



2025:DHC:1386



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 11<sup>th</sup> December 2024*

*Pronounced on: 3<sup>rd</sup> March 2025*

+ **CRL.REV.P. 436/2022**

CCL 'K'

..... Petitioner

Through: Mr. Ashim Sood, Mr. Ashish Kumar, Ms. Prateek Kundu, Ms. Yamina Rizvi, Ms. Ragini Nagpal, Ms. Isha Khurana, Mr. Ashish Panday, Ekansh Gupta, Mr. Ankur Singhal, Mr. Subramaniam, Advocates.

versus

THE STATE (NCT OF DELHI)

.... Respondent

Through: Mr. Aman Usman, APP for State with Insp. Narender, SI Pankaj Yadav, PS: Nangloi

**CORAM:  
HON'BLE MR. JUSTICE ANISH DAYAL**

### **JUDGMENT**

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## ANISH DAYAL, J.

### I. Proceedings before this Court

1. Whether trial proceedings of a ‘*child*’ alleged to be in conflict with law and a person ‘*not a child*’, i.e. an adult, could be held jointly, after a preliminary assessment of *Juvenile Justice Board* (‘**JJB**’) declaring the ‘*child in conflict with law*’ (‘**CCL**’) to be psychologically and physically mature, is the question that has come up for consideration before this Court in this petition.

2. The present revision petition has been filed by the petitioner (CCL) to set aside order dated 23<sup>rd</sup> May 2022 (‘**impugned order**’) passed by the Trial Court, ASJ-6, West, Tis Hazari Courts, Delhi dismissing the application of the petitioner under *Section 23 of Juvenile Justice (Care and Protection of Children) Act, 2015* (‘**JJ Act**’) whereby the petitioner sought to stop the ongoing joint proceedings/trial of the petitioner with adult accused, Mr. Vivek Kumar, in connection with *FIR No. 418/2016 under Sections 186/353/302/34 IPC at PS Nangloi*.



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## **II. Factual background**

3. As per the case of the prosecution, on 26<sup>th</sup> September 2016, information was received at Police Station Nangloi and the same was entrusted to SI Mahesh Kumar, who along with staff, reached the spot i.e. *Government Boys Senior Secondary School Sultanpuri Road, Nangloi, Delhi*. On reaching the spot, it was found that there was a lot of blood scattered at the main gate of the school and also, in class room no.108. Upon enquiry, it was revealed that the injured teacher, *Mr. Mukesh Kumar*, had already been taken to *Sri Balaji Hospital in Paschim Vihar, Delhi*.

4. On reaching the hospital, the injured teacher was found to be admitted vide MLC No. 6314/16, in which alleged history was written as “*assault by sharp weapon at around 5PM at Govt. Boys Senior Secondary School, SP Road, Nangloi by two school students Vivek and Master K.*” In the hospital, eye witness Sh. Badan Singh/complainant, who is also the Vice Principal of the school, got the injured teacher admitted in the hospital and handed over his complaint to SI Mahesh Kumar, in which he alleged that, Vivek Kumar Jha is a 12<sup>th</sup> class student and Master K is also a 12<sup>th</sup> class student, whose name was struck off being an absentee and their class teacher was Mukesh Kumar, PGT (Hindi). Both students had threatened Mukesh Kumar as they felt that Master K’s name was struck down because of their class teacher. On the day of the incident on 26<sup>th</sup> September 2016, when teacher Mukesh Kumar was counting the answer sheets in class room No. 108, the complainant heard hues and cries and spotted the two students namely,



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Vivek Kumar and Master K, running from the stairs. He proceeded to catch them but was unsuccessful as they ran from the school after jumping over the wall. On reaching the classroom, the teacher Mukesh Kumar was found there lying in seriously injured condition. On the basis of the same, the present FIR came to be registered and investigation was taken up. During the course of treatment, the injured teacher was declared dead by the doctor at *Sri Balaji Hospital, Paschim Vihar, Delhi* and Section 302 of Indian Penal Code, 1860 ('**IPC**') was added in the case.

5. On 27<sup>th</sup> September 2016, the accused Vivek Kumar aged 19 years and accused Master K aged 17 years, were apprehended and clothes worn by them were seized and taken into possession. On the instance of accused Vivek, the weapon of offence i.e. knife and on the instance of Master K, *punch* used by him was recovered. Documents relating to the age of the accused were verified from *Govt. Sr. Secondary School, Sultan Puri, Nangloi*, according to which the date of birth of CCL is 29<sup>th</sup> October 1998 and co-accused Vivek is 25<sup>th</sup> February 1998. The charge sheet was filed by the concerned IO.

6. The Board in its assessment *vide* order dated 9<sup>th</sup> January 2017 opined that "*there is need for trial of the CCL as adult offender*" and on the basis of the opinion, the case was transferred to the Children's Court for trial. The order of the Board dated 9<sup>th</sup> January 2017 was challenged by petitioner in appeal before Sessions Court and the same was dismissed *vide* order dated 3<sup>rd</sup> June 2017. Thereafter, petitioner being aggrieved by the outcome of the appeal, preferred a revision petition



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being *CRL. REV. P. 961/2017*, which was dismissed as withdrawn *vide* order of this Court dated 10<sup>th</sup> December 2024.

7. Pursuant to the dismissal of the appeal, the case of petitioner was sent for initiation of trial and by order dated 24<sup>th</sup> September 2018 the charge-sheets for both, adult accused i.e. Vivek Kumar and CCL, were tagged together and by order dated 19<sup>th</sup> December 2018 charges were framed against both adult accused and CCL. The trial is presently at the stage of prosecution evidence and about 24 out of 30 witnesses have been examined so far.

### **III. Submissions on behalf of petitioner**

8. Counsel for the petitioner has raised *inter alia* the following contentions.

9. On the issue of moving the application belatedly, counsel for petitioner submits that the application was moved in 2022 and a claim of juvenility may be raised at any stage, even after the final disposal of the case and that delay in raising the claim of juvenility cannot be a ground for rejection of such claim and places reliance on the decision in *Abuzar Hossain v State of W.B (2012) 10 SCC 489*.

