decision as to whether the accused is to be tried as an adult or as a child. It is stated that a similar view was also taken by different High Courts in cases of *Navinbhai Bijalbhai Dharmani v. State of Gujarat* 2019 SCC OnLine Guj 6868; *Ajay*



Bhuiyan v. State of Jharkhand 2021 SCC OnLine Jhar 576; Lalu Kumar v. State of Bihar 2019 SCC Online Pat 1697.

(ii) **ARGUMENTS ON BEHALF OF STATE**

23. Learned APP for the State has argued that in all these petitions, the petitioners have been alleged to have committed heinous offences i.e. offences which are grave and serious in nature, having tendency to affect the society at large, and they have been rightly held to be tried as adults by the respective Juvenile Justice Boards. As regards the contentions raised on behalf of petitioners that the learned Children's Courts had failed to follow the mandate of Section 19(1) of the JJ Act, it is argued that in the orders on charge passed in CRL.REV.P. 665, 737 and 1179 of 2018, it has been mentioned by the concerned Courts that the entire documents placed on record have been perused, which would mean that the preliminary assessment report would also have been perused and considered before framing charges. However, it is also submitted by the learned APP for the State that if at all such an omission exists, it can only be termed as mere procedural irregularity which is curable in nature, and the same cannot vitiate the entire trial and proceedings conducted pursuant to passing of impugned orders. In this regard, reliance is placed upon the decision of this Court in ***CCL LK (supra)*** whereby it was expressed that though the Court below had failed to pass appropriate order as per Section 19(1), the same did not vitiate the entire trial proceedings and thus, the matter was only remanded back for passing an order afresh in terms of Section 19 and



Rule 13, however, the evidence that had already come on record was saved.

(iii) ANALYSIS AND FINDINGS

24. For appreciating the rival contentions raised before this Court, it shall be necessary and apposite to evaluate the framework of Juvenile Justice Act as well as the Rules framed thereunder.

25. Section 15 of the JJ Act provides for preliminary assessment of a child by JJ Board in cases of heinous offences. For reference, the same is reproduced as under:

“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...”

26. Upon conduct of preliminary assessment, if the child is found to be in conflict with law, the Board can pass an order in terms of Section 18(3) if it is of the opinion that the child is required to face trial as an adult and can transfer the case to the Children’s Court. In this regard, Section 18(3) of JJ Act reads as under:

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

(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...”

27. As far as the powers bestowed upon the Children’s Courts are concerned, the same are enlisted under Section 19 of the JJ Act, which is extracted as under:

“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."

28. The Hon'ble Apex Court in case of *Shilpa Mittal (supra)* had discussed the scope of Section 19 and the duty cast upon the Children's Court. The relevant observations qua this aspect read as under:

"18. The Children's Court constituted under the Act of 2015 has to determine whether there is actually any need for trial of the child as an adult under the provisions of Cr.PC and pass appropriate orders in this regard. The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining childfriendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in sub-section (2) of Section 19. Furthermore, under sub-section(3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformatory services, educational services, skill development, alternative therapy, counselling, behaviour modification, and



psychiatric support is provided to the child during the period the child is kept in the place of safety...”

(Emphasis supplied)

29. Further, Rule 13 of the JJ Rules further elaborates what has been contained in Section 19 of the Act. The relevant portion of the said Rule, touching upon the duties of Children’s Court in deciding as to whether the child needs to be tried as an adult upon receipt of report in such regard by the JJ Board, is extracted herein-under for reference:

“13. Procedure in relation to Children’s Court and Monitoring Authorities.-

(1) Upon receipt of preliminary assessment from the Board the Children’s Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(6) **The Children’s Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.**

(7) **Where the Children’s Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:**

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children’s Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children’s Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).



(v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.

(Emphasis supplied)



30. After careful consideration and examination of the aforementioned provisions of the JJ Act and JJ Rules, **the following crucial aspects come to the forefront:**

- i. If a child, above the age of 16 years, is alleged to have committed a heinous offence, the Juvenile Justice Board is required to conduct a preliminary assessment with regard to the mental and physical capacity of the child to commit such an offence, ability to understand the consequences thereof as well as the circumstances in which the offence was allegedly committed by the child;
- ii. If the preliminary assessment conducted by the Juvenile Justice Board indicates the need that the child should be tried as an adult, the Board can transfer the case to the Children's Court which has jurisdiction to try such offences;
- iii. Upon receipt of the preliminary assessment from the Board, the Children's Court has to then decide as to whether or not there is a need for trial of the child as an adult;
- iv. While arriving at such a conclusion, i.e. whether the child is to be tried as an adult or as a child, the Children's Court is required to record reasons in support thereof;
- v. In case the Children's Court decides that there is no need for trial of the child as an adult, the Court will decide the matter itself and conduct an enquiry as if it was functioning as a Board and dispose of the matter in accordance with the provisions of the Act and Rules;



- vi. However, in case the Court decides that the child needs to be tried as an adult, it shall follow the procedure prescribed by Cr.P.C. of trial by Sessions.

