

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2609 of 2024

Arising Out of PS. Case No.-27 Year-2023 Thana- MAHILA P.S. District- Sitamarhi

Avnish Kumar, Son of Kamlesh Kuwar, R/O Vill.- Husainpur, P.S.- Mahindwara, Dist.- Sitamarhi, through his natural guardian Father Kamlesh Kuwar, Male, Age - 46 years, Son of Lal Bahadur Kuwar, R/O Vill.- Husainpur, P.S.- Mahindwara, Dist.- Sitamarhi.

... .. Appellant

Versus

1. The State of Bihar
2. Nisha Devi, Wife of Mahesh Kunwar, R/o, Village – Husainpur, P.O. Chakshambhu, P.S. Mahindwara, Dist. Sitamarhi.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Vindhya Keshari Kumar, Sr. Advocate Mr. Ravi Shankar Pathak, Advocate
For the State	:	Mr. Chandra Sen Prasad Singh, APP
For the Resp. No.2	:	Ms. Smiti Bharti, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 07-08-2025

Introduction

The present Criminal Appeal has been preferred by the Appellant against the impugned order dated 16.04.2024, passed by learned A.D.J.-Ist-Cum-P.O. (Children Court), Sitamarhi in Sitamarhi Mahila P.S. Case No. 27 of 2023 (Trial No. 1 of 2024) whereby learned Children Court has rejected the bail application of the Appellant, holding as follows:

“From perusal of record and the case-diary. It transpires that the witnesses in the case-diary have supported the prosecution case. The victim has also supported the incident in her statement u/s. 164 Cr.P.C. It also appears from the record that after completion of investigation, charge-sheet has been submitted in the case against the petitioner for the offences u/s. 342, 363, 366(A), 376 (AB) I.P.C. and Sec. 6 of POCSO Act. From perusal of case-diary, it appears that the victim has made specific allegation against the C.C.L. 'A' in her statement



u/s. 161 Cr.P.C. and in her statement u/s. 164 -Cr.P.C. The Social Investigation Report is available on the record. It appears that the effect of the association of bad society is the reason of said offence. Therefore, the atmosphere outside the Observation Home is not conducive for the C.C.L. 'A' as there is every possibility that the C.C.L.'A' would come in the association of criminals and would commit another offence and since the nature of offence is heinous. Hence, the release of the C.C.L. would not only expose him to moral, physical and psychological danger but would also lead to defeat the ends of justice.

Considering the aforesaid facts and circumstances of the case and seriousness of the offence I am not inclined to grant bail to the C.C.L.'A'. Accordingly, the prayer for bail is hereby rejected.”

Prosecution Case

2. The prosecution case, as emerging from the written report of the mother of the victim dated 07.09.2023, is that when the three year old minor daughter of the informant was playing in front of her house at 7:00 PM in the evening on 04.09.2023, she was enticed away by the Appellant to his house, where he committed rape upon her. Subsequent to the occurrence, the victim came to the informant weeping and stated to her that the Appellant had undressed her. From the perusal of her person, it appears to the informant that she was subjected to rape and the clothes of the victim was stained with blood. It is also stated that the victim was carrying chips in her one hand.

Social Investigation Report

3. Social Investigation Report is on record, as per which both the parents of the Appellant are alive and they are



fifty years of age. The Appellant has also two brothers and three sisters and both the brothers are educated and they are involved in cultivation. Even his grandfather, aged about 70 years is alive and he is also educated up to intermediate. As per further report, the behavior of the Appellant towards the family members is cordial. He is also religious and he has no habit of any smoking, drinking, gambling or begging. He plays cricket and likes reading books and religious activities. He is obedient to his parents and he contributes to the business of his family. He is a student of B.A. (Hons.), Ist Year. He has also taken computer training and his attitude towards his friends is positive. As per the neighbors, his conduct is good. His neighbors belong to farmer and labor class, but he has never misbehaved with them. It is also reported that due to previous enmity and land dispute, he has been falsely implicated in this case under conspiracy. The family of the Appellant has a *pucca* house and some land. It is also reported that there is long dispute between the family of the Appellant and the prosecution side. As per further report, the father of the victim has taken one lakh rupee as a loan from the brother of the Appellant and that money was to be returned in the month of November. But when the money was demanded, the case was lodged against the Appellant under conspiracy. The



Appellant wants to continue his studies and join Indian Defence.