10. Counsel for petitioner submits that *Section 23 of JJ Act* overrides all other laws and places reliance on the decisions in *Kanai Lal Sur v Paramnidhi Sadhukhan* 1957 SCC OnLine SC 8 and *Pintu Sureshbhai Prajapati v State of Gujarat (R/SCA No. 8101/2019, decided on 16.06.2021)*. He submits that the plain meaning of Section 23 of JJ Act



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bars joint proceedings, including trial of CCLs with adult offenders and there is no statutory provision that suggests a contrary interpretation.

11. He also places reliance on **CCL A v State of NCT of Delhi** (Bail App. No. 2510/2020, decided on 19.10.2020) and submits that even when a child is sent up for trial ‘as an adult’ before a Children’s Court, the child does not become an adult or ‘major’, but is only to be treated differently, considering the heinous nature of the offence alleged, though still as a *child in conflict with law*.

12. Petitioner’s counsel argues that the impugned order held that after examination under Section 19 of JJ Act, a CCL would be ‘*tried along with an adult*’ which is contrary to the language used by the legislature i.e. ‘*tried as an adult*’ as opposed to ‘*tried with an adult*’.

13. He submits that the Trial Court’s interpretation would render several provisions of the JJ Act a nullity as Section 23 of JJ Act prohibits ‘*joint proceedings*’ of a CCL and adult offender together, and not just ‘*joint trial*’. While placing reliance on the decision in **Babu Lal v Hazari Lal Kishori Lal** (1982) 1 SCC 525 he submitted that the word ‘*proceeding*’ has much wider meaning than the word ‘*trial*’.

14. Counsel for petitioner argued that as per **K.H. Nazar v Mathew K. Jacob & Ors.** (2020) 14 SCC 126, the Supreme Court has held that provisions of beneficial legislation must be construed with a purpose-oriented approach and that in **Pratap Singh v State of Jharkhand & Anr.** (2005) 3 SCC 551, the Supreme Court considered the *Preamble*, the *Statement of Object and Reasons* of the JJ Act and concluded that it



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was a beneficial legislation and ought to be interpreted to the benefit of those for whom it is made.

**15.** He also argued that in view of Section 18(3) of the JJ Act, only a Children's Court can conduct trial of CCLs and a Sessions Court does not have the jurisdiction to conduct the trial of a CCL. He further argued that the petitioner has been, and continues to be, '*prejudiced*' on account of having been tried with an adult while placing reliance on the decision in *Mumtaz Ahmed Nasir Khan v The State of Maharashtra & Anr.* (Crl. Appeal No. 1153 of 2018, decided on 15.07.2019) wherein the Bombay High Court explained the difference, finding that a trial before a Children's Court is '*offender-oriented*', whereas a trial in a regular court is '*offence-oriented*'.

**16.** He submits that the joint trial proceedings are prejudicial to the rights and interests of CCL K at every stage of the trial, including the framing of charges against CCL K and the adult co-accused jointly *vide* order dated 19<sup>th</sup> December 2018, which is in complete violation of the principle of non-stigmatizing language enshrined in Section 3(viii) of the JJ Act (*Principle of non-stigmatising semantics*). He also submits that the name of CCL K has been repeatedly used in various orders passed by the Trial Court, which is in complete violation of Section 3(xi) of the JJ Act (*Principle of right to privacy and confidentiality*).

**17.** Counsel for petitioner submits that special treatment of CCLs during judicial processes such as trials has been recognized by various authorities, committees, and government bodies, an illustrative few are as under:



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### **17.1 *The National Policy for Children, 2013***

This was adopted by the Government of India in 2013 and postulates the “*best interest*” principle as the primary consideration for all decisions and actions affecting children taken by courts of law and casts a duty on the State to ensure that justice delivery mechanisms are participatory, responsive and child sensitive. Counsel for petitioner placed reliance on Clause 3(vii) and 5.4, which are extracted as under:

#### ***“3. Guiding Principles***

*(vii) the best interest of the child is a primary concern in all decisions and actions affecting the child, whether taken by legislative bodies, courts of law, administrative authorities, public, private, social, religious or cultural institutions”*

...

*5.4 The State shall ensure that service delivery and justice delivery mechanisms and structures are participatory, responsive and child-sensitive, thereby enhancing transparency and ensuring public accountability. Synergistic linkages will be created with other progressive and successful experiments to learn from best practices across regions.”*

### **17.2 *The Report of the National Annual Stakeholders Consultation on Child Protection, 2023***

This was organized by the Supreme Court Juvenile Justice and Child Welfare Committee noting the damaging effect that formal proceedings of the judicial system can have on the mental and physical well-being of children with one of the key recommendations being intensifying focus



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on embedding child-friendly processes and procedures, relevant extracts are as under:

*“Participants agreed to intensify focus on embedding child friendly and gender-sensitive justice processes and procedures, and strengthen cooperation between justice, child protection and allied systems. The High Court Juvenile Justice Committees and the Nodal Departments have additionally identified respective State priorities under the four areas of focus on the basis of the engagements organized as a lead up to the national consultations.”*

### ***17.3 The Guidelines for Police Officers of the Special Juvenile Police Unit, issued by the Juvenile Justice Committee***

The Guidelines provide for a “child-friendly” manner if what would otherwise be considered custodial interrogation in the form of an “interview” in suitable premises.

*“A Child in conflict with Law is presumed to be innocent until proven guilty according to law and therefore should not be compelled to confess guilt. As far as possible Child in Conflict with law should be interviewed at a premises which does not give feel to the child of being in police station and/or under custodian interrogation. If parents of the Child in Conflict with law so desire then the child may be interviewed at his home. The summary of such interview shall be recorded in the form of the "Version of the Child in Conflict with Law" and in case the same reveals that the child has been subjected to any neglect/abuse/ill treatment etc. by anyone, forcing the situation of conflict upon the child, then necessary action should be immediately initiated against perpetrator(s) of such acts.”*

**18.** Counsel for petitioner submits that it is clear from the language of Section 19(1)(i) of JJ Act that the intention is not for the trial of CCL



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to resemble the trial of an adult in all material aspects and on the contrary, the JJ Act provides that such a trial ought to be conducted in a ‘child-friendly’ atmosphere i.e. in a manner that is humane, considerate, and in the best interest of the child. He states that while there are no definitive guidelines on what constitutes a ‘child-friendly’ atmosphere to be maintained by a Children’s Court, various states, international organizations, and courts have provided guidance on what the features of such trial could be. Some illustrative examples are as under:

### **18.1 *The Madhya Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2022***

These rules provide that a trial conducted by the Children’s Court under the JJ Act shall be ‘in camera’ while maintaining a ‘child-friendly’ atmosphere.

