

Bails to juveniles in India; Analysis of laws and Judicial Pronouncements

Ms. Anu Singhai^{1*}, Prof. Dr. N. K. Thapak²

¹ Research Scholar, School of Legal Studies, L.N.C.T. University, Bhopal

² Supervisor, Vice- Chancellor, L.N.C.T. University, Bhopal

Abstract - Children are important to the future of society and have the ability to promote social change, economic development, peace and leadership. They play an important role in determining what the world will do in future. Children are considered equal members of society and enjoy all such rights as any other individual will do. Keeping this into consideration the parliamentarians and the laws makes over the period of time have made special laws to deal with the children who are found in conflict with the law. The Juvenile justice (Care and Protection of Children) Act 2015 is one such act that deals with the investigation, trial and rehabilitation of the juvenile delinquents. This being said, one of the most important issue that comes during the whole process is regarding bail to a juvenile. This issue becomes important as the on one side an offender needs to be detained in order to protect the society on the other hand considering the tender age of a child it cannot be denied that custody may do more harm than good. Keeping in mind this paradox, this article discussed below various aspects of the provisions regarding bail to the Juveniles and the juxtaposition of High Courts in case of Anticipatory Bail.

Keywords - Juvenile Delinquent, The Juvenile justice (Care and Protection of Children) Act 2015, Bail, Custody, Anticipatory Bail

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INTRODUCTION

Government and the general public have a responsibility to raise children who will be citizens of future in the correct way. The Apex Court, along with various High Courts, has been instrumental in the development and upkeep of India's juvenile justice system. It is critical to examine the judicial approach's trend and goal as evident in the many decisions passed down by the Honourable Supreme Court and High Courts on "juvenile delinquency." The juvenile criminal justice system remains an essential component of Indian legislation, and the court system has rendered it apparent that it lays great emphasis on the right application of the law to the benefit of juveniles. Numerous courts in India periodically set numerous judicial trends involving provisions of bail to juvenile delinquent. This aspect through various other legal angles have been discussed hereinafter. The researcher has attempted to include all conceivable aspects of aforesaid topic in this paper.

According to Section 12 of the Juvenile Justice Act of 2015, all juveniles and children who have been arrested and detained for an offence are eligible for bail. In any case, children who break the law won't be released if there is good reason to believe that doing so will put them in contact with serious criminals, put them in danger physically or morally, or that doing so

will undermine the goal of justice.¹ The Act declared that "Bail and not jail is the rule" and instructed the Board and the court to exercise discretion if the young person presented before them is granted bail. The judicial pattern around bail for juveniles can be analyzed in the cases listed below.

The honourable Supreme Court in landmark case^{2,3} opined that the Juvenile Justice (Care & Protection of Children) Act of 2000 has been acknowledged by the Court as a helpful law for juvenile assistance, and it must be understood in that context. In this regard, if Section 12 requires that a juvenile be released on bond, despite the fact that they are clearly juveniles, the requirements of said Section and the objective of the Act shall be given full attention by the Court and by any court currently dealing with such situations. Bail must be granted to a juvenile, with the exception of the restrictions mentioned in section 12 itself, regardless of anything in the Code of Criminal Procedure of 1973 or any other law now in effect that applies to the NDPS Act. In accordance with Section 12, a criminal will only be released on probation if his parole is reinstated or he

¹ section12(1) JJ act, 2015

² *Rajinder Chandra v. State of Chhattisgarh and Anr.*, MANU/SC/0051/2002.

³ *Pratap Singh vs. State of Jharkhand and Anr.* JT 2005 (2) 271.

completely fails the course of justice. Most definitely, the magnitude of the offence does not fall under the guidelines of the aforementioned Act. The passage of the juvenile justice act would not have been appropriate had the Criminal Procedure Code's rules permitted the juvenile's motion for bail to be granted. The Cr.P.C. of 1973 or any other regulation may not prevent the juvenile from being released on bail, according to the terms of Article 12 of the Act.

Regardless of the suspected crime, the accused juvenile must normally be freed on bail in accordance with the provisions of section 12, unless it is reasonable to claim that his release would put him in danger from the perpetrators, harass him, or violate his or her legal intent. The provision of Juvenile Justice Act and its clauses expressly state that special parole, trial, and punishment for delinquent offenders are necessary for exceptional proceedings. The Code of Criminal Procedure forbids the prosecution of a troubled young adult. The delinquent juvenile must be managed as curative and reforming rather than punishing in compliance with the principles of the Act. No delinquent adolescent shall be sentenced to death or life imprisonment in default of the payment of the fine, according to section 22 of the Act. Delinquent children have attained an extraordinary class status as a result of the provisions of the Act that need to be changed and to prevent the kids from turning into violent criminals.

According to aforesaid provision of the Act, a person is entitled to bond regardless of whether or how serious a crime they have committed has been. The part also explains the rationale behind rejecting a young criminal for bail. Additionally, all supporting documents must be documented to show that bail is rejected in any of the situations mentioned in the section. Every time a situation arises that is associated with a delinquent juvenile, everyone involved should fully apply the Juvenile Justice Act.

Provision of Bail during pendency of inquiry

According to Section 9(4) of the JJ Act, 2015, a person may be freed on bail in circumstances where maintaining a protective stay is not necessary. The next important issue that needs to be taken into account is law under sections 437 or 439 of the Cr.P.C.1973 or Section 12 of the JJ Act 2015 will be applied in such circumstances. The answer to this question will vary depending on the specifics of each situation. When a person's appearance makes them look to be a child at first glance and their claim of juvenility appears to be well-founded, section 12 of the JJ Act, 2015 may be invoked to grant them a larger bail amount.