Factual Background

4. On the basis of the written report of the informant, Mahila P.S. Case No. 27 of 2023 was registered on 07.09.2023, for the offence punishable under Sections 342, 363, 366(A) and 376 of the Indian Penal Code and Section 3/4 of the POCSO Act.

5. After investigation, charge-sheet for offence punishable under Sections 342, 363, 366(A), 376(AB) of the Indian Penal Code and Section 6 of the POCSO Act was filed before the Special Judge, POCSO Act, Sitamarhi. However, on the plea of juvenility taken by the Appellant, the matter was referred to Juvenile Justice Board, who found the Appellant 17 years and 17 days old on the date of the alleged occurrence, and hence, he was declared to be juvenile and thereafter, the matter was fixed for preliminary assessment of the juvenile.

6. By the order dated 12.03.2024 passed by learned J.J. Board, Sitamarhi in J.J.B. Case No. 22 of 2023, the Petitioner was found to be physically and mentally competent to know the consequences of the alleged offence, on the basis of the psychological test as well as SIR Report and interaction of the J.J. Board with the juvenile. The matter was transferred to Children's Court under Section 18(3) of the J.J. Act, 2015



because the alleged offence was heinous in nature punishable under Sections 376, 342, 363, 366A, 376AB IPC and Section 6 of the POCSO Act. The Children Court has rejected the bail application of the petitioner by the impugned order.

Submission on behalf of the Petitioner

7. I heard learned counsel for the appellant, learned APP for the State and learned counsel for the Respondent No. 2.

8. Learned counsel for the appellant submits that the appellant is innocent and has falsely been implicated in this case. He further submits that FIR has been lodged after delay of 3 days which shows that the case was lodged after deliberation and concoction. He further submits that there is also no cogent evidence / material in support of the allegation. He refers to medico-legal examination of the alleged victim as per which the hymen of the alleged victim was intact and no spermatozoa was found on her private parts and there is also no other scientific evidence to connect the appellant with the alleged offence.

9. He further submits that bail to the a juvenile in conflict with law is a rule and denial of bail is an exception and bail can be denied to juvenile-appellant only on limited grounds, as provided in proviso to Section 12 of J.J. Act, 2015. But as per the material on record, no ground is made out to deny bail to the



appellant. The observation of the Court below in the impugned order is made without any basis. The impugned order is also based on irrelevant considerations.

10. He further submits that in regard to bail under Section 12 of the J.J. Act, 2015, there no distinction made between a juvenile of 16 years of age and a juvenile of age between 16 to 18 years. As per Section 12 of J.J. Act, even if a juvenile is between 16 to 18 years of age and he is alleged to have committed heinous offence, he is entitled to get bail under Section 12 of the J.J. Act, 2015.

11. He refers to and relies upon **Lalu Kumar @ Lal Babu v. State of Bihar (2019 (6) BLJ 216)** passed by a co-ordinate Bench of this Court. He also refers to and relies upon **Biswajit Kumar Pandey @ Lal Kumar v. State of Bihar (2024 SCC OnLine Pat 8499)**, **Nitish Kumar v. State of Bihar (2025 SCC OnLine Pat 2421)**, **Chandan Kumar Paswan v. State of Bihar (2025 SCC OnLine Pat 2434)** and **Rakesh Rai v. State of Bihar (2025 SCC OnLine Pat 374)** passed by this Court.

12. He also submits that the Appellant is detained in the Observation Home for about one year and ten months since 08.09.2023.



13. Hence, in view of the learned counsel for the appellant, the impugned order is not sustainable in the eye of law and liable to be set aside, and the appeal deserves to be allowed, releasing the appellant on bail.