31. The aforesaid observations are bolstered by the view taken by the Co-ordinate Bench of this Court in case of **CCL LK** (*supra*), wherein it was held that the Children's Court, upon receiving the Board's preliminary assessment report, must decide whether the child should be tried as an adult or not, and pass a speaking order accordingly. The relevant observations of Co-ordinate Bench in this regard read as under:

“15. The question that arises for consideration is as to whether the provisions of Section 19 are mandatory or is the Children Court merely to follow the recommendations of the Board, made under Section 15 of the Act read with Section 18(3) of the Act?

16. The expression used in Section 19(1) is ‘may decide’. The expression ‘may’ used in section 19 does not give an option to the Children's Court to decide or not to decide in terms of section 19, but the expression ‘may decide’ is an option to the Children's Court to choose between option (1) and option (2) i.e. as to whether there is need for trial of the child as an adult or there is no need for trial of the child as an adult.

17. This also becomes clear when Rule 13 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (framed by the Central Government in exercise of powers conferred by provision of sub-Section (1) of Section 110 of the Act) (hereinafter referred to as the Rules) are examined.

19. Though, once again the expression used in Rule 13(1) is that the Children's Court may decide, however, Rule (6) uses the expression ‘shall’ and mandates the Children's Court to record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

20. Rule 13(7) stipulates that in case the Children's Court decides that there is no need for trial of the child as an adult, then it shall decide the matter itself. It is thereafter to conduct an inquiry as if it



was functioning as a Board and follow the procedure for trial in summon cases under Cr. P.C.

21. Rule 13(8) stipulates that in case the Children's Court decides that there is need for trial of the child as an adult, it is to follow the procedure prescribed by Cr. P.C. or trial by Sessions.

22. Reading of Rule 13 in conjunction with Section 19 of JJ Act clearly shows that it is obligatory on the part of the Children's Court to take a decision after receipt of the preliminary assessment report from the Board as to whether there is need for trial of the child as an adult or as a child. Appropriate speaking order recording reasons for arriving at the conclusion is to be passed by the Children's Court..."

32. A similar view was also adopted by Hon'ble Gujarat High Court in case of *Navinbhai Bijalbhai Dharmani (supra)* as well as Hon'ble Jharkhand High Court in case of *Ajay Bhuiyan (supra)* whereby it was held that the Children Court must independently assess whether the child should be tried as an adult or not and pass an appropriate order under Section 19 of the JJ Act read with Rule 13 of the JJ Rules.

33. Having observed so, this Court has perused the impugned orders passed by the learned Children's Court in all these petitions, which have also been reproduced in the preceding paragraphs for reference. In the considered opinion of this Court, a bare perusal of the record reveals that the learned Children's Courts did not pass any order, recording specific reasons as to whether the petitioners were to be tried as adults or not, and straightaway proceeded to frame charges against them. Even in their respective orders impugned before this Court, the learned Children's Courts have not enunciated the reasons as to why the petitioners were to be treated as adults and the orders also do not reflect or mention, even briefly, the findings or observations contained in the



reports of the JJ Boards while arriving at their decisions. Thus, the learned Courts did not arrive at any independent decision of their own by applying judicial mind in terms of Section 19(1) read with Rule 13(1) and 13(6).

34. However, as far as the consequence of failure to pass speaking order as per Section 19 of JJ Act is concerned, this Court finds merit in the contentions raised on behalf of the State as well as the view taken by the Co-ordinate Bench in **CCL LK** (*supra*). It is not in dispute that the proceedings qua the criminal prosecution, whether the child is tried as adult or not, continues before the Children's Courts only as per the scheme of JJ Act. After applying its judicial mind as envisaged under Section 19, if the Court decides that the child is not to be tried as an adult, it is required to conduct an inquiry as if it was functioning as a Board and follow the procedure for trial of the summon cases. On the other hand, in case the Court decides to try the child as an adult, it will conduct the trial following the procedure of trial by Sessions Court. In both these eventualities, the only difference pertains to the procedure which is to be followed by the Children's Court for trial. Further, as also observed by this Court in **CCL LK** (*supra*), the charge/notice is to be framed on the same set of facts, and thus, it would not suffer in so far as the alleged offences are concerned. Therefore, such an irregularity, being procedural but curable in nature, would be insufficient to vitiate the entire trial and proceedings emanating therefrom.

