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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of Decision: 14th October, 2024*

+ **CRL.REV.P. 805/2023**

RRPetitioner
Through: Mr. Rakesh Chahar, Adv.
(through VC)
versus
STATERespondent
Through: Mr. Ajay Vikram Singh,
APP for the State with SI
Sachin, PS S.P. Badali.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J.

1. The present petition is filed challenging the judgment dated 10.02.2023 (hereafter '**impugned judgment**'), passed by the learned Additional Sessions Judge ('**ASJ**'), North District, Rohini Courts, Delhi, in Criminal Appeal No. 86/2021.
2. By the impugned judgment, the learned ASJ dismissed the petitioner's appeal against order dated 04.02.2020, wherein the Juvenile Justice Board transferred the case in relation to FIR No. 927/2017, registered at Police Station Samaipur Badli, for offences under Sections 302/397 of the Indian Penal Code, 1860 ('**IPC**'), to the concerned Children Court.
3. The petitioner has also challenged the order dated 04.02.2020 in the present petition.
4. The FIR No.927/2017 was registered at the Police Station Samaipur Badli on 19.10.2017, for offences under Sections 302/397 of the IPC. The petitioner was charge sheeted for the



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offences under Sections 302/365/397 of the IPC. The matter was sent to the Juvenile Justice Board on 23.08.2018 as the age of the petitioner was found to be between sixteen to eighteen years on the date of commission of the alleged offence.

5. The learned Juvenile Justice Board passed the impugned order dated 04.02.2020 after a preliminary assessment of the petitioner. The impugned order dated 04.02.2020 was upheld by the learned ASJ by the impugned judgment after conducting a fresh preliminary assessment.

6. The learned counsel for the petitioner submits that the impugned judgment and the impugned order dated 04.02.2020 are unsustainable as they have been passed without duly appreciating the preliminary assessment reports of the petitioner where it is clearly mentioned that the petitioner is depressed and he is not fully capacitated at social interactions.

7. He submits that the petitioner was admittedly a child at the time of commission of the offence and he did not have the requisite mental capacity to commit the offence.

8. He submits that the petitioner lost his parents at a young age and he does not share cordial relations with his elder brother due to which he grew up in deprived conditions.

9. He submits that the chances of the petitioner having allegedly planned the crime are low and he should thus have been treated as a child.

10. He further submits that the Social Investigation Report ('SIR'), Physical Mental Drug ('PMD') Assessment Report and Preliminary Assessment Report have to be read in harmony. He



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submits that it is clear from the reports that the petitioner is deprived and depressed and he also has low intelligence, and he can thus not understand the nature and consequence of the offence.

11. *Per contra*, the learned Additional Public Prosecutor for the State submits that the alleged offence was committed brutally in a pre planned manner. He submits that the impugned judgment and the impugned order dated 04.02.2020 have been passed after due application of mind to the facts and circumstances of the present case.

12. I have heard the counsel and perused the record.

13. At the outset, it is relevant to note that the present petition has been filed under Section 397 read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') challenging the concurrent findings from the Juvenile Justice Board and the learned ASJ. It is not open to the Court to misconstrue the revisional proceedings as a second appeal by sitting in appeal over the challenged orders. The Hon'ble Apex Court in the case of *State of Kerala v. Puttumana Illath Jathavedan Namboodiri : (1999) 2 SCC 452* discussed the scope of revisional jurisdiction and held as under:

"5. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence



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and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice...."

(emphasis supplied)

14. In the present case, the impugned order dated 04.02.2022 is passed under section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act').

15. The learned Juvenile Justice Board considered the preliminary assessment report and PMD report of the petitioner at length and observed that he was physically and mentally able and he had the ability to understand consequences of his actions. It was also noted that it is mentioned in the preliminary assessment report that the petitioner had said that his other friends had planned to kill the victim. He had stated that one of his friends had given him a Laptop and a card and asked him to go away whereafter the police caught hold of him. It was found that the manner of commission of the offence and the statement of witnesses under Section 161 of the CrPC did not suggest that the crime was committed by an innocent mind or in the spur of the moment. Considering the same, it was found that the present case was fit to be referred to the Children Court. The said decision was upheld by the learned ASJ.

16. At this juncture, this Court also deems it apposite to refer to Section 15 of the JJ Act. The same reads 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



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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.”

17. Reliance has been placed by the petitioner on the case of **Barun Chandra Thakur v. Bholu : 2022 SCC OnLine SC 870** as well. The relevant portion of the said judgment is reproduced hereunder:

“19. Section 15 provides for preliminary assessment where the alleged offence is heinous and where the child has completed or is above the age of 16 years, 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 sub-section (3) of section 18. If the Board is of the opinion that the child needs to be tried as an adult then the case be transferred to the Children's Court having jurisdiction to try such offence. Otherwise, the Board itself will proceed to try the matter as a summons case under the Criminal Procedure Code, 1973.

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23. Section 19 deals with the powers conferred on the



*Children's Court. The Children's Court upon receipt of the preliminary assessment from the Board will decide whether there is need for trial of a child as an adult in accordance with the Cr.P.C. and pass appropriate orders after trial subject to the provisions of this section as also section 21. **However, if the Children's Court feels that there is no need for trial of child as an adult, then, it may conduct an inquiry as a Board and pass appropriate orders in accordance with provisions of Section 18...***

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45. The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children's Court or by the Board itself, treating him to be a child. There are two major consequences provided in the Act, 2015, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the said removal of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to section 24(1). Another consequence, which may also have serious repercussions, is that as per section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to section 24(2).