Submissions on behalf of the State and Informant

14. However, learned APP for the State and learned counsel for the respondent no. 2 (informant) vehemently oppose the prayer of the appellant for bail, submitting that the appellant has committed heinous offence against three years old female child and there is cogent material in support of the allegation. They further submit that even in her statement as recorded under Section 164 of the Cr.P.C., the victim child has supported the prosecution case against the appellant.

15. They further submit that after preliminary assessment, the appellant has been found to be physically and mentally mature to understand the consequences of the alleged offence and he is being tried as adult by children Court.

16. They further submit that the trial is at the stage of prosecution evidence and victim-child is still to be examined.

17. They also submit that the benefit of Section 12 of the J.J. Act, 2015 cannot be given to a juvenile who has been found to be between 16 to 18 years of age and alleged to have



committed heinous offence.

18. They also submit that there is no illegality or infirmity in the impugned order passed by learned children Court denying bail to the appellant. The grounds for denial are well founded. In view of learned A.P.P. and learned counsel for the Respondent No.2, the appeal is liable to be dismissed.

19. They also refer to and rely upon **Child in Conflict With Law v. State of Madhya Pradesh** as decided by Madhya Pradesh High Court and as reported in **2023 SCC OnLine MP 585**, wherein High Court of Madhya Pradesh has observed as follows:

“.....On one hand, all decisions regarding the child should be based on primary consideration of best interest of the child, on the other hand, the demands of justice of the other side cannot be simply shrugged off. In fact, Society has always been sensitive towards offences against the women and innocent children. Therefore, while considering the prayer for bail in cases related to rape/aggravated penetrative sexual assault upon a minor, particularly, tender aged girl, the court has to see whether release would not expose juvenile to the danger of retribution by the Society. In cases of rape with child, such a possibility always exists. Where victim is a child, the court would do well in its limit to refuse to exercise discretion vested under section 12 of the Act and bail can also be refused on the ground that release would defeat the ends of justice.”

20. They also referred to and relied upon **Om Prakash v. State of Rajasthan** as reported in **(2012) 5 SCC 201**, wherein Hon’ble Supreme Court has observed as follows:

“23. Hence, while the courts must be sensitive in



dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor.....

.....
38. The Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting the trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged.”

**Legal Provisions regarding Bail to Juveniles
under the J.J. Act, 2015.**

21. Before I consider the rival submission of the parties, it would be pertinent to refer to Section 12 of the Juvenile Justice (Care and Protection) Act, 2015, which deals with bail to the Juvenile. **Section 12 of the Act** reads as follows:-

“**12. Bail to a person who is apparently a child alleged to be in conflict with law.**-(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge



of the police station, such officer shall cause the person to be kept only in an observation home ¹[or a place of safety, as the case may be,] in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under subsection (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

(Emphasis Supplied)

22. From perusal of Section 12 of the J.J. Act, 2015, it clearly emerges that Section 12 of the Act overrides the bail provisions as contained in the Criminal Procedure Act, 1973 or any other law for time being in force. It further emerges that as per Section 12 of the Act, bail to the Juvenile is a rule and refusal of the same is an exception and Juvenile can be denied bail only on the following three grounds: (i) if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal, or, (ii) expose the said person to moral, physical or psychological danger, or, (iii) the person's release would defeat the ends of justice.

23. It also emerges that seriousness of the alleged offence or the age of the juvenile are also no relevant considerations for denial of bail under Section 12 of the J.J. Act. Even the child who is 16 years or above 16 years of age and is



alleged to have committed a heinous offence is also entitled to get bail under Section 12 of the Act, 2015. There is no classification, whatsoever, provided in Section 12 of the Act, 2015 in regard to grant of bail. Section 12 is applicable to all juveniles in conflict with law without any discrimination of any nature. (Also refer to **Lalu Kumar @ Lal Babu Vs. State of Bihar, 2019 (6) BLJ 2016**).