*“14. Procedure in relation to Children’s Court, Appeals, Appeals against the order of preliminary assessment and Monitoring Authorities:-*

*(2) Following procedure in relation to transfer of matter to Children’s Court under sub section (3) of section 18 shall be followed –*

*(iv) Such trial shall be conducted ‘in camera’ with protection of all rights of the accused in an adversarial criminal justice system as per the procedure prescribed by the Code of Criminal Procedure, 1973 (2 of 1974).”*

(emphasis added)

### **18.2 *The draft Karnataka State Juvenile Justice (Care and Protection of Children)***



These rules provide for a different physical environment for the Children's Court.

*“(8) Where the Children's Court decides that there is a need for trial of the child as an adult:*

*(i) The Children's Court shall not sit on a raised platform and there shall be no barriers, such as witness boxes or bars between the Court and the child;*

*(ii) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 (Central Act No. 2 of 1974) of trial by sessions and maintaining a child friendly atmosphere;*

*(emphasis added)*

### **18.3 Model Law on Juvenile Justice issued by the United Nations Office on Drugs and Crime in 2013**

Article 45 of the Model Law on Juvenile Justice issued by the United Nations Office on Drugs and Crime in 2013 provides that a court trying children shall ensure that the language used during the trial is suitable to the child's age and understanding and that a child is given breaks from the proceedings appropriate to his or her age, health, and understanding.

*“Article 45 – Right to participation during trial*

*The children's [juvenile] [youth] court shall:*

*(a) permit the child to communicate with his or her lawyer at any point during the trial;*

*(b) ensure that the language used during the trial is suitable to the child's age and understanding; and*

*(c) ensure that the child is given breaks from the proceedings appropriate to his or her age, health and understanding.”*

**18.4** In *A.K. Asthana v Union of India & Anr.* titled W.P.(C) 787/2012 decision dated 5<sup>th</sup> November 2014, a Coordinate Bench of this Court issued guidelines requiring courts to obliterate details leading to



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the disclosure of identity of a child from judicial proceedings before issuing certified copies and directed that the child's identity and related details will not be disclosed to anyone else.

***“B. FOR COURTS***

***B.1 Courts shall obliterate details leading to disclosure of identity of a child from judicial proceedings before issuing a certified copy or uploading them on the website.***

...

*Court passing such order shall obliterate the name and identity related details of such person being declared a juvenile or child from its record...*

(emphasis added)

***18.5 The Guidelines for Establishment of Child Friendly Police Stations***

These guidelines were issued by the National Commission for Protection of Child Rights in 2017 advocating a “child-friendly” approach which includes the behaviour, tone and attitude of the people interacting with a child, the physical infrastructure surrounding them, the procedures that he/she is taken through within the ambit of the law, the general environment surrounding the child, whether he/she is in a police station, a child care institution, a court, a government office, a hospital or any other location.

*“Section 2 (15) of the JJ Act defines the term ‘child friendly’ as “any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child”. Section 2 (9) defines “best interest of child” as “the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights*



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*and needs, identity, social well-being and physical, emotional and intellectual development”. It is important to note here that the child friendly approach should be reflected in every aspect of the experience of the child in conflict with law or the child in need of care and protection. It includes the behaviour, tone and attitude of the people interacting with them, the physical infrastructure surrounding them, the procedures that he/she is taken through within the ambit of the law, the general environment surrounding the child, whether he/she is in a police station, a child care institution, a court, a government office, a hospital or any other location.”*

(emphasis added)

### **18.6 Section 33 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”)**

Section 33 of POCSO prescribes the powers that special courts constituted thereunder, are endowed with, and although these special courts were instituted under POCSO to try cases of children who were victims of sexual offences, the JJ Act has provided for the same courts i.e. courts vested with the same powers and procedures under Section 33 of POCSO, to try cases concerning CCLs; these include the following:

- “a. The Special Court may, if it considers necessary, permit frequent breaks for the child during trial.*
- b. The Special Court shall create a child-friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust or confidence, to be present in court.*
- c. The Special Court shall not permit aggressive questioning or character assassination of the child and ensure the dignity of the child is maintained at all times during the trial.*



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*d. The Special Court shall ensure that the identity of the child is not disclosed at any time during the court of investigation or trial.”*

#### **IV. Submissions on behalf of State**

**19.** The APP submits that the impugned order dated 23<sup>rd</sup> May 2022 cannot be a subject matter of revision before this Court as the order under challenge is essentially in the nature of review and is barred by Section 362 of the Criminal Code of Procedure, 1973 (**‘CrPC’**) which prohibits the review of orders passed by a Criminal Court. He states that the application filed under Section 23 of JJ Act was merely a request for a review of the clubbing of trials of the co-accused Vivek Kumar and CCL, and as such, it was not maintainable.

**20.** The APP placed reliance on the decisions in ***Salil Bali v Union of India & Anr.*** (2013) 7 SCC 705 where, while rejecting the petition seeking a revaluation of certain provisions of the Juvenile Justice Act 2000, the Supreme Court held that any changes to the classification of juveniles were matters for legislative decision and the judiciary could not intervene in this domain. He also placed reliance on ***Shilpa Mittal v Govt. of NCT of Delhi*** (2020) 2 SCC 787 to state that before the juvenile is to be tried as an adult, a very detailed study must be done and the procedure laid down must be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult which indicates that the meaning of the words *‘heinous offence’* cannot be expanded by removing the word *‘minimum’* from the definition.



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**21.** The APP submits that the trial in respect of the petitioner and co-accused should be allowed to continue in the Children's Court. He submits that the objectives of the JJ Act, aim to distinguish between children who should be treated as juveniles and those who should be treated as adults.