35. Thus, this Court does not deem it fit to set aside the impugned orders in their entirety. However, since the learned Children's Courts



have failed to pass orders, recording the reasons and arriving at a conclusion as to whether the petitioners were to be tried as adults or not, **the concerned Children's Courts are hereby directed to pass such orders in terms of Section 19 of JJ Act and Rule 13 of JJ Rules.** The procedure to be followed thereafter for the purpose of trial, i.e. whether trial of Summons case (if not to be tried as adult) or trial by Sessions Court (if to be tried as adult), shall be determined as per the decision so arrived at by the Courts concerned.

36. It is however, clarified that the trial proceedings which have been conducted so far and the evidence that has come on record shall remain unaffected by the aforesaid direction.

BREACH OF TIME PERIOD ENVISAGED UNDER SECTION 14(3) OF JUVENILE JUSTICE ACT FOR CONCLUDING PRELIMINARY ASSESSMENT

(i) **ARGUMENTS ON BEHALF OF PETITIONERS**

37. On the issue of time period required for completing the preliminary assessment, it is stated by learned counsels for the petitioners that the provision contained in Section 14(3) is cast in mandatory terms and requires the preliminary assessment by the Juvenile Justice Board to be concluded within a period of 3 months. It is stated that in CRL.REV.P. 665, 737 and 825 of 2018, the preliminary assessment was completed beyond the period mandated under the statute. However, in all fairness, it is also stated by the learned counsels that even though the language of Section 14(3) is couched in mandatory



terms, yet the legislature in its wisdom has not spelled out the consequences arising from its breach, unlike the ones stipulated in relation to petty offences under Section 14 itself, and, thus, drastic consequence of automatically dropping further proceedings cannot be readily inferred by this Court in absence of clear legislative intent.

38. It is stated that though the breach in adhering to the time limit prescribed by the legislature may not by itself vitiate the preliminary assessment concluded at a later stage and the trial, the same should not be taken to mean that there can be an inordinate delay in a routine manner in concluding preliminary assessment by the Board and, thus, delay if any, must be not be unreasonable. Reliance in this regard is placed upon decision of Hon'ble Gujarat High Court in *Navinbhai Bijalbhai Dharmani* (*supra*).

39. It is, thus, submitted that the Juvenile Justice Boards must make an earnest endeavour to conclude the preliminary assessment within a period of 3 months from the date of first production of the child before the Board and every possible effort must be undertaken to honour the intent of the legislature, and it should be only under exigent circumstances that the Board may record reasons for its inability to conclude the preliminary assessment with the time period stipulated, and then it would be open to the Courts to consider the quantum of delay in light of facts and circumstances of each case.

(ii) ARGUMENTS ON BEHALF OF STATE

40. Learned APP for the State also argues that the statute does not



provide for termination or lapse of proceedings in case of heinous offences on failure of the Board to conclude the preliminary assessment within a period of three months. Thus, such a lapse cannot vitiate the entire assessment conducted by the JJ Board and the subsequent trial proceedings.

(iii) ANALYSIS AND FINDINGS

41. In respect of the aforesaid arguments advanced by the learned counsels, this Court notes that Section 14 of JJ Act provides for inquiry by the Board regarding child in conflict with law. As per Section 14(3) of the Act, in case of heinous offence under Section 15, the preliminary assessment is to be carried within a period of three months from the date of first production of the child before the JJ Board. Proviso to Section 14(4) also provides that for the reasons to be recorded, the concerned Magistrate shall extend the time period for completion of inquiry in case of serious or heinous offences, if the Board requests for such extension. The relevant provision reads as under:

“14. Inquiry by Board regarding child in conflict with law.—

(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.



(3) A **preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months** from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that **for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry**, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing....”

42. A bare perusal of the aforesaid provision also reveals that in cases of petty offences i.e. those not falling in category of heinous offences requiring assessment as per Section 15, the Board has to conduct and conclude the inquiry within a period of four months, extendable by a period of two months i.e. to a maximum of six months, as per Section 14(2). As regards the consequence of breach of such timeline, Section 14(4) clearly stipulates that if the inquiry by the Board is not concluded even within this extended period i.e. six months, the proceedings shall stand terminated.

43. However, it is crucial to note that though a time period of three months from the date of production of child before the Board has been prescribed, accompanied by the word “shall”, for the completion of preliminary assessment by the Board in case of heinous offences, the proviso to Section 14(4) provides for further extension of this time period by the Court upon such request made by the JJ Board. There are two other important aspects apparent from the reading of the provision. *Firstly*, unlike in cases of inquiry relating to petty offences where the



maximum extension of time period can be by two months, the legislature has not provided any such maximum extendable time period in relation to preliminary assessment in cases of heinous offences. *Secondly*, unlike in cases of inquiry relating to petty offences, the failure to conclude the assessment in relation to heinous offences under Section 14(3) does not lead to any termination of the proceedings.

