

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.443 of 2025

Arising Out of PS. Case No.-45 Year-2022 Thana- BASOPATTI District- Madhubani

Nitish Paswan S/O Uday Paswan R/O Village- Majhaura, P.S- Basopatti,
Distt.- Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar
2. Md. Ajim Rain S/O Late Rajjak Rain R/O Village- Khaina Tolae Majhaura,
P.S- Basopatti, Distt.- Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Subhash Kumar Jha
For the Respondent/s : Ms. Anita Kumari Singh

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 17-07-2025

1. The instant appeal under Section 101 (5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 has been filed, assailing the order of rejection of bail by Children's Court on the ground that the CICL was charged with the offence of POCSO Act and he required to be tried under the said Act.

2. It is urged on behalf of the prosecution that Section 34 of the POCSO Act lays down the procedure in case of commission of offence by child and determination of his age.

3. Section 34 of the POCSO Act runs thus: -

“34. Procedure in case of



commission of offence by child and determination of age by Special Court.

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

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

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

4. Thus, it is submitted on behalf of the prosecution that if a child under the age of 18 years is an accused under POCSO Act, the said Court under the POCSO Act is empowered to adjudicate and decide the age



of the accused in the manner contemplated in the Juvenile Justice (Care and Protection of Children) Act, 2015 and trial of such offence shall be held by the said Court under POCSO Act.

5. This issue came up for consideration before the Hon'ble Supreme Court in ***Thirumoorthy v. State, represented by the Inspector of Police***, reported in ***2024 SCC OnLine SC 375***. It is held by the Hon'ble Supreme Court in Paragraph 27 of the said judgment: -

“27. Thus, there is no escape from the conclusion that even before the result of investigation was filed, the fact regarding the accused being a CICL was well known to the Investigating Officer (PW-25), the prosecution and the trial Court as well.”

6. The Hon'ble Apex Court next reproduced the General principles to be followed in administration of the Juvenile Justice (Care and Protection of Children) Act, 2015. As laid down by the Hon'ble Apex Court, Section 3 states thus: -

“3. General principles to be



followed in administration of Act.— The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:-

(i) Principle of presumption of innocence : Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth : All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation : Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest : All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full



potential.

(v) *Principle of family responsibility : The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.*

(vi) *Principle of safety : All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.*

(vii) *Positive measures : All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.*

(viii) *Principle of non-stigmatising semantics : Adversarial or accusatory words are not to be used in the processes pertaining to a child.*

(ix) *Principle of non-waiver of*



rights : No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination : There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality : Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort : A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration : Every child in the juvenile justice system shall have the right



to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start : All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion : Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice : Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

7. Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 lays down the procedure to be followed by a Magistrate who has not been



empowered under this Act. Section 9 runs thus: -

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

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



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

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

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

(emphasis supplied)

8. Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the preliminary



assessment into heinous offences by Board, which runs
hereunder: -

“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 subsection (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 Criminal Procedure Code, 1973:

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.”

9. Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015 speaks about orders regarding child found to be in conflict with law. Section 18 runs as hereunder: -

“18. Orders regarding child found to be in conflict with law.—(1)
Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has



committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

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

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

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

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

Provided that, in case the child is working, it may be ensured that the



provisions of any labour law for the time being in force are not violated;

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

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

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in



the interest of other children housed in a special home, the Board may send such child to the place of safety.

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

(i) attend school; or

(ii) attend a vocational training centre; or

*(iii) attend a therapeutic centre;
or*

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

(v) undergo a de-addiction programme.

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

10. Section 19 deals with the powers of the Children's Court, which runs as hereunder: -



“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 Criminal Procedure Code, 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)-(5).....”

11. Thus it is held by the Hon’ble Supreme Court in **Thirumoorthy** (supra) that trial of a CICL shall be conducted under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and not under the POCSO Act.



12. In view of aforesaid decision passed by the Hon'ble Supreme Court, this Court has no other alternative but to hold that a CICL involved in a case under the POCSO Act shall be dealt with either by the Juvenile Justice Board or by the Children's Court as per the provision of the Juvenile Justice (Care and Protection of Children) Act, 2015.

13. In view of the above decision, this Court takes up the instant appeal for determination.

14. The appellant was arrested in connection with Basopatti P.S. Case No. 45 of 2022, dated 25th of February, 2022, instituted for the offences punishable under Sections 363 and 366 of the Indian Penal Code and Section 12 of the POCSO Act.

15. On the date of occurrence, it is held by the Juvenile Justice Board that the appellant was above 16 years of age but below 18 years. Therefore, trial of the appellant shall be conducted by the Children's Court.

16. It is alleged that the victim had voluntarily eloped and married the appellant and was living with him.



She is now pregnant.

17. The appellant is in custody since 5th of September, 2024.

18. Though the appellant is minor, this Court deals with the instant appeal on the presumption of innocence of the appellant, because the victim voluntarily eloped with him and both of them married and she is now pregnant.

19. In view of such circumstances, I am inclined to release the appellant on bail.

20. The appellant, Nitish Paswan, is directed to be enlarged on bail on furnishing bail bonds of Rs. 25,000/- (twenty five thousand) two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge 1st cum Special Judge SC and ST Act, Madhubani (Special Judge, Children Court, Madhubani), with condition that one of the bailor must be either of the parents of the appellant, with further condition that, if, on bail, the appellant shall be under the care and protection of his parents and under the supervision of the Probation Officer. The Probation Officer is directed to file quarterly report before the Children's



Court about the antecedent of the appellant. If any adverse report is filed, the order of bail shall be cancelled without further reference to the Bench.

With the aforesaid direction, the instant appeal stands disposed of.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
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