

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Crl R No. 15/2021

CrlM No. 1019/2021

Reserved on: **12.04.2022**

Pronounced on: **28.04.2022**

Zubair Ahmad Teli & Anr.

...Petitioner(s)

Through: Mr. Tariq M. Shah, Advocate.

Vs.

Union Territory of J&K & Anr.

...Respondent(s)

Through: Ms. Aasifa Padroo, AAG.

Mr. M.Iqbal Bhat, Advocate.

CORAM: HON'BLE MR. JUSTICE M. A. CHOWDHARY, JUDGE

JUDGMENT

1. Petitioners, through the medium of this revision petition moved in terms of the *Section 102 of The Juvenile Justice (Care and Protection of Children) Act, 2015*, seek setting aside the judgment dated **07.09.2021** (for short 'impugned judgment') passed by the court of learned Principal Sessions Judge, Kulgam (hereinafter called 'appellate court') in case **File No. 10/A** titled '*Abdul Khaliq Sheikh vs. Zubair Ahmad Teli & Anr.*', whereby the order dated **01.06.2021** passed by the Juvenile Justice Board, Kulgam, granting interim bail to the petitioners under Section 12 of Juvenile Justice Act, 2015 (supra), was set aside.
2. The impugned judgment has been assailed on the following grounds:
 - I) That, the impugned order has been passed in gross ignorance and misinterpretation of law laid down under the Juvenile Justice (Care and Protection of Children) Act,

2015 read with its rules as the court by passing the impugned order has re-wrote the statute thereby supplying Causus Omissus as the statute governing the said matter laid in its **Section 12** is unambiguous and clear, as such, the order impugned has defeated the intention of the legislature and produced a whole unreasonable result thereby violating the rights of the petitioners.

- II) That, neither **clause (e) of Sub Section 3 of Section 8** nor **Section 15** nor **Section 18 (3)** of The Juvenile Justice (Care and Protection of Children) Act, 2015, provides and indicates that the law laid down in the said provisions is to be followed for consideration of bail application under **Section 12** of the Act in a case of juvenile delinquent irrespective of its age as the law laid down under the said provisions clearly indicates that the preliminary assessment required to be made is only a guiding factor for the purposes of passing relevant orders by the Board under **Section 18(3)**, which in terms is only to enable the Board to pass an order that there is need for trial of a child above the age of 16 years as an adult before the Children court.
- III) That, the impugned order has been passed without taking into consideration that not only the Juvenile Justice Board has followed the procedure established under law by granting bail in favour of the juvenile delinquents but has handed them in custody of the responsible persons against an undertaking after proper enquiry and application of mind.

IV) That, the order impugned is itself bad in law, as the court below has not taken into consideration that petitioner No.1 on the date of alleged offence was below the age of 16 years, accordingly, has ignored and mis-appreciated the fact that as per the law there is no need to conduct the preliminary assessment for grant of bail in his favour, as such, to this extent the order impugned on this ground is not sustainable.

V) That, the order impugned has been passed without taking into consideration the guiding factor laid under **Rules 10(2) and 20(8) of the Juvenile Justice Rules, 2016**, which clearly establishes that there is no need of any preliminary assessment or to seek any social investigation report from the Probation Officer or Child Welfare Officer or Social Worker concerned, in case of release of juvenile pending enquiry by the Juvenile Justice Board.

VI) That, **Section 12** of the Act, 2015 has to be interpreted independently irrespective of any other provision laid under the Act and the same has been clearly interpreted by the higher courts in their various judgments, as such, on this ground also the order impugned is bad in law.

3. Heard, perused the record and considered.

4. Learned counsel for the petitioners has vehemently argued that the court below has misdirected itself by holding that the social investigation report as required under **Section 15** of the Juvenile Justice Act, is required before consideration of bail in favour of the juvenile delinquent. He has further argued that without clear provisions

contained under the Act (supra), the court below has imported the requirement of having the social investigation report as required under **Section 15** for consideration of bail plea as well having recourse to the interpretation of the aim and object of the Act, though there was no such requirement in terms of clear, unambiguous and explicit provisions of the Act. It has been further argued that the Juvenile Justice Board had granted bail in favour of the petitioners having regard to their age, as was required under **Section 12** of the Act which is self-contained provision regarding bail and this order has been wrongly interfered by the court below and the bail granted to the petitioner-juvenile was cancelled. He further argued that the court below by holding that non-compliance of **Section 15** of the Act, which deals with obtaining of social investigation report at the time of consideration of bail, has been done by the court below to set aside the bail order granted in favour of the petitioners on wrong notion with the help of interpretation ignoring the plain meaning of words assigned in different provisions of the Act. He has further argued that applying the doctrine of “*Reading down*” and “*legal fiction*” to gather the intention of legislature from the object of the statute to **Section 15** of the Act viz-a-viz bail in a heinous offence, was misplaced by the court below ignoring the right of the petitioners for grant of bail as provided under the Act, in unambiguous terms. It was prayed to set aside the order impugned and restore the order passed by the Juvenile Justice Board, whereby the bail had been granted to both the petitioners.