44. Therefore, though the legislature has prescribed the time limit to complete the preliminary assessment in case of heinous offences, couched in mandatory terms, it has not provided for consequences of any such breach. In the opinion of this Court, this underscores the fact that the State has an obligation to safeguard its citizens from crimes, and this duty becomes even more evident in instances of heinous offences. While the State must consider the rights of juveniles, including their entitlement to a timely preliminary assessment, as mental and physical capacities evolve with time and age, the State however is also tasked with the responsibility of prosecuting and penalizing offenders in cases of heinous offences as these crimes have far-reaching impacts that extend beyond individuals or families to the society at large.

45. Thus, in view of the aforesaid discussion, this Court reaches a conclusion that the time period prescribed under Section 14 for the completion of preliminary assessment in relation to heinous offences cannot be held to be mandatory in nature, in a hyper-technical manner, so as to disregard and negate the decision arrived at by the JJ Board after the expiry of prescribed time period in every case.

46. However, it is important to consider that as time goes by, a



juvenile can potentially achieve a higher level of maturity as well as mental and physical capacity. Therefore, the absence of a provision that specifies a maximum time frame for concluding the preliminary assessment or for the lapse of proceedings due to failure to complete it within the designated period should not be interpreted as allowing an unreasonable prolongation of the preliminary assessment of a juvenile.

47. *Thus, in case of heinous offences, the Juvenile Justice Boards are required to follow the mandate of Section 14(3) and proviso to Section 14(4) in their true spirit and dispose of the proceedings before it expeditiously and without any unnecessary and unreasonable delay.*

48. Whether the delay in conclusion of preliminary assessment by the JJ Board is reasonable or not, or whether the same has caused any prejudice to the juvenile, or whether such a delay defeats the aim and object of the legislation so as to vitiate the entire trial, or whether permission for extension of time to conclude preliminary assessment is obtained from the Court concerned, will have to be examined by the Courts in the given set of facts and circumstances of a case. Some relevant factors while deciding so, of course, would be the duration of delay, age of juvenile at relevant points of time i.e. at the time of commission of offence, at the time of assessment by psychologists etc., and at the time of interaction with assessment by JJ Board, among other factors.

49. Coming back to the petitions filed before this Court, in ***CRL.REV.P.665/2018***, the petitioner was arrested on 17.09.2016 and he had disclosed his age as 19 years to the investigating officer. However, since he had no identity/age proof, a bone ossification test



was conducted and as per report dated 17.11.2016, the medical age of the petitioner was opined as 17 to 18 years. During the course of investigation, the police had also verified the age of petitioner from his first attended school, and his date of birth was found to be 03.04.2000. The petitioner was then first produced before the concerned JJ Board on 14.12.2016. The Board, in order to fulfil its duty as per Section 15(1) deemed it fit to obtain assistance of psychologists, and accordingly, *vide* order dated 26.12.2016, the Board directed the Psychologist, OHB-II to furnish its report before 12.01.2017. A perusal of record reveals that the matter was then adjourned on several dates as the report of psychologist was awaited and notices were issued repeatedly to the concerned psychologist to file report before the Board. As per records, the report was finalised by the concerned psychologist on 24.03.2017, and the JJ Board received the same only on 12.04.2017. At this point, it is to be noted that this psychological assessment was carried out within a period of about three months by the concerned psychologist. Thereafter, part arguments were heard by the Board on 27.04.2016 and the same were concluded on 11.05.2017, and the matter was then put up for orders on 25.05.2016 and the learned counsel for petitioner had also requested to file written submissions in the meantime. However, due to delay in filing of written submissions by the learned counsel for petitioner before the Board or due to absence of a member of the Board on the date fixed, the order could not be pronounced and after the written submissions were filed by the learned counsel for petitioner, the arguments were heard afresh on 27.06.2017 and the order were reserved on the same day, and the same was pronounced on 29.07.2017.