Another point that needs to be made in this instance is that, regardless of the type of offence, the bail application must be evaluated in light of the terms of section 12 of the JJ Act, 2015. The honorable High

Court of Madhya Pradesh in a landmark case⁴ stated that the sole component of the JJ Act, 2015 that applies to bail for juveniles is section 12. However, it is important to keep in mind that this bail is merely a temporary arrangement for putting the person in the custody of his or her parents or guardians while the investigation into the accusation of juvenility is ongoing. In other words, it could only be a temporary solution until the investigation is over. Otherwise, if the person does not appear to be a child at first glance and the juvenility issue does not, at first glance, satisfy the court, then in such situations, the person's bail may be taken into consideration in light of the provisions of sections 437 or 439 of the Criminal Procedure Code.

Custody during pendency regarding adjudication of juvenility

Another important issue that needs attention is regarding the custody of the juvenile delinquent while the inquiry regarding the determination of juvenility is pending. The provision under section 9(4) of the JJ Act, 2015 states that if a person under this provision is required to be held in protective custody while the person's claim of being a child is investigated, the person may be housed in a place of safety in the interim. As a result, this clause affords the Court or Magistrate the power to place the person in a safe place during the interim time. As a result, only for protective stay may a person be sent to a place of safety in order to address genuine cases that inspire prima facie satisfaction of the Court. In the remaining circumstances, while recording the reasons for the same, the Court may sentence the individual to prison for protective custody.

Anticipatory Bail

It is made clear that under the Juvenile Justice Act, there is no express provision which enables a juvenile to move an application for anticipatory bail, according to the passage of the juvenile justice act of 2015. Different High Courts have expressed differing opinions on this matter because there is no specific provision for it. An important question was raised in a case⁵ that whether or not a request for anticipatory bail in the context of a juvenile delinquent with the law could be maintained before the High Court or Court of Sessions. The court determined that Section 12(1) of the Act governs the situations in which a child in conflict with the law is apprehended, detained, or brought before the Board. However, this Provision does not address the circumstances that must exist before apprehending a kid who has broken the law. Additionally, it was decided that the restrictions in Section 12(1) of the Act do not expressly or implicitly exclude the High Court or Court of Session from exercising their authority under Section 438 of the Code. It cannot be

⁴ *Y v. State of M.P*, MCrC No. 54552 of 2019

⁵ *Mr. X v. State of Kerala* 2018 (3) R.C.R (Criminal) 327

argued that his application under Section 438 of the Code is unmaintainable simply because the Act only calls for the apprehension of a kid in conflict with the law rather than his arrest.

Although there was no provision under the Cr.P.C. at that time for anticipatory bail in the state of Uttar Pradesh, it was noted in *KM Hema Mishra*⁶ that the High Court had the authority to award anticipatory bail in the right circumstances within its writ jurisdiction. Similar to this, the Punjab and Haryana High Court ruled in *Krishan Kumar Case*⁷ that a request for anticipatory bail is valid.

The Madhya Pradesh High Court ruled in a case that a minor is not permitted to file an application under section 438 of the Criminal Procedure Code. The court further noted that the “powers conferred by the Criminal Procedure Code” of 1973 with respect to juvenile offenders could only be exercised by a juvenile justice board that has been legally established, according to the “conjoint reading of sections 6 and 12 of the juvenile justice act.” Only when an appeal, revision, or other proceeding is brought before the High Court or Court of Sessions may they exercise the powers granted to the board, with the exception of as provided in sections 438 and 439 of the CrPC.⁸ It was held that, a juvenile’s request for anticipatory bail under section 438 of the Criminal Procedure Code is inadmissible because the Juvenile Justice Act of 2015 only gave the police the authority to detain the minor rather than “arrest” him.

CONCLUSION

The Honorable Supreme Court, time and again at numerous occasions have opined that no person can be detained in jail for uncertain period, as in case where the detention is unauthorized then an infeasible right of bail arises to the detenu irrespective of the nature of offence committed by him. It is also true and undeniable that the system of arrest and detention is necessary keeping in mind the law and order situation, for investigation purpose, for ensuring that people who are threat to society are restrained temporarily unless the justice system states otherwise. Despite all these necessities, this situation is different when it comes to the case of juvenile. The fact that these are young children who are in conflict with the law and the fact that keeping them in custody may cause them more injury as they would be directly exposed to the hardened criminals, would do more harm than good. Hence, irrespective of the nature of offence bail to a juvenile is a mandate according to the provisions of the act. However in case the juvenility of a person is not established, but the same has been claimed, then the provision regarding the custody

during pendency have been made clear by the courts at several occasions. The opinion regarding the validity of the anticipatory bail is not yet very clear as the different High Courts have split opinions about it, and the Act itself is silent in this regard. However, the majority opinion is that the anticipatory bail in case of Juveniles cannot be entertained as it is to be granted in case of apprehension of arrest in a non-bailable offence. Contrary to this, in cases of Juveniles bail is a mandate. Thus, JJ Act being a beneficiary legislation deviates from the general principles given in Cr.P.C. and makes bail a mandate for juveniles in all cases.

Corresponding Author

Ms. Anu Singhai*

Research Scholar, School of Legal Studies, L.N.C.T. University, Bhopal

⁶ *KM Hema Mishra v. State Of Uttar Pradesh and Ors* , 2014(1) CCR 385.

⁷ *Krishan Kumar v. State of Haryana CRM-M-19907-2020*

⁸ *XXX vs State of Madhya Pradesh*, MCRC NO 4183 OF 2014