**22.** He submits that the interpretation of Section 23 of the JJ Act, in line with the legislative intent, indicates that the term 'CCL' is understood to exclude children, who have been directed to be tried as adults. He states that the correct interpretation of Section 23 JJ Act 2015, is that Section 23(1) would prevent the trial of a CCL (*who has not been directed to be tried as an adult*) alongside a major accused. Section 23(2) would then apply specifically to a child (*who is now directed to be tried as an adult*) and it would mean that if during proceedings, the JJB or Children's Court found, that the child is now directed to be tried as an adult, his proceedings cannot be concluded with a child not to be tried as adult (CCL). He states that children who are not to be treated as adults, would not face a joint trial with either a major accused or a child, who has been directed to be tried as an adult.

**23.** He submits that this interpretation of Section 23 of JJ Act allows for a major accused and a child who has been directed to be tried as an adult, to be tried together in the Children's Court as the Children's Court is competent to try both adults and children under its jurisdiction. He further states, that there is no statutory bar preventing the Children's Court from trying a major accused along with a child who is being



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treated as an adult, whereas, in contrast, JJB lacks the jurisdiction to try major accused persons, as it is limited to matters involving children.

**24.** He also submits that potential harm could arise from conducting separate trials for a child who has been directed to be tried as an adult, and a major accused, in the same case. He states that multiple trials could lead to contradictory testimonies, inconsistent judgments, difficulties for independent witnesses, all of which could undermine the integrity of the judicial process. He also submits that joint trials involving both children and adults are permitted under specific conditions in Queensland, Australia, and Hong Kong.

**25.** He lastly submits that the JJ Act was designed to safeguard the rights of children, however, the law expressly creates exceptions for certain children to be treated as adults (*under Section 19(1)(i) of JJ Act 2015*) and these exceptions must be respected in the interest of justice. The JJ Act recognizes a more stringent approach for children who commit heinous offences and has provisions to direct them to be tried as adults, subject to mental and physical conditions.

## **V. Analysis**

**26.** The issue for consideration before this Court, is whether an adult accused can be tried jointly with a child (*directed to be tried as an adult*) in the Children's Court, or whether the trial should be bifurcated, with the major accused being sent to regular Sessions Court, while the child (*directed to be tried as an adult*) remains before the Children's Court.



## **A. Relevant statutory provisions**

27. To address the above queries, it is necessary to refer to the following provisions of the JJ Act 2015, extracted as under for ease of reference:

### **27.1 Section 3**

*3. General principles to be followed in administration of Act.—The Central Government, the State Governments, the Board, the Committee, or other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely—*

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

(emphasis added)

### **27.2 Section 15**

*“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 sub-section (3) of Section 18:*



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*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.”*

(emphasis added)

### **27.3 Section 18**

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, or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter 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.*

*(emphasis added)*

#### **27.4 Section 19**

*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 Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and Section 21,*



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*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) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow-up by the probation officer or the District Child Protection Unit or a social worker.*

*(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:*

*Provided that the reformative services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.*

*(4) The Children's Court shall ensure that there is a periodic follow-up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.*

*(emphasis added)*

## **27.5 Section 23**

*“23. No joint proceedings of child in conflict with law and person not a child.—(1) Notwithstanding anything contained in Section*



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*223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.*

*(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.*

(emphasis added)

## **B. Procedure under JJ Act, 2015**

**28.** As per Section 15 of JJ Act 2015, the JJB conducts a preliminary assessment, where a CCL between 16-18 years of age, is alleged to have committed a heinous offence, after assessment of *firstly*, mental and physical capacity; *secondly*, his ability to understand the consequences of the offence and *thirdly*, the circumstances in which he allegedly committed the offence, and may transfer him to Children's Court for trial as an adult, in accordance with Section 18(3) of JJ Act 2015.

**29.** In the present case, upon the registration and investigation of the case, the petitioner was produced before the JJB, and the JJB conducted a preliminary assessment under Section 15 of JJ Act *vide* order dated 9<sup>th</sup> January 2017. The Board declared the CCL as above 16 years of age, as on the date of the alleged incident, as per the confidential preliminary assessment report from psychologist.



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**30. *Firstly***, on the aspect of physical and mental capacity, JJB stated that, “*As per the preliminary assessment reports filed by the Psychologist, CCL is able bodied, having no physical infirmity. He has no psychiatric illness or intellectual disability and there is no doubt about his mental capacity to commit the offence. The preliminary assessment report matches with the assessment of the Board regarding mental and physical capacity of the CCL.*”

**31. *Secondly***, regarding his ability to understand the consequences of the offence, the JJB held that CCL is able to understand the consequences of the offence committed by him, as he fled from the spot immediately after the incident, by scaling the school wall, which reflects that he understood the consequences of the offence.

**32. *Thirdly***, as regards the circumstances in which he allegedly committed the offence, the Board while relying upon the status report filed by the IO, stated that the name of CCL was struck off the rolls of the school due to long absence and when he along with co-accused, entered the school on 26<sup>th</sup> September 2016 (*the date of the school examination*), CCL and co-accused, stabbed their class teacher in his abdomen and caused three other incised wounds, two on the left thigh and one on left side of abdomen, without any provocation.

**33.** Therefore, the JJB, after conducting the preliminary assessment in accordance with Section 15 of JJ Act 2015, directed *vide* order dated 9<sup>th</sup> January 2017, that it is satisfied that there is need for trial of the CCL as ‘*adult offender*’ and transferred the case to the designated Children’s Court, in accordance with Section 18(3) of JJ Act 2015.



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34. The relevant portion of order dated 9<sup>th</sup> January 2017, is extracted as under:

“The CCL is able to understand the consequences of the offence committed by him. He fled from the spot immediately after the incident by scaling the school wall, which reflects he understands the consequence of the offence...”

The circumstances in which the offence was committed by the CCL indicate his criminal proclivities as the offence was committed against a school teacher, without any provocation and without any regard for human life. Upon conducting the preliminary assessment under section 15 of the Act, the Board is satisfied that there is need for trial of the CCL as adult offender. Hence, the case is hereby transferred to designated Children’s Court for trial through concerned Ld. District Judge.”

(emphasis added)

35. CCL then challenged the order dated 9<sup>th</sup> January 2017, in appeal before the Sessions Court by way of CRL.A 13/2017 before ASJ-V (West), and the same was dismissed *vide* order dated 3<sup>rd</sup> June 2017, confirming the orders of JJB regarding petitioner’s CCL status. Thereafter, petitioner preferred a revision petition CRL.REV.P. 961/2017 against the order of preliminary assessment (*which was dismissed as withdrawn by order of the Delhi High Court dated 10<sup>th</sup> December 2024*). Meanwhile, pursuant to the dismissal of the appeal, petitioner’s case was sent to designated Children’s Court for initiation of trial.