24. Here, it would be also pertinent to point out that the ends of justice as used in the proviso to Section 12(1) of the J.J. Act is drastically different to one as used in the context of penal statutes. The ends of justice in the context of any Act is ascertained on the basis of the purpose and object of that Act and the objective of the J.J. Act is to reform and rehabilitate the juveniles and not to punish them, as emerges from the preamble to the J.J. Act, which reads as follows:

“An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.”

(Emphasis Supplied)

25. The purpose and object of the J.J. Act manifests in Section 3 also of the J.J. Act, providing for general principles



to be followed in the administration of the Act. Section 3 of the Act reads as follows:

“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:—

.....
(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.

.....
(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.”

(Emphasis supplied)

26. The J.J. Act is based on the belief that children are the future of the society and in case they go into conflict with law under some circumstances, they should be reformed and rehabilitated and not punished. No society can afford to punish its children. Punitive approach towards children in conflict with law would be self-destructive for the society.

27. As such, if the keeping of the child in custody is helpful in his development and rehabilitation or protection, only



then it could be said that release of the child would defeat the ends of justice. (Also refer to **Abhishek Vs. State, 205 CriLJ (NOC) 115 (Delhi)** and **Manoj Vs. State (NCT of Delhi, 2006 CriLJ 4759)**).

28. It also emerges from Section 3 of the Act that Reformatory or Observation Home is only one of the measures contemplated by our legislature for reforming and rehabilitating the delinquent children. However, the family of the child in conflict with law has been considered by the legislature as the best and first desirable institution to achieve the object of the Act. Hence, the primary responsibility of care and protection of the child has been given to the biological family or adoptive or foster parents of the child and it has been contemplated that every child in conflict with law has right to be reunited with his family at the earliest. Institutionalization of a juvenile in conflict with law has been contemplated as the last resort. Such principles manifest in clauses v, xii and xiii of Section 3 of the Act which read as follows:

“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:—

.....
(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.

.....
(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 reunited 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.”

(Emphasis Supplied)

29. Hence, under the J.J. Act, 2015, a child in conflict with law is not expected to be treated as an adult offender. J.J. Boards/Courts are required to adopt fundamentally a different approach while dealing with juveniles in conflict with law. They are expected to deal with such juveniles with all sensibility and responsibility, keeping in mind the purpose and object of the J.J. Act to reform and rehabilitate the child, so as to make him a responsible and productive member of the society. The society would get ruined if such children are dealt with punitive approach.

30. Similar view has been taken by this Court in **Biswajit Kumar Pandey @ Lalu Kumar Case** (supra), **Nitish Kumar Case** (supra), **Chandan Kumar Paswan Case** (supra) and **Rakesh Rai Case** (supra).

31. In **Re-Exploitation of Children in Orphanages in the State of T.N. Vs. Union of Indian and Ors.** as reported



in **(2020) 14 SCC 327, Hon'ble Supreme Court** has held that bail to a juvenile can be denied only on three grounds as provided in the Proviso to Section 12(1) of the J.J. Act, 2015.

The relevant part of the judgment reads as follows:

"7. Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo created is that in case the release of the child is likely to bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lock-up and has to be kept in an observation home or place of safety."

(Emphasis supplied)

32. Hon'ble Apex Court in Juvenile in Conflict with Law Vs. State of Rajasthan, as reported in **2024 SCC OnLine SC 5297** also has held that juvenile in conflict with law has to be necessarily released on bail unless the proviso is applicable and there must be clear finding regarding the applicability of the proviso. The relevant part of judgment reads as follows:

"6. From the phraseology used in sub-section 1 of Section 12, a juvenile in conflict with law has to be necessarily released on bail with or without surety or placed under supervision of a probation officer or under the care of any fit person unless proviso is applicable.

7. We have perused all the orders passed earlier by the



JJ Board, Special Court and High Court and specially the order dated 11th December, 2023 passed by the JJ Board. There is no finding recorded that the proviso to sub-Section 1 of Section 12 is applicable to the facts of the case. Without recording the said finding, bail could not have been denied to juvenile in conflict with law.

.....