5. Learned counsel for the respondent No.2 on the other hand vehemently argued, supporting the judgment passed by the court below, that the Juvenile Justice Board was under obligation to obtain the social

investigation report from the concerned Probation officer before consideration of bail, whereas the Board without obtaining the report had granted bail to the petitioners in violation of the provisions of **Section 15** of the Act with regard to physical and mental capacity of the petitioners to commit the heinous offence before grant of bail to them. Learned counsel further submitted that while considering the bail application of the petitioners, the respondents/complainant have not been given reasonable opportunity to lodge their protest or to contest the bail application resulting into miscarriage of justice and that the Juvenile Justice Board had passed the perverse order contrary to the law prescribed for grant of bail under the Act, 2015.

6. Learned counsel for the respondents further argued that it is an admitted case that one of the petitioners was above the age of 16 years and having regard to the alleged offence committed by them being heinous it was incumbent upon the Board to consider the bail application moved by the petitioners in the light of **Section 15** of the Act, which provided to obtain social investigation report through Probation Officer/Child Welfare Officer/Social worker, as such, the Board had wrongly granted bail to the petitioners and the court below exercising appellate powers has been pleased to set aside the order of the Board wherein the justice has been miscarried.
7. Learned counsel for respondents even challenged the order of the Board on the ground that the custody of the petitioners-juveniles had been assigned by the Board to one Farooq Ahmad Pandith –paternal uncle of the petitioners who was not even the ‘fit person’ as he himself was involved in the criminal case registered vide FIR No.150/2014 at Police Station, Kulgam for the commission of offences punishable under

Sections 457, 380, 201 RPC. Learned counsel further argued that the appellate court interpreting the expression “ends of justice” as justice for all the parties involved in the dispute which also means serving the interests of general public as well, rightly cancelled the bail granted by Juvenile Justice Board. Finally, it was prayed to uphold the impugned order and dismiss the instant Revision Petition filed by the petitioners.

8. The factual background of the case is that on 09.03.2021 one Abdul Khaliq Sheikh reported at police station, Behibagh that his son Wakil Ahmad Sheikh had gone out from his house on 06.03.2021 to Alamgung and was brought in the injured condition as he was found lying on the road and his motorcycle was also lying aside.

- a) That, his son was shifted to Yaripora Hospital for treatment wherefrom he was referred to Soura, Hospital, Srinagar.
- b) That, his son had been attacked on the head with some dangerous thing by some unknown persons.

On receipt of this report, case vide FIR No.10/2021 was registered for the commission of offences punishable under Sections 307, 341 IPC. During the investigation the injured succumbed to his injuries at the hospital and the police, during interrogation of the juveniles, claimed that they have disclosed to have hit Wakil Ahmad Sheikh with a bat on his head and the juveniles were arrested in the case and remanded to Juvenile Home. Petitioners-juveniles moved an application for grant of bail before the Juvenile Justice Board, Kulgam vide order dated 01.06.2021, the Board while holding that there being no dispute about juvenility of the petitioners, being below the age of 18 years on the date of alleged offence and having regard to **Section 12** of the Act, 2015, granted bail to both the juveniles and their custody was given to their

paternal aunt Sarwa Begum and her husband Farooq Ahmad Pandith residents of Harnag, Anantnag, so that the juveniles do not get exposed to physical danger while living with their father who resides in the same village where the complainant resides and were granted interim bail till 05.06.2021.

9. Aggrieved of this order, the complainant Abdul Khaliq Sheikh, father of deceased, filed an appeal before the court of learned Principal Sessions Judge, Kulgam, who vide impugned order set aside the order passed by the Juvenile Justice Board and further ordered the juveniles be taken into custody.
10. **Section 12** of the Juvenile Justice Act, 2015 deals with bail of the juveniles. For facility of convenience the provision of **Section 12** of the Act, 2015 is reproduced as under:-

“12. Bail to a person who is apparently a child alleged to be in conflict with law.

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there 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 persons 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 subsection (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.”