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36. The trial of the co-accused Vivek Kumar was pending in the Sessions Court and *vide* order dated 7<sup>th</sup> June 2017, the District and Sessions Judge (West) transferred the case of the major co-accused to the Children's Court, as trial of the petitioner was already pending before the same Children's Court. Charge-sheets for both the CCL and co-accused were tagged together *vide* order dated 24<sup>th</sup> September 2018. Charges were framed against both co-accused jointly *vide* order dated 19<sup>th</sup> December 2018, under Sections 186/353/302/34 IPC. The case is pending before the trial court at the stage of prosecution evidence; some witnesses were also examined and discharged.

37. Petitioner then filed an application under Section 23 of JJ Act in SC No. 45/17 and 276/2017, praying to stop the ongoing joint proceedings, of the petitioner with adult co-accused Vivek Kumar, which was dismissed by order dated 23<sup>rd</sup> May 2022 passed by ASJ-06 (West) Tis Hazari Courts, and is under challenge in the present petition.

38. As per impugned order dated 23<sup>rd</sup> May 2022 passed by ASJ-06 (West), Tis Hazari Courts, the application moved by petitioner under Section 23 of JJ Act was dismissed stating that Section 23 of JJ Act cannot be applied in the circumstances of the present case. The relevant portion of the impugned order, is extracted as under:

“Plain reading of the section clearly provides that any child in conflict with law would not be tried along with one who is not a child. The basic object of the section is that one who is child within the meaning of section 2(12) and (13) of the Act would not be tried with an adult. However, JJ Act was amended whereby section



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15 now provides for conducting of an preliminary assessment into heinous offences, where the CCL is more than 16 years of age and Board would assess if his mental and physical capacity to commit such offence is such that he understands the consequence of an offence, in that eventuality he can be ordered to be tried along with an adult for a regular trial in accordance with C.r.P.C...

...Section 23 applies in a different scenario and cannot be applied in the circumstances of the present case. Hence application stands dismissed."

(emphasis added)

39. CCL was released on 20<sup>th</sup> April 2020, whereby interim bail for a period of 45 days was granted to the petitioner, which was extended from time to time. Interim bail was then extended upto 16<sup>th</sup> July 2022 *vide* order dated 23<sup>rd</sup> May 2022.

40. Co-accused Vivek Kumar's *BAIL APPLN. 3669/2023* was dismissed as withdrawn, by order of Delhi High Court dated 3<sup>rd</sup> November 2023. The said order stated that only 6 out of 30 witnesses have been examined during the trial.

### **C. Definition of 'child'**

41. For appreciating the definition of '*child*' and allied expressions, the following provisions of JJ Act 2015 for ease of reference are extracted hereunder:

*"2. Definitions. —In this Act, unless the context otherwise requires —*



- ...
- (12) “child” means a person who has not completed eighteen years of age;
- (13) “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;
- ...
- (15) “child friendly” means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;
- ...
- (20) “Children's Court” means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;
- ...
- (33) “heinous offences” includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;
- ...
- (35) “juvenile” means a child below the age of eighteen years;”

(emphasis added)

**42.** As per the definitions laid down in JJ Act 2015, the petitioner is a CCL (*child in conflict with law*) which means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age, on the date of commission of such offence. He



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has committed a heinous offence, as the punishment under IPC for Section 302, falls under the category of imprisonment for more than 7 years.

#### **D. Judicial precedents cited: Relevant extracts**

**43.** Certain decisions relied upon by counsel are useful for assessment being made by this Court and relevant extracts are as under.

**44.** A claim of juvenility may be raised at any stage, even after the final disposal of the case and that delay in raising the claim of juvenility cannot be a ground for rejection of such claim. Reliance is placed on the decision in ***Abuzar Hossain v State of W.B.*** (2012) 10 SCC 489 and the relevant paragraphs are extracted as under:

*“39. Now, we summarise the position which is as under:  
39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.*

*39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility...”*

(emphasis added)



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45. The Supreme Court in *Pratap Singh v State of Jharkhand & Anr.* (2005) 3 SCC 551 considered the Preamble, the Statement of Object and Reasons of the JJ Act and concluded that it was a beneficial legislation and ought to be interpreted to the benefit of those for whom it is made. The relevant paragraph is extracted as under:

*“10. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at making available the benefit of the Act to the neglected or delinquent juveniles. It is settled law that the interpretation of the statute of beneficial legislation must be to advance the cause of legislation for the benefit of whom it is made and not to frustrate the intendment of the legislation.”*

(emphasis added)

46. Reliance was placed on the decision in *Kanai Lal Sur v. Paramnidhi Sadhukhan* 1957 SCC OnLine SC 8 where the Supreme Court has held that the words used in the material provisions of a statute must be interpreted in their plain grammatical meaning and that S. 23 (1) of JJ Act unambiguously provides that “*there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child*”. The plain meaning of Section 23 of JJ Act bars joint proceedings, including trial, of CCLs with adult offenders and there is no statutory provision that suggests a contrary interpretation. The relevant paragraphs of the said decision, are extracted as under:



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*“6.... However, in applying these observations to the provisions of any statute, it must always be borne in mind that the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself. If the words used are capable of one construction, only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act. The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise....”*  
(emphasis added)

47. Some useful guidance was taken from the decision dated 16th June 2021 in ***Pintu Sureshbhai Prajapati v State of Gujarat*** 2021:GUJHC:20584 where it was held that the Court below had committed a serious error in law in ordering the joint trial of the two cases of the accused adult and child in conflict with law, for the purpose of recording of common evidence solely on the premise that both the Sessions Cases arise out of the same alleged offence and it was held that the case of the child alleged to be in conflict with law has to be tried separately and independently under the provisions of the Act of 2015. The relevant paragraphs of the said decision are extracted as under:

*“15. Section 23 of the Act expressly bars joint proceedings of a child in conflict with law with a person not a child. For ready reference, the said provision is reproduced hereunder:-*



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*“23. No joint proceedings of child in conflict with law and person not a child. -*