9. Though none of the courts at no stage have recorded a finding that in the facts of the case, the proviso to sub-Section 1 of Section 12 was applicable, the juvenile in conflict with law has been denied bail for last one year.

10. Hence, the impugned orders are set aside. The appeal is accordingly allowed.

11. We direct that the juvenile in conflict with law shall be released on bail without surety. However, the jurisdictional Juvenile Justice Board shall issue appropriate directions to the jurisdictional Probation Officer to keep the juvenile under supervision and to submit periodical reports to the Board about the conduct of the Juvenile."

(Emphasis supplied)

33. Karnataka High Court in XXX (accused before the J.J. Board) Vs. State and Others as reported in **MANU/KA/3957/2024** has also held that Section 12 of the J.J. Act, 2015 is applicable even to a juvenile who is being tried as adult by Children Court and bail to him can be denied only on the grounds as provided in the Proviso to Section 12(1) of the J.J. Act, 2015. The relevant part of judgment reads as follows:

"9. Section 12(1) of the Act provides that notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force, a child, who is produced before the Board, shall be released on bail subject to proviso to Section 12(1) of the Act of 2015. Therefore, it is very clear that even if the child is ordered to be tried as a



adult, as provided under Section 18(3) of the Act of 2015, for the purpose of his bail application, Section 12 of the Act of 2015 would be applicable and his bail application cannot be considered under the provisions of Code of Criminal Procedure. As is evident from Section 12 of the Act of 2015, the only embargo in not releasing a child on bail is that there appears a reasonable ground that his release is likely to bring him into any association with any known criminal or expose him to moral, physical or psychological danger or that release of such a person would defeat the ends of justice. The three disentitlement categories contemplated in the proviso to Section 12(1) of the Act of 2015, would not come in the way of the petitioner's application being considered under Section 12 of the Act of 2015 for the following reasons:-

(a) The nature of crime committed by the petitioner is not likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger; (b) There is no such report available on record which suggests that the petitioner is likely to be exposed to moral, physical and psychological danger; (c) The victim girl and her parents do not apprehend any danger from the petitioner and they have appeared before the Special Court and stated that they have no objection for enlarging the petitioner on bail."

(Emphasis supplied)

34. Allahabad High Court in Radhika (Juvenile)

Vs. State of U.P., as reported in **2019 SCC OnLine All 4911**

has also held that under Section 12 of the J.J. Act, 2015, nature and character of the alleged crime is not a relevant consideration and bail can be denied to a juvenile only on the grounds as provided in the Proviso to Section 12 of the J.J. Act, 2015. The relevant part of judgment reads as follows:

"27.It is explicit from the plain reading of Section 12 of the Act that irrespective of nature and character of



the crime, if a 'child' brought by the police or appears before the Board, such child shall, notwithstanding anything contained in Code of Criminal Procedure, 1973 or any other law enforced in time, "shall' be released on bail with or without surety under the supervision of Probation Officer or under the care of any fit person. The word "fit person' is defined under section 2(28) of the Act, means any person prepared to owe responsibility of a child for a specific purpose and after making due enquiry in this behalf, the Board may give the custody of child in the hand of "fit person'. Thus, it is clear that the child delinquent has got a right to be released on bail with or without surety and the gravity, nature and depth of the offence shall not come into the way.

28. However, in the proviso of Section 12(1) of the Act, there are three embargoes/riders; namely; (a) if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal or; (b) expose that person as moral, physical or psychological danger or; (c) the person's release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances lead to such a decision.

29. From the plain reading of the above proviso, it has been clearly borne out that (1) the juvenile delinquent has got unqualified right to seek bail irrespective of the gravity, depth and seriousness of the offence; (2) his bail could be denied strictly on the three grounds, as mentioned under the proviso of Section 12 of the Act by the Board".