11. This Section authorizes the Juvenile Justice Board to consider a bail plea, notwithstanding anything contained in the **Code of Criminal Procedure, 1973** or in any other law for the time being in force, and to release a juvenile on bail with or without surety or to place under the supervision of Probation Officer or under the care of any fit person.

This provision of bail seems to be the rule with only exceptions 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 physiological danger or his release would defeat the ends of justice, and in that case the Board has to record the reasons for denying the bail and the circumstances that led to such a decision.

12. On perusal of the said provision of bail, it is amply reflected that the grant of bail is a rule and its denial is an exception, and the exceptions are categorized on three counts namely :

- i) Release is likely to bring that person into association with any known criminal;
- ii) Expose the said person to moral, physical or psychological danger;

iii) His release would defeat the ends of justice.

13. It is borne from the pleadings that the offence alleged to have been committed by the petitioners-juveniles is a very heinous offence, who have allegedly committed the murder of the son of respondent No.2. The court below, while discussing **Section 8** of the Act, 2015 (supra) with regard to functions and responsibilities of the Board, observed that the legislature intended that the denial or grant of bail to the juveniles should be based on the overall appreciation of conditions of the person who is apparently a child, alleged to have committed a non-bailable offence, and this appreciation has to be based on social investigation done by the Probation Officer or some Child Welfare Officer or a Social Worker. The idea underlying for obtaining social investigation report is meant to ensure the safety, security and reform of the said child, than to punish him, which of-course is the purpose and purport of the Juvenile Justice Act.

14. The appellate court has held that this exercise, prescribed under the Act for grant of bail to the child, is mandatory in nature, otherwise the whole objective to be achieved by **Section 12** of the Act for grant of bail will lose significance. The court below held that the Juvenile Justice Board, without any such exercise had granted bail, as such, the Board was not having any material before it with regard to the background of the juveniles and the person to be fit for their custody, and that in such situation, release of the petitioners-juveniles resulted in defeating the ends of justice.

15. The appellate court has concluded that the expression 'ends of justice' means justice to all the parties involved in the dispute including the interests of general public as well. While appreciating this expression

the court has gone to observe the merits of the case, that is, young age the deceased who was the father of two minor kids including an infant and the extreme form of brutality subjected to him by the petitioners resulting in severe injuries on his body to which he finally succumbed at SKIMS, Srinagar. The court has further observed that the Juvenile Board was expected to have considered various aspects of the case like, as how and under what circumstances the alleged killing of the deceased happened; what was the modus operandi to commit the alleged offence; what were the circumstances which led to commission of such a heinous offence by the accused. That, then the Juvenile Board should have also considered this paramount aspect as who is the victim, what was his age, what is the situation of victim's family and how this gruesome murder is being taken in the vicinity of the victim's family? What will be the effect and impact of grant of bail to the juveniles on the victim's family and its adjoining society in particular and how all these factors are going to affect the person to be bailed out on the basis of juvenility. The appellate court further observed, after making these comparative analysis of all aspects, the Juvenile Justice Board, based on the detailed report of Probation Officer, should have reached to a conclusion as to how ends of justice can be met viz-a-viz grant or refusal of bail to the juvenile.

16. For proper appreciation of the matter in question, **Section 15** of the Act is required to be extracted as under:

“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:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.”

17. On a keen perusal of the provision contained under **Section 15** of the Act, it appears that in a case of heinous offence (punishable with more than seven years imprisonment), alleged to have committed by a child who had completed or is above the age of 16 years, the Juvenile Justice Board has to conduct preliminary assessment with regard to his mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstance in which he allegedly committed the offence, before passing the order in accordance with the provisions of **sub-section (3) of Section 18** of the Act, 2015 (supra), and that the Board may take assistance of experienced psychologists or psycho-social workers or other experts.

18. The contention of the petitioners-juveniles before the appellate court was that **Section 15** of the Act has been envisaged for deciding as to whether the trial of a juvenile, who is of 16 years age or above and found to be mentally and physically mature to commit a crime, by a Juvenile Justice Board or by the Children court, and this provision cannot be read with the provisions of **Section 12** of the Act with regard to consideration of bail without making any reference to **Section 15**. The court below held that the object and reason was to treat differently

the children with the age group of 16 years and above for the purpose of trial, and how-come the provision of bail be the same as that of a juvenile below 16 years of age.

19. As noticed earlier, on perusal of the provisions regarding bail contained in Section 12 of the Juvenile Justice Act, 2015, it is amply reflected that grant of bail by the Juvenile Justice Board is a rule and denial thereof is an exception. It is not out of place to mention here that the exceptions based on the grounds of denial of bail are also meant to ensure the safety, security and reform of the said child, than to punish him, which is admittedly the purpose and purport of the Juvenile Justice Act.