*(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.”*

*15.1 In the instant case, on the application (Exhibit-6) preferred by the concerned Additional Public Prosecutor in Sessions Case No.90 of 2018 relating to the co-accused named in the same FIR, the Court of learned Additional Sessions Judge, which is not a Designated Court under the Act, passed the impugned order of trial of Sessions Case No.90 of 2018 relating to co-accused persons, who were adults, with Sessions Case No.06 of 2019 relating to the petitioner – child in conflict with law, by consolidating the cases, for the purpose of recording of common evidence solely on the premise that both the Sessions Cases arise out of the same alleged offence. Such order passed by the Court below is illegal, without jurisdiction and contrary to the provisions of the Act. Even if more than one case is registered in connection with a single alleged offence and the evidence in all the cases may be common, no case involving a child who is alleged to be in conflict with law, could be clubbed or consolidated with the cases where the co-accused in the same alleged offence is not a child. The case of the child alleged to be in conflict with law has to be tried separately and independently under the provisions of the Act of 2015. While passing the impugned order of joint trial, the Court below has failed to take into consideration the fact that the case of the child in conflict with law had been transferred to the*



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Children's Court having independent jurisdiction to try such offence; whereas, the case of the co-accused, who are adults, had been instituted on police report and was triable exclusively by the Court of Sessions on its committal by the Magisterial Court. Thus, under the scheme of the Act, in case a child in conflict with law, who is alleged to have committed a heinous offence, is below the age of 16 years on the date of commission of such offence, then his case shall be disposed of by the Board; and, in case a child in conflict with law is above the age of 16 years at the relevant time, then a preliminary inquiry has to be initiated in terms of Section 15 of the Act and thereafter, an order of transfer of the case to the Children's Court is passed. Whereas, in the case of an adult co-accused of the same alleged incident, the matter would be committed to the Court of Sessions by the Magisterial Court.

15.2 The order dated 25.06.2019 passed by the Court below is not only dehors the provisions of Section 23 of the Act, but is also without jurisdiction. This provision could be better understood if one makes a reference to Section 19(1)(ii) of the Act, which provides that if the Children's Court comes to the conclusion that there is no need for trial of the child in conflict with law as an adult, then it may conduct an inquiry as a Board and may pass appropriate orders in accordance with the provisions of Section 18 of the Act. Section 23 of the Act clarifies that despite anything contained in Section 223 of the Code of Criminal Procedure or in any other law in force, there shall be no joint proceedings of a child in conflict with law and an adult.”

(emphasis added)



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48. On the issue of ‘*child as an adult*’, reliance has been placed on **CCL ‘A’ v State (NCT of Delhi)** 2020:DHC:3061 where it was held that even when a child is sent-up for trial as an adult before a Children’s Court, the child does not become an adult or ‘*major*’, but is only to be treated differently in regard to heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. The relevant paragraphs of the said decision are extracted as under:

“Does a child sent-up for trial as an ‘adult’ de-juré become an ‘adult’:

24. Interestingly, it is noticed that the JJ Act uses the words “child” and “juvenile” in an interchangeable manner; and in fact these two terms are defined in what is almost a circular definition, as extracted above.

25. The answer to this query is self-evident. Firstly, a child is sent-up for trial as an adult upon a preliminary assessment made by the JJB under sections 15(1) read with 18(3) only with regard to his mental and physical capacity to commit such offence and his ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. This preliminary assessment is further subject to a decision by the Children’s Court as to whether there is need for trial of the child as an adult. If the Children’s Court so opines under section 19(1) and thereby confirms the preliminary assessment of the JJB, the child is then tried as an adult subject to safeguards under the Cr.P.C., but still considering the special needs of the child, the tenets



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of fair trial and maintaining a child-friendly atmosphere.

26. Clearly therefore, even when a child is sent-up for trial as an adult before a Children's Court, the child does not become an adult or 'major', but is only to be treated differently considering the heinous nature of the offence alleged and consequent need for a stricter treatment of the offender, though still as a juvenile in conflict with law. It must be borne in mind that the Legislature has created this categorization based upon an assessment of the child's "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". If the intention of the Legislature was that upon such assessment, the child would de-juré become an adult, then the question of there being a separate Children's Court to try him with specific safeguards provided for the trial would not arise. That however is not the case."

(emphasis added)

**49.** Reference was made to the observations in a decision of Bombay High Court in *Mumtaz Ahmed Nasir Khan v State of Maharashtra* 2018 SCC OnLine Bom 15847 which state that while the trial in a regular court is offence oriented, the trial in the juvenile court is offender oriented. The relevant paragraphs are extracted as under:

"42. On transfer to the regular criminal court, the trial may be according to the mainstream criminal procedure, but the punishment however, must be reformatory and rehabilitative—rather than retributive.



43. Essentially, the trial in the regular court is offense oriented; in the juvenile court, it is offender oriented. In other words, in the children's court, societal safety and the child's future are balanced. For an adult offender, prison is the default option; for a juvenile it is the last resort. Aaron Kupchik calls the method adopted by the regular criminal courts vis-a-vis juveniles the "sequential model of justice." That is, it adheres to a criminal justice model during the trial phase of case processing, but moves toward a juvenile justice model during sentencing, though the quantum varies in both methods. In contrast, the juvenile court follows a justice model throughout.

44. Under the Chapter "Understanding the Scope of the Problem", Aaron Kupchik notes that jurisdictional transfer is hardly an innovation. Since the creation of the juvenile court, judges have been able to designate as adults and transfer to criminal court certain serious offenders who require punishments beyond what the juvenile court can give. The methods, according to him, vary, though. He identifies three methods...

(emphasis added)

#### **E. Section 23 of JJ Act: A dissection**

50. The issue raised before this Court focuses on the prohibition mandated under Section 23 of JJ Act. Certain aspects of this provision are culled out for a deeper and better assessment.