(Emphasis supplied)

35. **Punjab and Haryana High Court** has also held in **Vishvas vs. State of Punjab** as reported in **MANU/PH/0067/2021** that under Section 12 of J.J. Act, 2015, the nature and gravity of the alleged offence is not relevant while considering bail application to a juvenile. Bail can be denied to a juvenile under Section 12 of the J.J. Act, 2015 only



on the grounds as provided in the proviso to Section 12(1) of the J.J. Act and there must be material on record in support of the grounds. It has also held that '**ends of justice being defeated**' has to be considered in the context of the welfare of the juvenile. The relevant part of judgment reads as follows:

"7. From a bare reading of the provisions of Section 12 of the J.J. Act, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by him, and bail can be declined only in such cases where reasonable grounds are there for believing that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. Meaning thereby, as per aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12(1) of the J.J. Act is available. Similar view was observed in cases Manoj Singh vs. State of Rajasthan 2004(2) RCC 995, Lal Chand v. State of Rajasthan MANU/RH/1042/2005 : 2006(1) RCC 167, Prakash v. State of Rajasthan MANU/RH/0549/2005 : 2006(2) RCR (Criminal) 530 and Udaibhan Singh alias Bablu Singh v. State of Rajasthan MANU/RH/1038/2005 : 2005(4) Crimes 649.

8. Learned counsel for the respondent-State has also not pointed out any material available on record to show that there are reasonable grounds for believing that the petitioner is likely to come into the association of any known criminal if released on bail, or his release will expose him to moral, physical or psychological danger. The order passed is mechanical and without adhering to the provisions of Section 12(1) of the J.J. Act, which specifies that 'the Board shall record the reasons for denying the bail and circumstances that led to such a decision.'

.....
12. The Supreme Court and various High Courts, time and again have reiterated the well settled position of law, that gravity of offence is immaterial in deciding the bail application. Bail of a child in conflict with law



cannot be rejected in a routine manner and if the bail is declined, a reasoned order has to be given by the Board. A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12(1) of the J.J. Act, 2015 itself are made out. The exceptions are noted being:-

- a) a reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;
 - b) his release is likely to expose him to any moral, physical or psychological danger; and
 - c) his release would defeat the ends of justice.
-
.....

14. The third exception namely 'ends of justice being defeated' has to be considered in the context of the welfare of the juvenile, as has been held by the Delhi High Court in Master Abhishek (Minor) Vs. State (Delhi) MANU/DE/0445/2005 : 2005 VI AD Delhi 18.
(Emphasis supplied)

36. Similar view has been taken by **Rajasthan High Court** in **Gau v. State of Rajasthan, 2025** as reported in **SCC OnLine Raj 2526**. The relevant part of the judgment reads as follows :

"7.The language of Section 12 of the Act of 2015 conveys the intention of the Legislature to grant bail to the juvenile, irrespective of nature or gravity of the offence, alleged to have been committed by him and bail can be denied only in the case where there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal, or expose him to moral, physical or psychological danger, or that his release would defeat ends of justice.

(Emphasis supplied)

37. **High Court of Uttaranchal** in **X (Juvenile in conflict with law) Vs. State of Uttarakhand**, as reported in **2025 SCC OnLine Utt 157** has also held that the Juvenile



Justice Act is child friendly and all decisions regarding the child under the Act should be based on primary consideration of the best interest of the child. It has been also held that any juvenile in conflict with law is entitled to get released on bail irrespective of nature of the offence. Bail could be denied to him only on the grounds as provided in the proviso to Section 12 (1) of the J.J. Act., 2015. The relevant part of judgment reads as follows:

8. For a child in conflict with law, every offence is bailable. The CIL is entitled to be released on bail as per Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“the Act”), irrespective of the offence having been classified bailable or non bailable. The only rider is the proviso to Section 12 of the Juvenile Justice Act. The child may not be released on bail, if there are grounds to believe that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the release of the person would defeat the ends of justice.

9. The JJ Act is, in fact, child friendly. The central theme is that the child interest is supreme. Section 3 of the JJ Act incorporates the general principles to be followed in the administration of the Act. According to which, “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. In fact, Section 3 sub section (v) speaks of primary responsibility. According to it, “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”.

.....
12. Nothing has been shown that if released the CIL would come into contact with any known criminal or expose him to moral, physical or psychological danger



or his release would defeat the ends of justice.