46. These consequences are serious in nature and have a lasting effect for the entire life of the child. It is well settled that any order that has serious civil consequences, reasonable opportunity must be afforded. The question is of what would be a reasonable opportunity in a case where a preliminary assessment is to be made by the Board under section 15.

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62. The obligation of the Board in making the preliminary assessment on the four counts mentioned in section 15 of the Act is largely dependent upon the wisdom of the Board



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without there being any guidelines as to how the Board would conduct such preliminary assessment. In the absence of any such framework or guidelines, the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing the four attributes.

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68. The language used in section 15 is “the ability to understand the consequences of the offence”. The expression used is in plurality i.e., “consequences” of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far-reaching consequences in future. Consequences could be in material/physical form but also affecting the mind and the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board.”

(emphasis supplied)

18. It is not the case of the petitioner that the preliminary assessment of the petitioner suffered from infirmity to warrant an interference in the impugned orders.

19. The main thrust of the petitioner’s arguments is that the petitioner has low intelligence and he grew up in a deprived atmosphere. It is also argued that the petitioner was suffering from depression and the Courts below did not appreciate that the petitioner did not have the mental capacity to understand the nature and consequences of the offence. There is no argument regarding the physical capacity of the petitioner to commit the offence.



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20. The learned ASJ has extensively addressed the aforesaid arguments in the impugned judgment. The relevant portion of the same is reproduced hereunder:

*“14. Mentioning of intelligence as Low or under depression does not describe the CCL to be suffering from any psychological illness of such a nature which prevents him to understand the nature of offence allegedly committed by him. It is no-where contended on part of CCL that he is suffering from any mental illness or that he is undergoing any such treatment. **From both the Preliminary Assessment Reports, physical, mental, drug assessment report, individual counseling report and social investigation report, it can be safely concluded that the CCL had no physical and intellectual disability and that he was able to understand the consequences of the act on the date of commission of alleged offence.***

15. The contention of the Ld. Counsel for the CCL that since CCL has been grown up in deprived atmosphere, his intelligence was low and thus he was not able to understand the consequence of the act is not found to be acceptable.

As per the FIR, the crime was committed in a brutal manner and single handedly. The manner in which the alleged crime is committed, leaves no doubt that the said act cannot be committed without understanding the nature and consequence of the act. Only an insane person can take the plea of not understanding the consequence of such a brutal act. No such plea of insanity is taken in this case. Further, in the previous preliminary assessment report there is no mention of depression and it is found mention in subsequent report pertaining to the year 2022 and hence is not relevant. As per the social investigation report, there is no history of abuse within family and the CCL was seems fit medically. Thus, it is hereby concluded that on the date of commission of alleged offence CCL was not under any kind of depression. In fact, as per the Preliminary Assessment Report, the CCL has high motivation to make as identity in the society and the act he did was under the prospect of securing the job as the same was alleged to be offered. These observations collectively leads to safely conclude that the CCL was fully aware of nature of his act and its consequence.”

21. As rightly noted by the learned ASJ, the initial preliminary assessment of the petitioner dated 06.09.2018 makes no mention



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of him suffering from depression and it is only the subsequent preliminary assessment conducted in the year 2022 that states that the petitioner suffers from depression. It is relevant to note that the incident dates back to the year 2017. It is also pertinent to note that the petitioner was not referred to any psychiatric consultation. In such circumstances, subsequent observation of depression after five years of the offence does not help the case of the petitioner. It is relevant to note that the SIR mentions that the petitioner was low and depressed, however, even so, as rightly noted by the learned ASJ, depression or low intelligence cannot be construed to be factors that can prevent the child in conflict of law from understanding the consequences of the offence and the circumstances in which the alleged offence was committed.

22. The initial preliminary assessment report also records that while the petitioner denied the offence, however, he understands the consequences of the same. Moreover, it was noted that the petitioner had high motivation to make an identity in the society and he had no signs of any intellectual disability. The preliminary assessment dated 22.05.2022 also records that the petitioner appears to have the ability to make decisions and have the understanding of cause and effect of his actions.

23. It is also relevant to note that the SIR mentions that while the petitioner had denied his role in the alleged offence, but he felt guilty that even after discovering the plan, he took it lightly. This shows that the petitioner had the ability to understand the consequence and nature of the alleged offence.



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24. One of the main factors that weighed the Courts below was the nature and brutal character of the offence. It has been alleged that a quarrel ensued between the victim and the petitioner after the victim refused to enter into a partnership with the petitioner. It is alleged that the petitioner took out a knife and stabbed the victim to death. The crime as alleged is not of such a complex nature so as to require high intelligence.

25. It has also been argued that the learned Juvenile Justice Board and the learned ASJ have not taken into account the various reports of the petitioner. A bare perusal of the impugned orders shows that the both the Courts have extensively discussed the important factors in the reports to arrive at the conclusion that the matter ought to be referred to the Children Court.

26. In view of the aforesaid, this Court finds no infirmity in the impugned judgment and the impugned order dated 04.02.2020.

27. It is seen that the identity of the child in conflict with law has been disclosed in the pleadings as well as the case title of the present matter. The same violates the right to confidentiality of the petitioner and is in contravention of the law as stipulated under Section 74 of the JJ Act. The Hon'ble Apex Court in the case of *Shilpa Mittal v. State (NCT of Delhi) : (2020) 2 SCC 787* had taken note of the fact that disclosure of the name of the child in conflict of law in the impugned judgment is in contravention of the provisions of Section 74 of the JJ Act. Consequently, the Hon'ble Apex Court had directed the High Court to correct its judgment and remove the name of the child in



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conflict with law. In view of the same, the Registry is directed to conceal and mask the name of the petitioner from the cause list as well as the record of this case so that his identity is not disclosed.

28. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

OCTOBER 14, 2024