

Pronounced on: 31.07.2025

...Petitioner

...Respondent

Mr. Naveen K. Sheoran, DAG, Haryana.

ANOOP CHITKARA, J.

5. The petitioner's Counsel further submits that the Juvenile Justice Board, as well as

Ld. Additional Sessions Judge has illegally and unlawfully declined bail to the petitioner, holding that the petitioner's release would defeat the ends of justice and would expose him to moral, physical, or psychological danger, further submitting that such an apprehension is ill-founded.

6. The learned counsel representing the State, on the other hand, has strenuously supported the impugned orders, urging this Court to dismiss the present petition.

REASONING:

7. After the petitioner's arrest, an ossification test was duly conducted, and based thereupon, vide order dated 27.01.2025, the learned Additional Sessions Judge declared the petitioner a juvenile under the law.

8. Significantly, the State has not placed on record any report as envisaged under Sections 15, 18, and 19 of the "JJ Act, 2015". It is not even apparent whether such a report was ever prepared or considered.

9. Section 12 of The Juvenile Justice (Care and Protection of Children) Act, 2015 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 appear 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 sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home 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 sub-section (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.

10. A plain and holistic reading of §12 makes it evident that, if the person is apparently a child, the default rule is one of release on bail, with or without sureties, or placement under a probation officer or a fit person. However, the proviso to §12, couched in negative form, carves out an exception. It authorizes the Board to decline bail only upon recording well-reasoned satisfaction that there exist reasonable grounds for believing that the release is likely to bring the child into association with a known criminal, or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. In such eventualities, denial is permissible—but only by giving proper reasons.

11. In the light of the above, the Juvenile Justice Board must, while deciding bail applications of a child in conflict with law [CICL], scrupulously consider the following aspects:

- (1) Whether the release is likely to bring the child into association with any known criminal;
- (2) Whether the release is likely to expose the child to moral, physical, or psychological danger; and
- (3) Whether the release would defeat the ends of justice.

12. While rejecting the petitioner's bail, the Principal Magistrate, Juvenile Justice Board, Ambala, in his order dated Feb 24, 2025, referred to the Social Investigation Report, and observed in the following terms:

“[5]. After having heard learned counsel for CICL and the learned APP and after having perused the case file and Social Investigation Report, the Board is of the view that the CICL does not deserve the concession of bail. In this regard, the Board wants to maintain that perusal of the Social Investigation Report shows that CICL had been residing in slum area. The mother of CICL had left him and his father had already died 3-4 years back. The CICL had been living with his Aunt (Mausi) and it has also been mentioned in the Social Investigation Report that due to bad company, he indulged in such a crime. Perusal of case file further shows that he was arrested with 39.730 Kgs of Ganja along with his aunt with whom he had been residing. The aunt (Mausi) is already confined in the jail. Hence, there is no one to look after him if he is released on bail, there are strong chances that he may join the bad company of bad elements and it will not be safe either for the CICL or for the society. The Board is also of the view that if released the CICL will be exposed to moral, physical or psychological danger and his release would defeat the ends of justice and the future of the CICL may be spoiled if he is released at this stage.”

13. A careful perusal of the above reasoning by the Principal Magistrate, Juvenile Justice Board, shows that an overarching reason mentioned for denying bail to the CICL was because, “*CICL had been residing in slum area*”.

14. On appeal, the learned Additional Sessions Judge, Ambala, found no infirmity in the reasoning above and dismissed the appeal. The following portion from the order merits reproduction:

“[8] xxxxx It is also observed that the Social Investigation Report shows that CICL had been residing in slum area. The mother of CICL had left him and his father had already died 3-4 years back. The CICL had been living with his aunt (Mausi) and it has also been mentioned in the Social Investigation Report that due to bad company, he indulged in such a crime.

x x x x

[9]. After going through the file minutely and carefully, it is observed by the Court of undersigned that the juvenile-appellant is aged about 18 years and he has developed enough maturity to understand the difference between commission of crime and commission of good deeds in the interest of society. So, he needs to be kept under the observation home. So, this Court is of the considered opinion that the learned Juvenile Justice Board has rightly held that if juvenile is enlarged on bail, the same would not be in his interest as it might possible that he would again come in contact of co- accused which can expose him to moral, physical and psychological danger. Further, it would be in the larger interest of juvenile to provide him institutional care and counselling sessions at this stage, as same would help him to reform and mingle in the mainstream of the society.”

15. In addition to the finding that his parents were not present to guide him, CICL being found in possession of 39.73 kg of Ganja, a commercial quantity and petitioner’s place of residence, were the factors regarded to negate petitioner’s bail. Thus, it is clear that the learned Additional Sessions Judge also endorsed that portion of the reasoning that the petitioner’s roots and residence in a slum area were detrimental enough to continue the petitioner in an observation home, his residing in a slum weighing as an unfavorable ground to release CICL on bail.

16. On the face of it, these reasons are not in terms of the statutory requirement of Section 12 of the JJ Act.

17. One of the most disquieting aspects is the judicial forum considering the place of residence mentioned in the Social Investigation Report as an adverse factor to negate the petitioner’s bail.