51. *Firstly*, the said provision is *non obstante*. Section 223 of Cr.P.C. prescribes as to what persons may be charged jointly and includes those who are accused of the same offence in the course of the same



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transaction. For convenience, Section 223 of Cr.P.C. is extracted hereunder:

“223. What persons may be charged jointly.—The following persons may be charged and tried together, namely:

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of Section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under Sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;



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*(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:*

*Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he 2[or it] is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”*

(emphasis added)

**52. Secondly,** Section 23 of JJ Act is *non obstante* ‘any other law for the time being in force’, essentially underscoring that the provision is strict and cannot be diluted or eroded on account of any legal and statutory provision. Reliance may be placed on the decision in ***Union of India v. G.M. Kokil*** 1984 Supp SCC 196 which held that it is well-known that a *non obstante* clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, the relevant paragraph of which is extracted under:



*“11. Section 70, so far as is relevant, says “the provisions of the Factories Act shall, notwithstanding anything contained in that Act, apply to all persons employed in and in connection with a factory”. It is well-known that a non obstante clause is a legislative device which is usually employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions. Thus, the non obstante clause in Section 70, namely, “notwithstanding anything contained in that Act” must mean notwithstanding anything to the contrary contained in that Act and as such it must refer to the exempting provisions which would be contrary to the general applicability of the Act. In other words, as all the relevant provisions of the Act are made applicable to a factory notwithstanding anything to the contrary contained in it, it must have the effect of excluding the operation of the exemption provisions. Just as because of the non obstante clause the Act is applicable even to employees in the factory who might not be ‘workers’ under Section 2(1), the same non obstante clause will keep away the applicability of exemption provisions qua all those working in the factory...”*

(emphasis added)

**53. Thirdly,** the provision uses the word ‘shall’ in order to highlight the prohibition which the provision contemplates against any joint proceeding of child in conflict with law (‘CCL’) and ‘a person not a child’. The word ‘shall’ as often articulated by the courts imports mandatoriness. Reliance may be placed on the decision in **Khub Chand v State of Rajasthan** 1966 SCC OnLine SC 113 where it was held that



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the term ‘shall’ in its ordinary significance is mandatory. The relevant paragraph is extracted as under:

*“7....The term “shall” in its ordinary significance is mandatory and the court shall ordinarily give that interpretation to that term unless such an interpretation leads to some absurd or inconvenient consequence or be at variance with the intent of the legislature, to be collected from other parts of the Act. The construction of the said expression depends on the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction and such other considerations...”*

(emphasis added)

**54. Fourthly**, the reference in the provision is to ‘child’ and ‘child alleged to be in conflict with law.’ While ‘child’ is defined in Section 2(12) of JJ Act, meaning a person who has not completed 18 years of age; ‘child in conflict law’ (‘CCL’) is defined in Section 2(13) of JJ Act, meaning a person who has not completed 18 years of age on the date of commission of offence i.e. a child (*below 18 years of age*). The provision therefore, contemplates two distinct categories of persons, one a ‘child in conflict with law’ who necessarily must have not completed 18 years at the date of offence and a person who is not a child i.e. who is 18 years and above. These categories are clear in the scope and definition and since they are benchmarked on completion of an age of 18 years, the categorization of any offender, as being either a ‘CCL’ or ‘not a child’ is quite evident, clear, and obvious. In fact, the word ‘adult’ is not defined in the said Act. The inviolable assumption therefore,



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would be that an ‘adult’ refers to a person who is ‘not a child’ i.e. above 18 years of age. *The National Rural Employment Guarantee Act 2005*, as an illustration, defines an ‘adult’ as someone who has completed 18 years of age. The relevant provision of the Act is extracted as under:

“2. (a) “adult” means a person who has completed his eighteenth years of age.”

**55. Fifthly**, Section 23(2) of JJ Act provision adverts to an inquiry by the Board or by the Children’s Court which would result in a finding that an offender is either ‘not a child’ or ‘child’.

**56.** Section 9(2) of the JJ Act provides for a Magistrate’s Court to make an inquiry if an issue of juvenility is raised, take evidence as necessary to determine the age of the person and record it as a finding to state ‘the age of the person as nearly as may be’.

**57.** The Board, also under *Juvenile Justice (Care and Protection of Children) Rules 2016* under Rule 10A, has the power to determine the age of the offender, before it. Once having reached a conclusion that the offender is a child or an adult, Section 23(2) of JJ Act would kick in and trial of the adult would have to be separated, notwithstanding that they have been accused of the same offence committed in the course of same transaction [since Section 23(1) JJ Act is non obstante Section 223 Cr.P.C.].

#### **F. ‘As an adult’ v. ‘With an adult’**

**58.** The question now, which is the grist of the discussion before us, is whether an offender who is declared a child i.e. less than 18 years, but



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post-preliminary assessment under Section 15 by the JJB, is directed for trial '*as an adult*', what would be the consequences?

**59.** Section 18(3) of JJ Act provides that in this situation, the child is transferred to the Children's Court, having jurisdiction to try such offences.

**60.** Post a decision under Section 18(3) of JJ Act does not provide that '*child*' becomes an adult or ceases to be a '*child*'. It only provides that the trial of the said child would be '*as an adult*'. The phraseology here is critical, since the whole argument hinges upon the difference between '*as an adult*' and '*along with an adult*', the latter being used by the ASJ in the impugned order dated 23<sup>rd</sup> May 2022.

**61.** The statute is fairly clear and categorical in using the phrase '*as an adult*' and in combination with '*Children's Court*'. The usage by the ASJ in the impugned order as to be tried '*along with an adult*' brings it in direct confrontation with the Section 23 JJ Act prohibition. Section 23 JJ Act precisely prohibits the trial of a CCL to be held '*along with an adult*'.

**62.** Section 23 of JJ Act itself envisages a situation where there are two or more offenders, where one or more being a '*child*' and the others being '*not a child*'. This is the assumption which the provision is based upon. Therefore, to contend that a child can be tried in court along with an adult would render the prohibition under Section 23 of JJ Act nugatory, otiose and redundant, which cannot be permitted.

**63.** The express terms of a statute must be read and interpreted on the plain language and one cannot import an obscure, unnecessary,



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inconsistent, and forced interpretation. This is based on the well settled principles of statutory interpretation as exemplified in ***Kanai Lal Sur v Paramnidhi Sadhukhan*** 1957 SCC OnLine SC 8 (as extracted in paragraph 44 above), where it has been held that the words used in the material provisions of the statute must be interpreted in their plain grammatical meaning. Reliance in this regard has also been placed in ***Pratap Singh*** (supra) (as extracted above in para 45).