20. The appellate court's observation that the expression 'ends of justice' means justice to all the parties involved in the dispute and to serve the interests of general public as well, appears that the court has laboured under a misconception. The Juvenile Justice Act is a special legislation and had been enacted by the Legislature to ensure the rights of the children in conflict with law, as such, the baseline conceived by the appellate court to cancel the bail, on the point of 'ends of justice' of the parties, general public and the victim, is wholly misplaced. The provision of bail contained under Section 12 of the J.J. Act, cannot be stretched to deny bail, by borrowing irrelevant principles and construction of statute in such a way that the very aim and object of the Act is defeated.

21. The appellate court has also exceeded its jurisdiction to hold that enquiry under Section 15 of the J.J. Act should have been conducted by the Juvenile Justice Board, before consideration and grant of bail. It is an admitted case that only one of the petitioners/accused was above 16 years of age, therefore, enquiry, if any, as envisaged under Section 15 of

the J.J.Act was required in his case only and not in case of the other petitioner/accused. This enquiry under Section 15 of the Act is to be conducted in context of the matter of the trial by the Juvenile Justice Board or the Children's Court, in case of heinous and serious offences.

22.Applying the doctrine of "reading down" to gather the intention of legislators from the object of the statute and also to apply legal fiction to Section 15 of the Act viz-a-viz bail in the case involving heinous offence by the appellate court to deny the bail to the juveniles, in the considered opinion of this Court is misinterpretation of a beneficial legislation for securing the safety and welfare of the children in conflict with law.

23.It is astonishing to note that even if the compliance of the provisions of Section 15 regarding 'social investigation report', as applied by the appellate court, the bail granted by the J.J.Board to petitioner No.1/accused No.1, who was below 16 years of age, is patently wrong as in his case such enquiry was not required at all. Appellate court has thus, patently misdirected itself to cancel the bail to the juvenile, below the age of 16 years.

24.Other ground was that the custody of the petitioners had been granted by the J.J.Board to such persons, stating them to be 'fit persons' in the order, without conducting any enquiry, with regard to their fitness. The custody by the J.J.Board, of the petitioners, instead of giving them to their parents as they lived in the same village as that of the deceased and the complainant party, had been given to the paternal aunt of the children and her husband, who reside in a different village. It was objected that the custody of the children had been given to the morally depraved person against whom a case vide FIR No. 150/2014 was

registered at Police Station Kulgam, under Sections 457, 380, 201 RPC. Learned counsel for the petitioners has produced the judgment dated 03.11.2018, whereby the court of learned Special Mobile Magistrate Anantnag, had acquitted the said accused, who has given the custody of the juveniles in the aforesaid case, therefore, it cannot be said that the persons to whom the custody of the complainant was given and who were close relatives of the juveniles, were not fit persons to be given their custody.

25. The appellate court had relied upon the law laid down in a case titled **Radhika(juvenile) Vs. State of U.P. D.O.D. 05.08.2019**, wherein it has been held that the ‘social investigation report’, as required under Section 15 of the J.J. Act, was imperative before consideration of bail.
26. I, respectfully beg to differ with the observations and law laid down in the **Radhika’s case** by the learned Single Judge of Hon’ble Allahabad High Court, as in my considered opinion and for the afore-stated reasons, there is no requirement of such report while considering the bail, as that was never intended by the legislature. Even another Bench of Single Judge of Allahabad High Court in a case **Jiya-uddin(minor) Thru. His... Vs. State of U.P & Anr. (Cr.Rev. No. 1234/2018)**, while discussing **Radhika’s case**, held that there was no such requirement to consider social investigation report before consideration of bail. Para 27 of the said judgment is relevant to be quoted here-in-under:

“27. Keeping the aforesaid in mind, however it is made clear that the aforesaid factors that are to be required to be kept in mind would be completely different from the preliminary assessment required to be made under Section 15 of the Act. The factors regarding gravity of charge and circumstances surrounding a heinous offence is only for the purpose of understanding whether release of such a juvenile would defeat the ends of justice. For consideration of a bail application under Section 12 of the

Act, a complete preliminary assessment under Section 15 of the Act is neither required to be done nor considered.”

