



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 275 OF 2023

Adnan Shamsoddin Bagwan,
Age : 23 years, Occu. : Labour,
R/o. Tamaswadi, Tq. Parola,
Dist. Jalgaon.

.... Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
M.I.D.C. Police Station,
Tq. & Dist. Jalgaon.

2. XYZ,
Through Police Inspector,
M.I.D.C. Police Station,
Tq. & Dist. Jalgaon.

.... Respondents

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Mr. N. R. Shaikh, Advocate for Applicant.

Mr. S. A. Gaikwad, APP for Respondent No.1 – State.

Mr. P. P. Pangal, Advocate for Respondent No.2 (Appointed).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 DECEMBER 2025

PRONOUNCED ON : 12 DECEMBER 2025

JUDGMENT :

1. Instant revision takes an exception to the judgment and order dated 07.02.2023 passed by Additional Sessions Judge (Fast Track Special Court), Jalgaon in Criminal Misc. Application No. 4 of 2023, rejecting the prayers for delay condonation and further directing trial to be proceeded.

2. Learned counsel for revision petitioner pointed out that, revision petitioner is child-in-conflict with law against whom proceedings are instituted for offence under section 376(2)(i) of Indian Penal Code and section 3(a)/4, 5(m)/6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and also under the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. He further pointed out that, at the time of alleged incident, revision petitioner was 16 years, 11 months and 16 days old. That, therefore, considering his age, preliminary inquiry was to be conducted by the Board as contemplated under section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "*Juvenile Justice Act, 2015*"). That, initially case was to be decided by Juvenile Justice Board, however, by order dated 24.05.2018 Juvenile Justice Board opined that the Juvenile is liable to be treated as an adult, and accordingly, transferred the case to the Children Court.

4. He next submitted that, child-in-conflict with law was an orphan and moreover he belongs to vulnerable section of the society and he had also not completed 17 years of age. He emphasized that, in view

of section 15 of Juvenile Justice Act, 2015, there has to be mandatorily a report by a child psychiatrists and psychologists. Here, there was no such report which was mandatory. Resultantly, it is his submission that the order of Juvenile Justice Board treating child to be like an adult and further order of appellate court directing trial to be proceeded, is required to be set aside.

Learned counsel in support of such contention, sought reliance on the judgment of the Hon'ble Apex Court in the Case of ***Barun Chandra Thakur v. Master Bholu and Anr.*** reported in AIROnline 2022 SC 1006, and sought reliance on observations, more particularly reflected in paragraph 17 of the judgment.

5. According to learned counsel, in view of above settled law that child, who has not completed the age of 18 years, is entitled for the benefits of 2000 Act and more particularly, here, in absence of examination or report of child psychiatrists, the order dated 24.05.2018 is bad in law and liable to be set aside.

6. Justifying the order, learned APP pointed out that, grave and serious offence is committed by the child-in-conflict with law. According to learned APP, learned Juvenile Justice Board, Jalgaon, which comprises of Principle Judge and two members had heard the application and after making thorough preliminary inquiry as contemplated under the statute,

had recorded a finding that act of the accused was with full knowledge and and child-in-conflict with law had mental capacity to understand the consequences of the offence and also taking into account the material against the child-in-conflict with law, a report Exh.23 from Civil Hospital, Jalgaon, ordered that, the child-in-conflict with law is required to be dealt as an adult in view of section 18(3) of Juvenile Justice Act, 2015. According to learned APP, though in the provision under section 15 of the Act, the word “may” is used, it is not mandatory, but it is rather directory. Therefore, according to learned APP, no fault can be found in the order of Juvenile Justice Board, more particularly, it is pointed out, when report is received that, one of the member, namely Dr. Neeraj S. Deo possesses requisite qualification. For above reasons, revision is sought to be dismissed for want of merits.

7. It is emerging from the record that, here, during pendency of revision, this court by order dated 01.03.2023 directed the trial court not to take further steps during pendency of the revision.

8. Here, there is challenge to the order passed by learned Additional Sessions Judge, which is Fast Track Court, rejecting application for condonation of delay and further directing accused to co-operate the court for fixing further programme and proceeding with the trial, failing which it is observed that bail shall stand cancelled.

9. Record shows that, vide Exh.1 in J.C. No.172 of 2017 on behalf of child-in-conflict with law, objection was raised that report of psychologist was not placed on record to show his mental and physical capacity to commit the offence, when such report was said to be mandatory. Objection was thereby raised for transfer of case to the Children Court for trial of child-in-conflict. It appears that, on such application the Juvenile Justice Board comprising of one Principle Judge and two members, passed the following order :-

“[1] As per Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, this case is transferred to Children Court, Jalgaon for trial of child-in-conflict with law as on

[2] Record and Proceeding of this case shall be transferred to Children Court, Jalgaon.

[3] The child-in-conflict with law along with his parents/guardians shall remain present before Children Court, Jalgaon on 25.06.2018.”

10. Perused the relevant observations in the judgment of Hon’ble Apex Court in the case of **Barun Chandra Thakur** (supra) as well as the judgment of Hon’ble Apex court in the case of **Child-in-Conflict with Law, through his Mother v. State of Karnataka and Anr**, reported in (2024) 8 SCC 473. The relevant observations are as under :-

“II. Whether the period provided for completion of preliminary assessment under section 14(3) of the act is mandatory or directory.

14. Section 15 of the Act enables the Board to make preliminary assessment into heinous offences where such an offence alleged to have been committed by a child between 16 and 18 years of age. The preliminary assessment is to be conducted with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances in which the offence was allegedly committed. Proviso to the aforesaid Section provides that for making such an assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts. Explanation thereto provides that the process of preliminary assessment is not a trial but merely to assess the capacity of such a child to commit and understand the consequences of the alleged offence. The importance of the assistance from the expert is even evident from Section 101(2) of the Act. While considering the appeal against an order passed Under Section 15, the appellate authority can also take assistance of experts other than those who assisted the Board.

*15. The importance of the aforesaid provision was considered by this Court in **Barun Chandra Thakur's case** (supra) where requirement of such assistance was held to be mandatory, even though the words used in proviso to Section 15(1) and Section 101(2) of the Act are 'may'."*

On one hand, learned counsel for revision petitioner would submit that report of an expert, who is child psychiatrist or child psychologist, is mandatory and it is not discretionary. Said submissions are counted by prosecution on the ground that it is directory and not mandatory.

11. Here, in view of above controversy, this court had called

upon report from the Juvenile Justice Board vide order dated 13.11.2025 and 21.11.2025 to ascertain whether any of the member of the board, who were party to the order dated 24.05.2018, are experts in child psychiatry or child psychology, who can comment on the mental and physical capacity of the child. This court is in receipt of report dated 01.12.2025 conveying that Dr. Neeraj Shyam Deo, who is shown to be member of Juvenile Justice Board possesses qualification of B.A. (Psychology) and B.Ed (Clinical Psychology and Child Care Training) and P.hD. (Psychology).

12. Learned counsel for the revision petitioner would submit that the said member is not a child psychiatrist and child psychologist. However, this court does not find any force in such submission, more particularly when Dr. Neeraj Shyam Deo is shown to be equipped with Doctorate in Psychology.

Therefore, in the light of such qualification, the very member of the Board, who is a signatory to the order dated 24.05.2018, is apparently an expert. Hence, there is no merit in the submissions that there is no examination of the child by an expert.

13. For above reasons, no case being made out in revision, the same is dismissed.

14. Fees of learned counsel, who is appointed to represent cause of respondent no.2 is to be paid by the High Court Legal Services Sub - Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)