In substance, however, the concerned JJ Board had considered the report of psychologist, interacted with the petitioner, heard the arguments addressed by both sides and concluded the hearing on 11.05.2017, i.e. within a period of one month from receipt of psychological assessment report and within five months from date of first production of petitioner before the Board. By virtue of order dated 29.07.2017, the Board held that the petitioner was to be tried as an adult. This Court notes that during this entire time period, the age of petitioner as per bone ossification test was around 17-18 years. Further, as per the school records, the petitioner's date of birth was 03.04.2000. As per this date, the age of petitioner would be about 16 years and 5 months at the time of commission of offence, about 16 years and 8 months at the time production before JJ Board, and about 16 years and 11 months at the time of his psychological assessment. Further, he would be aged about 17 years and 1 month when the hearing before the JJ Board was concluded and matter was reserved for orders. In a nutshell, the petitioner was within the age bracket of 16^{1/2} to 17^{1/2} years at the time of commission of offence as well as his psychological assessment and preliminary assessment. Thus, in the given facts and circumstances, where the preliminary assessment was concluded within a period of about seven months from the date of production of petitioner before the Board, and where the Board had taken assistance from the psychologists and their assessment of the petitioner had taken some time, which was completed within a period of about three months from the date of first production of petitioner before the Board, and when the Board had primarily concluded the hearing before it within a



period of one month from receipt of report of psychological assessment and within five months from the date of first production of petitioner before the Board, *this Court does not find any ground to hold that the delay in completion of preliminary assessment was of such nature so as to vitiate the entire trial.* Furthermore, no prejudice seems to have been caused to the petitioner due to such a delay and even no arguments in this regard were addressed before this Court. While holding so, this Court also takes note of the facts of the case, which reveal the brutality with which the victim was raped and strangled to death allegedly by the petitioner who was the victim's nephew.

50. In **CRL.REV.P.737/2018**, the petitioner was arrested on 21.02.2017 and produced before the JJ Board. The records of the case reveal that initially, the age of petitioner was mentioned as 15 years by the police and even the medical/clinical examination of the petitioner dated 21.02.2017 as well as 09.03.2017 records his age as 15 years. It is to be noted that during this time, since the age of petitioner had been mentioned as 15 years, the provisions of Section 15 i.e. for conducting preliminary assessment of individuals between the age group of 16 to 18 years had not come into existence. Thereafter, the investigating officer had obtained the schools records of the petitioner on 15.03.2017 and it was found that the date of birth of petitioner was 06.10.2000, and the same was duly informed to the Court concerned on 20.03.2017. On 03.04.2017, the Board observed that as per the age proof filed on record, the age of petitioner was less than 18 years and he was accordingly declared juvenile for the purpose of inquiry under the Act, and the IO was asked to file final report as per Section 173 Cr.P.C. The



chargesheet in the present case was filed only on 27.04.2017 recommending charges under Section 376(2) of IPC and Section 6 of POCSO Act against the accused persons, and the Board after taking into account the contents of the same, observed that as per records, since the petitioner was aged between 16 to 18 years at the time of commission of offence, his preliminary assessment under Section 15 was mandatory and thus, *vide* order dated 01.05.2017, the Psychologist, OHB-II was directed to file a psychological assessment report within 15 days before the Board. On 29.05.2017, the 'Physical, Mental and Drug Assessment Report' by the concerned psychologist/counsellor and 'Social Investigation Report' by the probation officer were prepared. However, the psychologists had informed the Superintendent concerned that sessions with the family members of the petitioner could not be conducted and thus, requested that the family members be sent to Mental Health Unit (MHU) for conduct of sessions and filing of the reports. A perusal of order sheets of the JJ Board revealed that on 29.05.2017, it was observed that the confidential psychological assessment report had been received, however, on 24.06.2017 and 10.07.2017, it was observed that the report had not been received. Thereafter, the Board had concluded the preliminary assessment of the petitioner in terms of Section 15 on 24.07.2017. Be that as it may, as per the date of birth of petitioner i.e. 06.10.2000, his age at the time of commission of offence and production before the Board would be about 16 years 4 months, and about 16 years and 7 months at the time of his psychological assessment. Further, he would be aged about 16 years and 9 months when his preliminary assessment was concluded. In a



nutshell, the petitioner was within the age bracket of 16 to 17 years at the time of commission of offence as well as his psychological assessment and preliminary assessment. Thus, in the given facts and circumstances, where the preliminary assessment was concluded within a period of about four months from the date of placing on record the age proof of the petitioner which revealed the age of petitioner between 16 to 18 years, thereby necessitating an assessment as per Section 15 of JJ Act, and within three months from filing of chargesheet before the Board, and where the Board had taken assistance from the psychologists and their assessment of the petitioner had been completed within a period of about one month, except for interaction with family members of the petitioner, *this Court does not find any ground to hold that the minor delay in completion of preliminary assessment was of such nature so as to vitiate the entire trial.* As observed in preceding paragraph also, no prejudice seem to have been caused to the petitioner herein and even no arguments in this regard were addressed before this Court. While holding so, this Court also takes note of the facts of the case, which reveal that two minor victims were raped in an open ground by pulling of their clothes by the petitioner, as alleged, as well as the fact that petitioner was previously also involved in a criminal case of similar nature.