(Emphasis supplied)

38. The High Court of Bombay in XYZ v. State of Maharashtra, as reported in **2023 SCC OnLine Bom 2790** has held that grounds for denial of bail must be based on material. The relevant part of judgment reads as follows:

"6.The mandate of the aforesaid provisions requires that the CCL alleged to have committed a bailable or non bailable offence and apprehended, shall be release on bail with or without surety. The proviso to Section 12(1) puts an exception, where there are reasonable grounds to believe that the release of CCL is likely to bring him into the association with any known criminal or exposed him to moral, physical or sociological danger or his release would defeat the ends of justice. It is therefore, evident that the denial of bail to the CCL shall be for specific reasons akin to above proviso.

.....

9. There is nothing on record to indicate that the CCL is likely to come in association with the known criminals or get exposed to moral, physical or sociological danger or his release would defeat the ends of justice. In the wake of aforesaid circumstances the case is made out to allow this Revision Application and to release the CCL on bail by setting aside the impugned order passed by the Sessions Judge, Beed. Hence following order:"

(Emphasis supplied)

39. Hence, it is clearly found that notwithstanding anything contained in the code of criminal procedure or any other law for time being in force, bail to a juvenile in conflict with law is governed by Section 12 of the J.J. Act, 2015. This Section is equally applicable to all juveniles in conflict with law



without any discrimination of any nature. Even bail to a juvenile in conflict with law of the age between 16 to 18 years, being accused of heinous offence, is governed by Section 12 of the J.J. Act. Moreover, under Section 12 of the J.J. Act, 2015, bail to a juvenile is a rule and the refusal of the same is an exception and it can be denied only on three grounds as provided in the proviso to Section 12(1) of the J.J. Act, 2015. It is also found that nature and seriousness of the alleged offence is not relevant for consideration of bail under Section 12 of the J.J. Act. “The ends of justice” as used in the proviso to Section 12(1) of the J.J. Act is drastically different to one as used in general criminal jurisprudence. If the detention of the juvenile at Observation Home or other institutions as contemplated under the J.J. Act is helpful in protection, development and rehabilitation of the juvenile, only then it can be said that release of the child would defeat the ends of justice. It is also found that the denial of bail must be reasoned. The grounds of denial must be based on relevant facts and circumstances, as emerging from the material on record. Social Investigation Report is one of the most important such material. Perusal of such report is mandatory as per Section 15 (2) of the J.J. Act, 2015. The Board/Court is required to know not only about the offence committed by the



juvenile but even about the socio-economic conditions/circumstances under which the offence was committed, so that appropriate order in regard to the juvenile in conflict with law could be passed with intent to reform and rehabilitate the juvenile and reintegrate him with the mainstream of the society.

40. Now coming to the judgment **Child in Conflict with Law Vs. State of Madhya Pradesh, 2023 SCC OnLine MP 585** as referred to and relied upon by the learned counsel for the informant and APP for the State is not against the aforesaid finding of law by this Court. Madhya Pradesh High Court in this judgment has clearly held that all decisions regarding the child should be based on primary consideration of best interest of the child. It has also held that seriousness of the offence can not be a basis for denial of bail to a juvenile. It only says that aggravated sexual assault against a girl of tender age may expose juvenile to the danger of retribution by the society and, hence, may expose the juvenile to the physical danger. So, I have no dispute with such opinion of Madhya Pradesh High Court. However, such possibility of exposure to physical danger must be based on concrete finding as per Social Investigation Report and otherwise and it cannot be based only on surmises



and conjecture. If there is concrete material in the Social Investigation Report to show that the Juvenile may face backless of the society, if he is released on bail, bail could be denied to him for his protection.