27. Similar views have been taken by other High Courts. Hon’ble Orrisa High Court in case ‘**Nari @ Narendra Barik Vs. State of Odisha (CRLA No.60/2021)**’, Hon’ble Patna High Court in case ‘**Lalu Kumar @ Lalu Babu @ Lallu Vs. State of Bihar, Criminal Appeal (SJ) No. 2117/2019**’; Hon’ble High Court of Madhya Pradesh in case ‘**Prahlad Singh Parmar Vs. State of MP & Ors. (MCRC-3085-2021)**’; Hon’ble Punjab & Haryana High Court in case titled ‘**Harsh Vs. State of Punjab (CRM-M- 47646-2021)**’; and Hon’ble Delhi High Court in case ‘**Ccl A Vs. State (NCT) of Delhi (Bail Application No. 2510/2020)**’, have taken the same view.

28. The appellate court, insisting on ‘social investigation report’, as envisaged under Section 15 of the J.J. Act has discussed the gravity and seriousness of the offence to cancel the bail. The nature of the offence is not one of the factor on which bail may be granted or refused to a juvenile in conflict with law, therefore, bail cannot be denied to a juvenile in conflict with law on the ground of gravity of offence involved. Section 12 of the J.J. Act requires bail to be mandatorily granted to the juveniles in conflict with law and grant of bail to such a person is a rule and denial is an exception. Bail can only be denied to a juvenile in conflict with law on the ground that it is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

29. The primary assessment of a child in conflict with law is for further purpose of trial i.e., as to whether he should be tried by the Juvenile

Justice Board or by the Children's Court. It will not curtail the power of the Juvenile Justice Board to consider the application filed under Section 12 of the J.J.Act, 2015. The Board, however, even after deciding the bail application under Section 12 of the J.J.Act, is under obligation to pass necessary orders under Sections 14, 15 and 18 of the J.J.Act, 2015. Therefore, the contention raised by the respondents and accepted by the appellate court that the Juvenile Justice Board should have passed the assessment order prior to passing of order under Section 12 of the J.J.Act, is not sustainable and is liable to be rejected.

30. So far as the principles of 'reading down' the construction of statute, to which much stress has been laid by the appellate court is concerned, the same, in my considered opinion, is not tenable in view of the fact that the provisions of the Juvenile Justice Act are clear and unambiguous and require no such construction. Hon'ble Apex Court in the case titled **M/S Hiralal Ratanlal Vs. STO, reported as AIR 1973 SC 1034** observed as under:-

“In construing a statutory provision the first and foremost rule of construction is the literally construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear.”

31. It is a well settled principle of law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. When the language of the statute is plain and unambiguous, then court must give effect to the words used in the statute and it would not be open to the courts to adopt

hypothetical construction on the grounds that such construction is more consistent with the alleged object and policy of the Act.

32. The courts must avoid the danger of determination of meaning of provision based on their own preconceived notion of ideological structure or scheme into which the provision to be interpreted is somewhat fitted. The courts are not entitled to usurp the legislative functions under the disguise of interpretation.

33. On a close scrutiny of the provisions contained in Section 12 of the J.J.Act with regard to bail and Section 15 of the J.J.Act with regard to assessment report in the cases of heinous offences having regard to the age of the juveniles more than 16 years, both the provisions seem to be conveying in clear terms the intent of the legislature, where words are clear, there being no obscurity or ambiguity and the intent of the legislature is clearly conveyed. There is no scope for the courts to innovate or take upon themselves the task of amending or altering the statutory provisions. In such a situation, the judges should not proclaim that they are playing the role of law-makers merely for exhibition of judicial valor. The thin-line which separates adjudication from legislation should not be crossed or erased.

34. Having regard to the afore-stated reasons, this Court is of considered opinion that the juveniles in conflict with law, are entitled to be released on bail, as a rule, in terms of **Section 12** of the **J.J.Act**, notwithstanding the gravity of the offence, the preliminary assessment as envisaged in terms of **Section 15** of the Act and the difference of age below or above 16 years. The bail can be denied only for the exceptions provided under **Section 12** only that too having regard to the interest of child in conflict with law.

35. For the foregoing reasons and observations made hereinabove, the impugned order, whereby the order granting bail in favour of the petitioners/juveniles by the Juvenile Justice Board has been cancelled by the appellate court, is not sustainable. The impugned order, is, thus, struck down, as a result whereof the order passed by the Juvenile Justice Board Kulgam, granting bail to the petitioners/juveniles, is ordered to be restored.

36. Criminal Revision Petition along-with pending interim application(s), if any, is **disposed of** accordingly.

(M. A. CHOWDHARY)
JUDGE

Srinagar
28.04.2022
Muzammil. Q

Whether the order is reportable: Yes / No