2026:AHC:208588

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 5034 of 2026

Kishor Apchari R

.....Revisionist(s)

Versus

State Of U.P.And 3 Others

.....Opposite Party(s)

Counsel for Revisionist(s) : Anil Kumar, Viveka Nand Maurya
Counsel for Opposite Party(s) : G.A.

Court No. - 82

HON'BLE JAI PRAKASH TIWARI, J.

1. Second supplementary affidavit has been filed today in the court by learned counsel for the applicant. The same is taken on record.

2. Heard learned counsel for the revisionist, learned A.G.A. for the State.

3. As per instructions, it is submitted by learned AGA that notice has been served on opposite party no.4, but no one has turned up to opposed this revision.

4. The present criminal revision has been filed to quash the order dated 21.07.2026 passed by Additional District Judge/Special Judge POCSO Act/Children Court, Mirzapur in Juvenile Criminal Appeal No.25/2026 and the order dated 02.07.2026 passed by the Juvenile Justice Board, Mirzapur, in Bail Appliation No.20/2026, Case Crime No.188/2026, under Sections- 137(2), 87, 64(1), 352, 351(3) BNS and Section- 3/4 of POCSO Act, Police Station - Kotwali Chunar District- Mirzapur.

5. Learned counsel for the revisionist submits:

(i) admittedly, the applicant was a juvenile aged about 17 years and 27 days, on the date of alleged incident; He is in juvenile home since 13.05.2026;

(ii) the applicant has been falsely implicated, as the victim in her statements recorded under Sections 180 & 183 of BNSS has supported the revisionist; as per radiologist, the age of the victim is between 17 to 19 at

the time of incident;

(iii) there is no specific or strong objection raised in the DPO report, other than the general and vague observations;

(iv) there is no criminal antecedents /history of the applicant except the present case;

(v) due to huge docket of pending cases, there is no hope of early conclusion of the trial;

(vi) the revisionist has remained confined in the child observation home for an unduly long period of time;

(vii) none of the grounds contemplated under section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the Act) are available, to deny the bail to the applicant.

(viii) therefore, the impugned orders have been assailed as erroneous and contrary to law.

6. Learned A.G.A. for the State vehemently opposed the present criminal revision. It is submitted, the incident reported is true and it is wrong to say that the allegations made against the applicant are false, and/are motivated. Also, reliance has been placed on the findings recorded in the bail rejection orders to submit that the instant revision may be dismissed.

7. To examine the validity of the impugned order(s), it is useful to note the relevant provisions of the Act as well as the case laws relating to the subject.

8. The prayer of bail of a juvenile in conflict with law has to be considered in accordance with the provisions contained under Section 12 in The Juvenile Justice (Care and Protection of Children) Act, 2015, which is reproduced below:-

> *"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 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

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

(2). When such person having been apprehended is not released on bail under 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 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."

9. It is a settled position of law that the use of the word 'shall' in sub-section (1) of Section 12 of "JJ Act, 2015" is of great significance. The use of the word 'shall' raises a presumption that the particular provision is imperative, but this *prima facie* inference may be rebutted by other considerations such as the object and scope of the enactment and the consequences flowing from such construction. The word 'shall' has been construed as ordinarily mandatory, but is sometimes not so interpreted if the context or intention otherwise demands.

10. Provisions of Section 12 of "JJ Act, 2015" manifest that ordinarily, the Juvenile Justice Board is under obligation to release the juvenile on bail with or without surety. The juvenile shall not be released in certain circumstances as the latter part of the section also uses the word 'shall' imposing certain mandatory conditions prohibiting the release of the juvenile by the Juvenile Justice Board. If there are any reasonable grounds for believing; (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological danger and (c) that release of the juvenile is in conflict with law and would defeat the ends of justice.

11. The Hon'ble Supreme Court in the case of ***Juvenile in Conflict with Law v. State of Rajasthan, 2024 SCC OnLine SC 5297*** has held that a juvenile in conflict with the law must be released on bail under Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, unless specific statutory exceptions in the proviso apply. The paragraph no.6 of the judgment is quoted as under:-

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

12. The Hon'ble Supreme Court in ***Dr. Subramaniam Swamy vs Raju, 2014 (86) ACC 637*** also held that a juvenile has to be released on bail unless the Court has a reasonable ground to believe that his release will bring him into association of some known criminal, or will expose him to moral, physical or psychological danger or his release would defeat the ends of justice. The paragraph no.56.5 is quoted as under:-

> *"56.5. Grant of bail to juveniles in conflict with the law is the rule."*

13. In case of ***Chandan Kumar Paswan v. State of Bihar, 2025 SCC OnLine Pat 2434*** the Hon'ble Patna High Court has held that as per Section 12 of the Act, bail to the Juvenile is a rule and refusal of the same is an exception. The paragraph nos.16 & 17 of the judgment is quoted as under:-

> *"16. From perusal of Section 12 of the J.J. Act, 2015, it clearly emerges*

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

17. It also emerges that seriousness of the alleged offence or the age of the juvenile are also no relevant considerations for denial of bail under Section 12 of the J.J. Act. Even the child who is 16 years or above 16 years of age and is alleged to have committed a heinous offence is also entitled to get bail under Section 12 of the Act, 2015. There is no classification, whatsoever, provided in Section 12 of the Act, 2015 in regard to grant of bail. Section 12 is applicable to all juveniles in conflict with law without any discrimination of any nature. (Also refer to Lalu Kumar @ Lal Babu v. State of Bihar, (2019) 6 BLJ 2016).”

14. In view of the above, and considering the facts and circumstances of the present case, the Social Investigation Report (S.I.R) submitted by the concerned D.P.O, it appears that the findings recorded by the learned Magistrate of the JJ Board as well as learned appellate Court are in conflict with the settled principle in law, for the purpose of grant of bail and are erroneous and contrary to the law laid down by this Court. Consequently, those orders cannot be sustained. So, the impugned orders are hereby **set aside.**

15. In view of the observations made above, the present criminal revision is **allowed**.

16. Let the revisionist - **Kishor Apchari R through his natural guardian father Laxman Yadav** involved in the aforesaid case crime be released on bail, on his furnishing personal bond of Rs.20,000/- with two sureties each of like amount, to the satisfaction of the court concerned with the following conditions:

(i) The revisionist shall not tamper with the evidence or threaten the witnesses;

(ii) The revisionist through guardian shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(iii) The revisionist through guardian shall remain present before the trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial Court may proceed against him under Section 229-A of the Indian Penal Code/269 B.N.S.S.

(iv) Trial court is directed to conclude the trial as early as possible without granting any unnecessary adjournment.

17. Registrar (compliance) is directed to communicate the order to the Child Observation Home concerned within a week.

(Jai Prakash Tiwari,J.)

October 6, 2026
S.K.

Digitally signed by :-
SWEETY KANOJIA
High Court of Judicature at Allahabad