64. The Supreme Court has observed in ***K.H. Nazar v Matthew K. Jacob and Ors.*** (2020) 14 SSC 126 that provisions of a beneficial legislation have to be construed with the purpose-oriented approach and the interpretation of provisions should be in a manner which promote the said objective. There is no dispute that the JJ Act is a beneficial legislation intended to consolidate the law relating to *children found to be in conflict of law* and those needing care and protection, by adopting a ‘child-friendly’ approach in the identification and disposal of matters in the best interest of the children. The necessity for adverting to the literature, cited by counsel for petitioner (relevant extracts of which are in paras 17.1-17.3, and regulations proposed or stipulated by various States, extracted in paras 18.1-18.3), may not be necessary, since they were only served to highlight and re-emphasize that the State has to ensure that justice delivery mechanisms are participatory, responsive, and child-sensitive.

65. There is no apparent ambiguity in the phraseology used in Section 23 of the JJ Act. Importing and enforcing an interpretation is not at all necessary, in the opinion of this Court. The provision says what it does



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and considering the beneficial nature of the legislation, in any event, any dilution, distraction, diversion from clear and categorical provisions cannot be permitted.

**66.** The provision not only prohibits a joint trial, but also adverts to ‘joint proceeding’. The phrase ‘proceeding’ was assessed by the Supreme Court in **Babu Lal v Hazari Lal Kishori Lal** (1982) 1 SCC 525 stating that the term “proceeding” is a very comprehensive term and generally speaking, means a prescribed course of action for enforcing a legal right. It indicates a prescribed mode in which judicial business is conducted and is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. The relevant paragraph of the said decision are extracted as under:

“17. The word “proceeding” is not defined in the Act. Shorter Oxford Dictionary defines it as “carrying on of an action at law, a legal action or process, any act done by authority of a court of law; any step taken in a cause by either party”. The term “proceeding” is a very comprehensive term and generally speaking means a prescribed course of action for enforcing a legal right. It is not a technical expression with a definite meaning attached to it, but one the ambit of whose meaning will be governed by the statute. It indicates a prescribed mode in which judicial business is conducted. The word ‘proceeding’ in Section 22 includes execution proceedings also. In Rameshwar Nath v. U.P. Union Bank Ltd. [AIR 1956 All 586 : 1956 All LJ 470 : 1956 All WR HC 450] such a view was taken. It is a term giving the widest freedom to a court of law so that it may do justice to the parties in the case. Execution is a stage in the legal



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proceedings. It is a step in the judicial process. It marks a stage in litigation. It is a step in the ladder. In the journey of litigation there are various stages. One of them is execution.”

(emphasis added)

**67.** The trial as an adult before a Children’s Court effectively means that that particular offender/child would be outside the purview of possibilities the Board can adopt under Section 18(1) and (2) of JJ Act - *inter alia* allow the child to go home, direct group counseling, community service, payment of fine, release on probation of good conduct, directed to be sent to a special home. Determination under Section 18(3) of JJ Act plucks the child out of the Section 18(1) and (2) situations and directs him to a trial which is faced by, like any other adult, except it is before a Children’s Court. Once before a Children’s Court, the Children’s Court can exercise powers under Section 19 and either decide that the trial shall continue in a ‘*child-friendly atmosphere*’ or otherwise there was no need for trial of the child as an adult [*under Section 19 (1) of JJ Act*].

**68.** Under Section 19(2) of JJ Act, the Children’s Court is mandated to ensure that the final order could include an individual care plan for rehabilitation and under Section 19(3) of JJ Act to ensure that the child is sent to a place of safety till he attains the age of 21 years and then transferred to jail. The other provisions of section 19 of JJ Act provide for further directions which a Children’s Court can pass.



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## **VI. Conclusion**

**69.** Therefore, in the opinion of this Court, as per plain reading of Section 23 of JJ Act, and even by the dissection given above, there can be no doubt that joint trials ought not to be held between a child in conflict with law (*being tried as an adult*) and an adult offender.

**70.** In the case at hand, post the preliminary assessment under Section 15 of JJ Act, by the Board, the CCL has been tried before a Children's Court and to that extent his right has not been compromised.

**71.** The only issue arises that the adult offender also is tried before the same Sessions Judge who is a designated Children's Court. Though the trial would involve effectively the same set of witnesses and revolve around the same issues, Section 23 of JJ Act prohibits the same and there ought to be a separate set of trials for both.

**72.** Considering that the case of CCL was transferred to the Children's Court by order dated 9<sup>th</sup> January 2017, which was subsequently challenged and plea was rejected, the trials have been clubbed together and the case of the adult co-accused was transferred to the Children's Court as well. The charges were tagged together *vide* order dated 24<sup>th</sup> September 2018, and charges were framed jointly *vide* order dated 19<sup>th</sup> December 2018.

**73.** The challenge to the order of joint proceedings was then again sought to be displaced by the application under Section 23 of the JJ Act which was moved by petitioner and was dismissed by the ASJ by impugned order dated 23<sup>rd</sup> May 2022.



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74. The petitioner's counsel, Mr. Ashim Sood, was however, categorical in his plea and concedes that he is not seeking the trial to be started *de novo* since much time has passed and trial has continued, but at least it ought to split from the point where it stands. It is stated that only 5 to 7 witnesses are left to be examined and though can be examined together, on application of Section 23 of JJ Act, the trial should separate, even though it is being conducted by the same Session's Judge, sitting as a Session's Court and as a Children's Court.

75. Even though, at first blush this may seem like an unnecessary exercise, it would sanitize the process and bring it in consonance with the provisions of the Act and in tune with the legal mandate. Considering the prohibition is to '*joint proceedings*', there can be no doubt that the CCL must be tried independently from the adult offender and the recording of evidence relating to the rest of the witnesses and the final tail end of the trial including the arguments, ought to be conducted independently.

76. Accordingly, the revision petition is allowed; the impugned order is set aside to the extent that the trial of the petitioner/CCL going onwards would be held separately from that of the adult co-accused i.e. Mr. Vivek Kumar Jha.

77. Pending applications, if any, are rendered infructuous.

78. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)  
JUDGE

MARCH 03, 2025/sm/na

Signature Not Verified

Digitally Signed  
By: MANISH KUMAR  
Signing Date: 03.03.2025  
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