51. In **CRL.REV.P.825/2018**, the petitioner was arrested on 22.08.2016 and produced before JJ Board as he was below the age of 18 years, but his age was disputed by both the sides during subsequent proceedings. It was only on 20.09.2016 that the petitioner was declared juvenile after relevant documents were filed before the Board by the



police which revealed the date of birth of petitioner as 20.06.2000, and that his age at the time of commission of offence was 17 years and 2 months. Since the age of petitioner was found to be between 16 to 18 years, the Board directed for filing of Social Background Report, Social investigation Report, Preliminary Assessment Report, Physical Mental Drug Assessment Report by the concerned persons to carry out preliminary assessment under Section 15 of the Act. All the necessary reports including the chargesheet in this case were filed before the Board by 08.11.2016, after which the matter was fixed for arguments. A perusal of record reveals that thereafter, the counsel for accused/petitioner had sought adjournments on about three occasions and ultimately, the arguments were heard and concluded on 04.01.2017 and the matter was reserved for order. The order on preliminary assessment was announced by the concerned JJ Board on 08.03.2017. As per records, the petitioner's date of birth was found to be 20.06.2000. Thus, at the time of commission of offence and his production before the Board, the age of petitioner was about 17 years and 2 month, and about 17 years and 4 months at the time of his psychological assessment. Further, he would be aged about 17 years and 6 months at the time when arguments were heard by the JJ Board and the matter was reserved for orders, and about 17 years and 8 months when the order on preliminary assessment was announced by the concerned Board. In a nutshell, the petitioner was within the age bracket of 17-18 years at the time of commission of offence as well as his psychological assessment and preliminary assessment. Therefore, in the given facts and circumstances, where the preliminary assessment



was concluded within a period of less than six months from the date of placing on record the age proof of the petitioner which revealed the age of petitioner between 16 to 18 years, thereby necessitating an assessment as per Section 15 of JJ Act, and where the Board had taken assistance from the psychologists and other experts to arrive at such a conclusion, and where the hearing before the Board had been concluded and matter had been reserved for orders within three months and fifteen days from date of placing on record the age proof of the petitioner and within two months from filing of chargesheet and other reports, and where matter had to be adjourned for more than a month due to adjournments sought on behalf of petitioner, *this Court does not find any ground to hold that the delay in completion of preliminary assessment was of such nature so as to vitiate the entire trial*. No prejudice seems to have been caused to the petitioner due to such a delay and even no arguments in this regard were addressed before this Court. While holding so, this Court also takes note of the facts of the case, which reveal the brutality with which the minor victim aged about 7 years was allegedly kidnapped and raped by the accused persons including the petitioner, who was aged about 17 years and 2 months at the time of commission of offence.

CRYPTIC ORDER PASSED BY JJ BOARD UNDER SECTION 15 OF ACT

(i) ARGUMENTS ON BEHALF OF PARTIES

52. Learned counsel for the petitioner in CRL.REV.P.665/2018, in



addition to aforesaid arguments, submits that preliminary assessment of a juvenile under Section 15 is not a mere empty formality and mandates that all relevant considerations must be taken while conducting the preliminary assessment of a juvenile since the decision that may be arrived by the Juvenile Justice Board may be crucial in determining the future of a person. It is stated that the order passed by the Juvenile Justice Board in this case was cryptic and without due application of mind. Reliance in this regard has been placed upon decision of Hon'ble Apex Court in ***Barun Chandra Thakur v. Bholu*** 2022 SCC OnLine SC 870 on the aspects of Section 15 as well as judgments passed by several other High Courts.

53. Learned APP for the State, on the other hand, argues that a detailed psychological assessment was carried out by the psychologist attached with OHB-II and report running into 06 pages, covering all crucial aspects such as mental capacity, physical capacity, ability to understand consequences, mental status, behavioral examination, etc. was filed before the Board on 24.03.2017 i.e. almost within a period of three months from date of production of CCL before the Board. It is further stated that a bare perusal of the preliminary assessment done by the JJ Board *vide* order dated 29.07.2017 reveals that all the material considerations including the psychological assessment report were taken into account by the Board while arriving at a decision that the petitioner was to be tried as an adult. It is thus, stated that this order of JJ Board does not suffer from any illegality or infirmity. It is also submitted that the decision of the Hon'ble Apex Court in ***Barun Chandra Thakur*** (*supra*) on the aspects of Section 15 was rendered in



the year 2022, whereas the preliminary assessment in this case was conducted in the year 2017. It is also argued that as per Section 101 of JJ Act, if the petitioner was aggrieved by the order of JJ Board, he was required to file an appeal before the learned Children's Court instead of directly approaching this Court.