18. An arbitrary as well as an insensitive assumption that people living in slums are more likely to come in association with known criminals or likely to expose the said person to moral, physical, or psychological danger, and the person’s release would defeat the ends of justice, is belittling humanity and, thus, is indurate and

derogatory. It is not just harsh but also humiliating for a society to equate residence in a socio-economically deprived locality with a higher propensity for crime. Such a negative generalization undermines the intrinsic dignity and the overall value system of those citizens who reside in less privileged habitats and amounts to an impermissible stereotyping which can neither be the approach of the Executive nor the mandate of the Legislation and Judicial precedents. This premise is constitutionally abhorrent and antithetical to the very ethos of any democracy. A mindset like this seeks to paint the entire community with a broad, unfair brush, portraying an implicit yet unwarranted prejudice.

19. All involved appear to have proceeded with a preconceived, almost unconscious elitist bias, severely overlooking the dignity, worth, and moral fiber of those who inhabit the less privileged corners of our cities.

20. The ground reality is that a vast section of our country, our Bharat, lives in such humble dwellings on the peripheries of expensive residential areas, yet they nurture resilient values, rich cultural mores, deep and enduring social bonds with their tight-knit community, which comprises one's kith and kin. Far from being hubs of delinquency, these communities are often close-knit, offering warmth, support, mutual care, emotional sustenance, and a sense of belonging; qualities that an institutional setting can seldom replicate and are starkly missing in the observation homes. By no stretch of imagination can it be sweepingly implied that the people who live in slum areas are likely to be more unethical, immoral, dishonest, criminally deviant, or are any less human beings as compared to those people who live in high-end areas of urban and modern colonies, and to suggest the same would be an injurious stereotype.

21. Suffice to say, while dispensing justice, the courts should not bear a closed and prejudicial mindset towards the poor and marginalized sections of our society, including those who live in slums. Justice must always be rooted in empathy, fairness, and an unwavering commitment to equality. Courts must be vigilant not to let unconscious prejudices, biases, or preconceptions against the economically weaker or socially marginalized cloud their judgment and eclipse their ability to reason. To equate poverty or humble origins with criminal propensity is a fallacy that our justice system must scrupulously guard against.

22. Prolonged incarceration in an Observation Home may itself expose a child to undesirable influences, as it congregates several children in conflict with the law under one roof, potentially heightening their vulnerability to further exploitation, abuse, and victimization.

23. Since, the Court, has neither relied upon nor referred to the acknowledged studies or data, and has delved into all these aspects based on certain ground realities, it is clarified that these observations are being made solely for deciding the

present bail application and are not intended for any other collateral purpose except for granting bail to any such similarly situated children who are in conflict with the law.

24. Another reason cited to deny bail to the CICL is that his father is deceased and his mother has abandoned him. Thus, impliedly, both the courts branded him as an orphan. But to view orphanhood as a disqualification for bail is to disregard the very spirit of the Juvenile Justice Act, which recognizes the right of every child to be cared for by the community and the State. The absence of parents cannot by itself be a justification for continued confinement in an observation home. On the contrary, such a child deserves greater compassion and support, and not prolonged detention in the observation homes; in fact, the orphan would be better cared for by his peer group and the community that would surround him. This would make his transition & reintegration back into society more efficient and impactful, securing the best interests for all his future prospects.

25. The petitioner has been in custody since 30th May 2023, and the maximum sentence that can be imposed is three years. The petitioner has already undergone about two years of sentence, i.e., more than half of it. Hence, on this very ground as well, the petitioner is entitled to bail.

26. It is also significant to note the violation of Article 14 of the Constitution of India, i.e., Equality before law. A coordinate bench of this Court has already granted the petitioner's aunt (Omwati) bail vide order dated 23.01.2025. To deny bail to the petitioner, who has already spent over two years in an observation home, out of a maximum permissible three years, would amount to a violation of his fundamental right, leading to a gross travesty of justice.

27. Another significant consideration for granting bail is that the Court aims to give the petitioner another chance to course-correct, reform, and reintegrate into the community as an ideal and law-abiding citizen so that he can spend the rest of his life as a respected and dignified individual.

28. Given the above, and in the entirety of facts and circumstances, the petition stands allowed. Pending applications, if any, stand disposed of. Resultantly, the petitioner's custody shall be handed over to his aunt or any other relative who is willing to take his custody, subject to the condition that they shall be responsible for the petitioner's good behavior and shall ensure that the petitioner, who is a child in conflict with the law, does not repeat any such offence. The petitioner will be released after such person(s) furnish bond(s) in these terms.

29. Any observation made hereinabove is neither an expression of opinion on the case's merits nor shall the trial Court advert to these comments.

30. *There would be no need for a certified copy of this order for furnishing bonds,*

and the Petitioner/ any Advocate for the Petitioner can download this order along with case status from the official web page of this Court and attest it to be a true copy. If the attesting officer wants to verify the authenticity, such an officer can also verify its authenticity and may download and use the downloaded copy for attesting bonds, etc.

PETITION ALLOWED. Pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

July 31, 2025
anju rani

Whether speaking/reasoned	YES
Whether reportable	YES