41. So far as **Om Prakash Case** (supra) as referred to and relied upon by learned counsel for the informant and APP for the State is concerned, I find that this judgment has been delivered by Hon'ble Apex Court in different context and on distinguished facts and circumstances. This judgment was pronounced by Hon'ble Supreme Court in the year 2012 when an adult offender was taking plea of juvenility to get statutory protection of J.J. Act. Hence, Hon'ble Apex Court had cautioned by making the observations as referred to above. But Hon'ble Apex Court has reiterated the broad objective of Juvenile Justice Act to treat a child in conflict with law with care and sensibility offering him a chance to reform and settle into the mainstream of society, though it has cautioned that the J.J. Act should not be allowed to be used as a ploy to dupe the course of justice.

Present Case

42. Coming to the case on hand, I find that the Appellant has been found to be 17 years and 17 days old on the date of alleged occurrence and he has been also referred to



Children Court for trial under Section 18 (3) of the J.J. Act, 2015 after preliminary assessment.

43. However, the Children Court has denied bail to the Appellant stating that on account of association with bad elements, the Appellant has committed the offence and, hence, the atmosphere at his home would not be conducive and there would be possibility of the Appellant coming into association with criminals and committing another offence. He has denied bail to the Appellant also on the basis of the heinous nature of the alleged offence. In view of the learned Children Court, the release of the Appellant is also likely to expose the Appellant to moral, physical and psychological danger and defeat the ends of justice.

44. However, after perusal of the Social Investigation Report and the case diary, I do not find any basis for such findings by learned Children Court in his order denying bail to the Appellant. As a matter of fact, the findings of learned Children Court are contrary to the Social Investigation Report. It appears that learned Children Court has not taken pain to peruse the Social Investigation Report before passing the impugned order.

45. As per the Social Investigation Report, I find



that the Appellant belongs to a educated joint family and the behaviour of the Appellant towards his family members is cordial. He is also religious, having no bad habits, like, smoking, drinking, gambling etc. He plays cricket and likes reading books and religious activities. He is obedient to his parents and he is a student of Ist Year of Graduation. He wants to pursue his studies. He has also taken computer training. His attitude towards his friends is positive and even as per the neighbours, his conduct is good. His behaviour with them is cordial and he has never misbehaved with them. As per the Social Investigation Report, the Appellant has been implicated in this case falsely on account of previous enmity and land dispute between his family and that of the informant.

46. Hence, the findings of the Children Court regarding grounds of denial are contrary to the material on record. No one can say that atmosphere of the Appellant at his home is not conducive for his development and rehabilitation.

47. There is also no proof that after release, the appellant may go into association of criminals. Only conjecture and surmises regarding possibility of the Appellant to go into association of criminals would not do. The finding regarding the criminals in whose association the juvenile may go, is required



to be recorded as per statutory provisions which talk about association of known criminals. But there is no such finding, nor is any material on record in this regard.

48. There is also no material on record to support the finding of the Children Court that release of the Appellant to bail would expose him to moral, physical and psychological danger.

49. The finding of the Children Court that release of the Appellant would defeat the ends of justice is also misconceived. In fact, by detaining the Appellant in Observation Home, the Children Court has disrupted the studies of the Appellant, hampering his development and rehabilitation.

50. As such, I find that no ground is made out to deny bail to the Appellant.

51. Even as per merit of the case, I find that the F.I.R. has been lodged after three days of the alleged occurrence and medico legal examination of the alleged victim does not support the prosecution case. Though the alleged victim has supported the prosecution case in her statement under Section 164 Cr.PC, how far the statement of the child of tender age would be reliable, would be a big question for the Court to consider at the stage of appreciation of evidence. Possibility of



tutoring the child would be a serious impediment in reliability of the child witness.

52. Accordingly, the impugned order is not sustainable in the eye of law. Hence, the appeal is allowed, setting aside the impugned order and directing the Appellant to be released on bail, subject to furnishing bail bond of Rs.10,000/- by his father, who is also directed to give undertaking by way of an affidavit that the Appellant would not come into contact with any criminal and he will continue his further studies. Father of the Appellant would also give undertaking that the educational and developmental needs of the Appellant would be taken care of by him and the Appellant would attend the Court as and when required and directed.

(Jitendra Kumar, J.)

Shoaib/Ravi
Shankar/Chandan

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