

(2025) 12 GAU CK 1699
In the Gauhati High Court
Case No : CrI.A. Of 185 Of 2022

Abdul Kayum Barbhuiya

APPELLANT

Vs

State Of Assam And Anr

RESPONDENT

Date of Decision : 04-12-2025

Acts Referred:

Juvenile Justice Act, 2015 — Section 40, 46, 47, 49, 101(5)
Indian Penal Code, 1860 — Section 34, 201, 302, 364(A)
Code of Criminal Procedure, 1973 — Section 428

Citation : (2025) 12 GAU CK 1699

Hon'ble Judges : Sanjeev Kumar Sharma, J

Bench : Single Bench

Advocate : A M Barbhuiya, S R Mazarbhuiya, A Begum, A Hai, K A Mazumder

Final Decision : Disposed Of

Judgement

Sanjeev Kumar Sharma, J

1. Heard Mr. A.M Barbhuiya, learned counsel for the appellant as well as Mr. K.A. Mazumder, learned counsel for the respondent no.2. Also heard Ms. S. Bora, learned Additional Public Prosecutor for the State of Assam.

2. This appeal under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 is preferred against the judgment and order dated 06.07.2022, passed by the learned Sessions Judge, Hailakandi in Sessions (Child) Case No. 83/2019, convicting and sentencing the appellant to undergo 7 (seven) years stay in a Corrective Home under Sections 364(A)/302/201/34 IPC.

3. It is submitted that the only relief sought for by the appellant, at this stage, is that the period of detention undergone by the appellant prior to the passing of the impugned judgment and sentence should be set off as no such order is available in the impugned judgment.

4. On the other hand, learned counsel appearing for the informant submits that the place of safety where the appellant had stayed prior to the passing of the

judgment is not the same as the observation home/correction home where he has been placed after the passing of the judgment.

5. It may be stated that the appellant was initially placed in a "place of safety" on 19.12.2019 and after the passing of the impugned judgment dated 06.07.2022, he was transferred to an "Observation Home" and has been staying there till date. In case set off is allowed, the term of detention of the appellant will end on 19.12.2026.

6. For the purposes of deciding the issue at hand, the following provisions of the Juvenile Justice Act (hereinafter J.J. Act) require consideration :

Section 2(40) : "Observation home" means an observation home established and maintained in every district or group of districts by a State Government, either by itself, or through a voluntary or non-governmental organization, and is registered as such, for the purposes specified in sub-section (1) of section 47;

Section 47 : Observation homes.—(1) The State Government shall establish and maintain in every district or a group of districts, either by itself, or through voluntary or non-governmental organizations, observation homes, which shall be registered under section 41 of this Act, for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under this Act (2) Where the State Government is of the opinion that any registered institution other than a home established or maintained under sub-section (1), is fit for the temporary reception of such child alleged to be in conflict with law during the pendency of any inquiry under this Act, it may register such institution as an observation home for the purposes of this Act.

(3) The State Government may, by rules made under this Act, provide for the management and monitoring of observation homes, including the standards and various types of services to be provided by them for rehabilitation and social integration of a child alleged to be in conflict with law and the circumstances under which, and the manner in which, the registration of an observation home may be granted or withdrawn.

(4) Every child alleged to be in conflict with law who is not placed under the charge of parent or guardian and is sent to an observation home shall be segregated according to the child's age and gender, after giving due consideration to physical and mental status of the child and degree of the offence committed.

Section 2(46) : "place of safety" means any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, 1[***] to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board or the Children's Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order

Section 49 : Place of safety — (1) The State Government shall set-up atleast one

place of safety in a State registered under section 41, so as to place a person above the age of eighteen years or child in conflict with law, who is between the age of sixteen to eighteen years and is accused of or convicted for committing a heinous offence.

(2) Every place of safety shall have separate arrangement and facilities for stay of such children or persons during the process of inquiry and children or persons convicted of committing an offence.

(3) The State Government may, by rules, prescribe the types of places that can be designated as place of safety under sub-section (1) and the facilities and services that may be provided therein.

7. A bare perusal of Sub-Section (1) of Section 49 relating to place of safety would reveal that it is a place where a person above the age of 18 years or a child in conflict with law between the ages 16 to 18 years and is accused of or convicted for committing an heinous offence is to be kept, thereby, indicating that it is a place of confinement and a CCL placed in a place of safety, therefore, it is not liberty to go out of that place of safety of his own accord.

8. As far as observation home is concerned, Sub Section 4 of Section 47 would indicate the same in as much as it provides that a child alleged to be in conflict with law, who is not placed under the charge of a parent or guardian, and is sent to an observation home, shall be segregated according to the child's, age, gender, etc.

9. It is not in dispute that the inmates of an observation home are not free to go out of the said observation home of their own accord and are effectively under confinement, although the rigours of such confinement are much less than in a normal jail. Essentially, therefore, there is no substantial difference between a place of safety and an observation home, insofar as the curtailment of the inmates liberty is concerned.

10. As held by the Honourable Supreme Court in *Niranjan Singh, and another Vs. Prabhakar Rajaram Kharote, and others*, reported in 1982 SCC 559 as follows :

"7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in custody for the purpose of Section 439. This word is of elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody

and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.”

11. The aforesaid judgment of the Supreme Court has been quoted in a decision relied upon by the learned counsel for the informant i.e. Mr. Vinay Prakash Singh Vs. Sameer Gehlaut and Ors., 2022 LiveLaw (SC) 974.

12. From the aforesaid determination of the meaning of ‘custody’ by the Apex Court, there appears to be no escape from the conclusion that a person whether he be in an observation home or in a place of safety, as defined under the J.J Act is in custody and therefore, there cannot be any impediment in taking into account the period spent in a place of safety while setting off the period of such confinement from the total quantum of the sentence, although in this case, it is not a sentence in the ordinary sense of the term.

13. In Vinay Prakash Singh (Supra), relied on by the petitioner, the Apex Court was seized of the question, whether the term “same case”, as appearing in Section 428 Cr.PC meant that the pre-trial detention has to be in connection with the same case in which he was convicted and sentenced in order to have the pre-judgment detention period set off from the total quantum of the sentence imposed, which question was answered in the affirmative.

14. In the instant case, there is no dispute that the pre and post judgment detention of the petitioner/appellant was in respect of the same case. Similar was the issue in the case of the Superintendent of Prison & Another Vs. Venkatesan @ Senu @ Srinivasan @ Baskaran @ Radio @ Prakasam relied upon by the learned counsel for the informant. Further, there cannot be any dispute with regard to the applicability of Section 428 Cr.PC to a proceeding under the Act, in as much as, by virtue of Sub Section 2 of Section 4 of the J.J Act, every Bench of the Juvenile Justice Board shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate, or as the case may be, a Judicial Magistrate of the 1st class and a Judicial Magistrate of the 1st class, undoubtedly, has the duty, as well as the power of set off in view of the provisions of Section 428 of Cr.PC.

15. For the aforesaid reasons, the instant appeal is allowed to the limited extent by holding that the period of stay at the place of safety undergone by the appellant shall be set off against the total period of the sentence of 7(seven) years, imposed by the learned Children’s Court.

16. Accordingly, this criminal appeal stands disposed of.