54. In rebuttal, learned counsel for petitioner submits that even before the decision of Hon'ble Apex Court and at the time of assessment of present petitioner, there were sufficient provisions to guide as to how a preliminary assessment is to be conducted. It is again stated that both the psychological assessment as well as preliminary assessment of present petitioner do not meet the basic criterion laid in the Act and Rules and later by the Hon'ble Apex Court.

(ii) ANALYSIS AND FINDINGS

55. Another short issue raised on behalf of petitioner in CRL.REV.P.665/2018, is that the order on preliminary assessment passed by the concerned JJ Board is cryptic and does not consider the report filed by the psychologist before the Board and is, thus, against the procedure prescribed under the JJ Act.

56. At the outset, this Court takes note of the objection raised by the learned APP for the State that the petitioner has not filed an appeal under Section 101 of JJ Act, challenging the order of preliminary assessment passed by the JJ Board. To consider the same, the relevant portion of Section 101 of the Act is reproduced hereinunder for reference:



“101. (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children’s Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

(2) An **appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists** other than those whose assistance has been obtained by the Board in passing the order under the said section.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(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...”

(Emphasis supplied)

57. However, Section 102 of JJ Act confers revisional powers upon the High Court, in the following manner:

“102. The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children’s Court, or Court has passed an order, **for the purpose of satisfying itself as to the legality or propriety of any such order** and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

(Emphasis supplied)

58. Thus, a joint reading of Section 101 and 102 of the JJ Act reveal that in an appeal filed before the learned Sessions Court challenging preliminary assessment conducted by a Board, the Court concerned can



take assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order, in order to appreciate the findings and the decision arrived at by the Board. Whereas in a revision petition filed before a High Court, the Court is only required to consider whether the order assailed suffers from any illegality or impropriety.

59. In this background, before examining the order impugned before this Court, it shall be appropriate to consider the relevant provisions of JJ Act and Rules which occupy the field as far as preliminary assessment of individuals is concerned.

60. As observed in preceding discussion, Section 15 of the Act provides for preliminary assessment in cases of heinous offences alleged to have been committed by a child who has completed or is above the age of 16 years, and the Board is required to conduct the 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 after such assessment, pass an order in accordance with Section 18(3). Further, the proviso to Section 15(1) provides that for carrying out preliminary assessment in cases of heinous offences, the Board can take assistance of experienced psychologists or psycho-social workers or other experts.

61. Section 8 of JJ Act, which lists out the powers, functions and responsibilities of the Board, provides that the Board may direct the Probation Officer or the Child Welfare Officer or a social worker to submit a social investigation report within a period of fifteen days from



the date of first production of the child before the Board.

62. Moreover, a reference can also be made to relevant parts of Rule 10 and 10A of the JJ Rules, which read as under:

“10. Post-production processes by the Board.-

(1) On production of the child before the Board, the report containing the social background of the child, circumstances of apprehending the child and offence alleged to have been committed by the child as provided by the officers, individuals, agencies producing the child shall be reviewed by the Board and the Board may pass such orders in relation to the child as it deems fit, including orders under sections 17 and 18 of the Act...”

“10A. Preliminary assessment into heinous offences by Board

.....(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently...”

63. Having considered the relevant provisions of the Act and Rules, this Court has perused the records of the case as well as the order that has been assailed before this Court. Firstly, it shall be pertinent to note that during the course of enquiry, when the accused arrested in the present case was found to be a minor within the age bracket of 16 to 18 years, the matter was placed before the JJ Board and the Board had sought assistance of clinical psychologist attached with OHB-II for the purpose of preliminary assessment. Secondly, this Court has also considered and gone through the contents of the detailed report that was filed by the clinical psychologist before the concerned JJ Board after interacting with the petitioner. A perusal of the said report dated 24.03.2017 reveals that the same deals with the following aspects: (i)



socio-demographic background of the petitioner, (ii) case details and summary as reported by the petitioner and the observations of the psychologist qua mental capacity of the petitioner to commit offence, physical capacity to commit offence, ability to understand the consequence of offence, circumstances in which he allegedly committed the offence, (iii) past history of the petitioner, (iv) mental status examination, (v) behavioral observations, (vi) investigations including laboratory tests, psychometric evaluation, standard investigation, etc., (vii) diagnosis, (viii) summary or recommendations by the psychologist concerned.

64. The report of the psychologist had then been placed before the concerned JJ Board and *vide* order dated 29.07.2017, the Board had concluded that the petitioner/CCL had sufficient mental as well as physical capacity to commit the offence and understand its consequences.

65. The said order dated 29.07.2017, passed by the JJ Board, runs into six pages and takes into account the following aspects: (i) since during the course of inquiry, the age of accused was found between the age bracket of 16 to 18 years, the preliminary assessment under the JJ Act was necessary, (ii) brief facts of the case and the investigation conducted by the police, (iii) the duty of JJ Board to conduct preliminary assessment as per requirements of Section 15 of the Act, (iv) the assistance taken from a clinical psychologist for the purpose of preliminary assessment of the CCL/petitioner, who had filed a detailed report before the JJ Board after interacting with the petitioner, (v) contents of the psychological assessment report filed before the JJ



Board, (vi) scope of preliminary assessment as provided under Section 15 in comparison to scope of consideration of allegations at the stage of framing of charge, (vii) arguments raised on behalf of the petitioner/CCL and the findings of the JJ Board on mental capacity, physical capacity, socio-economic conditions, capacity to understand the consequences of the act, (viii) presumption of innocence in favour of the child, and (ix) the interactions of the Board with the petitioner/CCL. At the cost of repetition, this Court again notes that the case at hand deals with a CCL, who as per the records of school, was aged about 16 years and 5 months at the time of commission of offence and had allegedly raped his own maternal aunt and strangled her to death.

66. Therefore, upon examining and analysing the preliminary assessment carried out by the JJ Board, this Court is of the opinion that the same is in line with the procedure provided under the JJ Act and Rules.

67. Thus, in this Court's view, the order dated 29.07.2017 passed by the concerned JJ Board in CRL.REV.P.665/2018 does not suffer from any illegality or impropriety which warrants any interference by this Court.

CONCLUSION

68. In cases involving heinous offences alleged to have been committed by juveniles, it is crucial to adopt a balanced approach that takes into account multiple factors, and achieving this balance is a



complex endeavor that requires a comprehensive understanding of the complexities involved.

69. On one hand, the rights of juveniles must be acknowledged and respected. It is widely recognized that the decision-making abilities and comprehension of consequences of juveniles may not be fully matured, which underscores the necessity of providing avenues for rehabilitation and reform, focusing on addressing the root causes of their actions and enabling them to re-integrate into society as responsible and productive citizens. But on the other hand, the rights and well-being of victims cannot be undermined. Heinous offences inflict deep emotional and physical scars on victims and their families and thus it is essential that the justice system acknowledges their suffering and ensures that offenders are held accountable for their actions. Simultaneously, the duty of the State to maintain public safety and uphold the rule of law cannot be overlooked as well. The citizens rely upon the State and its law enforcement agencies to prevent crime and maintain law and order, and this responsibility increases further in cases of heinous offences, which can have far-reaching consequences for the society's sense of security and faith in the justice system. Balancing these varied interests requires a nuanced and case-specific approach, and the circumstances and socio-economic background of every juvenile alleged to have committed a heinous offence should be carefully considered.

70. In conclusion, striking the right balance in cases involving heinous offences alleged to have been committed by juveniles necessitates an approach that acknowledges the rights of juveniles, respects the rights and well-being of victims, and upholds the State's



duty to ensure public safety and justice. This intricate balancing act demands a thorough examination of individual cases and a clear understanding of the implications for society as a whole.

71. Having examined the scheme of Juvenile Justice Act, 2016 as well as the Rules made under the Act *in extenso*, this Court sums up the issues raised and dealt with in the present case as under:

I. Upon receipt of the preliminary assessment from the Board, the Children's Court, as per mandate of Section 19 of JJ Act, is bound to apply its mind to decide as to whether there is a need for trial of the child as an adult or not. As observed in para no. 33, the learned Children's Court in all the above-captioned did not arrive at any independent decision of their own by applying judicial mind and recording reasons as per scheme of Section 19(1) of JJ Act read with Rule 13(1) and 13(6) of JJ Rules, and thus, the matters are remanded back to the concerned learned Children's Court for passing appropriate orders under Section 19(1) of JJ Act, subject to directions contained in para nos. 34 to 36.

II. Failure to conclude preliminary assessment within three months in cases of heinous offences under Section 15, *ipso facto*, does not result in lapse of proceedings or vitiation of trial, and effect of any such delay will have to be examined in light of facts and circumstances of each case. However, for the reasons recorded in para nos. 44 to 48,



every preliminary assessment under Section 15 of JJ Act in relation to heinous offences must be initiated and concluded expeditiously as per terms of Section 14, and as per requirements as mentioned in the JJ Act and the Rules. As observed in para nos. 49 to 51, the failure to conclude preliminary assessment within a period of three months in CRL.REV.P. 665, 737 and 825 of 2018, cannot be held to have vitiated the entire trial proceedings in the facts and circumstances of these cases.

72. Accordingly, the present petitions, alongwith pending applications if any, are disposed of in above terms.

73. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

AUGUST 9, 2023/ns

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