

(2022) 04 MP CK 0080

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 3000 Of 2021

Child In Conflict With Law

APPELLANT

Vs

State Of M.P. & Anr

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 1(4), 1(4)(i), 1(4)(ii) 2(13), 2(14), 8, 8(2), 12, 15, 18 (1)(c), 19, 20, 101, 101(5), 102
Indian Penal Code, 1860 — Section 34, 147, 149, 195A, 302, 307, 336, 396, 506
Arms Act, 1959 — Section 25, 27
Madhya Pradesh Dakaiti Aur Vyapharan Prabhavit Kshetra Adhiniyam, 1981 — Section 11, 13
Code Of Criminal Procedure, 1973 — Section 437, 439, 482

Citation : (2022) 04 MP CK 0080

Hon'ble Judges : Anand Pathak, J

Bench : Single Bench

Advocate : V.D.Sharma, Ramdhar Chaubey, Arun Pateriya

Final Decision : Dismissed

Judgement

Anand Pathak, J

1. The instant criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is being filed, assailing the order dated 29/6/2016 passed in Criminal Appeal No. 328/2016 by Tenth Additional Sessions Judge, Gwalior rejecting appeal of petitioner and affirming the order dated 14/6/2016 passed by Principal Magistrate, Juvenile Justice Board, Gwalior in Case No. 117/2016; whereby, the application of petitioner for grant of bail was rejected.

2. Precisely stated facts of the case are that an FIR dated 14/2/2016 bearing Crime No. 95/2016 for offence under Section 147, 149, 302, 396, 307 of IPC, 25/27 of Arms Act and Section 13 of MPDVPK Act was registered by Police Station Gole Ka Mandir against the present petitioner as well as some other accused persons on the basis of allegations that petitioner alongwith other co-

accused persons intercepted the complainant, who was going to attend some programme alongwith two companions Mangal Singh and Shankar Singh (deceased), they were looted by the accused persons. Thereafter, accused opened fire over the complainant party in which Shankar Singh died due to fire arm injury.

3. Since at the time of alleged incident, petitioner was below 18 years of age, therefore, came under the ambit of Juvenile Justice (Care and Protection) Act, 2015 (for short "JJ Act") and under guardianship of father invoked the jurisdiction under Section 12 of the JJ Act for grant of bail by way of application before learned Principal Magistrate, Juvenile Justice Board, Gwalior (for short "JJ Board"), which was dismissed vide order dated 14/6/2016.

4. Meanwhile, an assessment of petitioner was made as per Section 15 of the JJ Act and his mental age was ordered to be tried as adult in the children Court.

5. Being aggrieved by order of JJ Board; whereby, the application under Section 12 of JJ Act was rejected, petitioner preferred an appeal before the 10th Additional Sessions Judge, Gwalior under Section 101 of JJ Act, which was rejected vide order dated 29/6/2016. Against the said order, petitioner preferred revision vide No. 683/2016 before this Court and vide interim order dated 17/8/2016 in an application filed in Criminal Revision, custody of petitioner was given to his father as an interim measure. Since no purpose remained further, therefore, vide order dated 11/1/2017, criminal revision was withdrawn, meaning thereby, petitioner kept enjoying liberty.

6. It further appears from the record that petitioner misused the liberty, therefore, complainant sought cancellation of bail of present petitioner and therefore, petition under Section 482 of Cr.P.C. was preferred by the complainant and vide order dated 26th October, 2017 in M.Cr.C.No. 5717/2017, petition was allowed and earlier order dated 17/8/2016 passed in Criminal Revision No. 683/2016 was recalled and petitioner was ordered for confinement. It appears that thereafter, he could not be apprehended and ultimately on 3/6/2021, he came under custody. Since then, he is suffering confinement.

7. It is the submissions of learned counsel for the petitioner that petitioner at the time of incident was juvenile and was a child in conflict with law as per Section 2 (13) of JJ Act. He had no direct role to play in the commission of crime and his role was confined to snatch the weapon from the complainant. Material prosecution witnesses have been examined and therefore, chance of tampering with evidence/witnesses is remote. His trial is conducted as per provisions of JJ Act, therefore a chance be given to him to reform himself and he undertakes to perform community service as per the provisions of Section 18 (1) (c), 19 and 20 of JJ Act.

8. Petitioner raised the legal question that initially an application under Section 439 of Cr.P.C was preferred by the petitioner before the trial Court and vide order dated 3/6/2021, his application under Section 439 of Cr.P.C. got dismissed.

Thereafter, challenging the said order, he preferred another application under Section 439 of Cr.P.C. before this Court but an objection was raised by counsel for the complainant regarding maintainability of the application. Thereafter, petitioner preferred a Criminal Revision challenging the said order of rejection by way of Criminal Revision under Section 102 of JJ Act vide criminal Revision No. 1709/2021 but again, on the objection of counsel for the complainant, he sought withdrawal of revision with liberty to renew the prayer by way of appropriate proceedings as per law.

9. Later on, an application under Section 439 of Cr.P.C. was preferred taking exception to order dated 3/6/2021 but again counsel for the complainant raised objection that an application under Section 439 of Cr.P.C. would not be maintainable and thereafter an application was preferred for correction and bail application under Section 439 of Cr.P.C. was converted into criminal revision under Section 102 of JJ Act while incorporating the necessary amendments in the body of the application. He raised the point that application under Section 102 of JJ Act is maintainable because scope of Section 101 and 102 of JJ Act is wide enough; wherein, High Court at the first instance also, can take care of any appeal or revision. Therefore, revision is maintainable.

10. Learned counsel for the State opposed the prayer and submits that looking to the nature of allegations and the conduct of petitioner whereby, after getting benefit of bail, CICL got indulged in another case for alleged offence under Section 336, 195-A, 506 and 34 of IPC. Therefore, his revision be dismissed.

11. Learned counsel for the complainant raised the point that in view of the provisions contained in the JJ Act, no revision is maintainable against the order of rejection of bail application under Section 439 of Cr.P.C. because the order impugned has been passed under the JJ Act, 2015, therefore, no such remedy is available to the petitioner. He prayed for dismissed of the revision on the ground of misconduct of petitioner/CICL and submits that his revision be dismissed.

12. Heard learned counsel for the parties at length and perused the documents / charge sheet / case diary.

13. In the present factual set up, following questions are being raised for consideration:-

"A. Whether, an application for bail is maintainable before the High Court under Section 12 of JJ Act for a child in conflict with law, who is sent-up for trial as an adult before the Children's Court ?

B. Whether, an application for bail as in (A) above, is maintainable before the High Court as a proceeding of first instance or only as an appellate or revisional proceeding under Section 102 read with Section 8 of the JJ Act?"

14. Before proceeding with the case, this Court reiterates the Objects of JJ Act:-

"An Act to consolidate and amend the law relating to children alleged and found

to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.”

15. In other words, it’s a beneficial legislation meant to address the problems and predicament of Child in Conflict with Law or (as per Section 2 (13) of JJ Act) or Child in need of Care and Protection (as per Section 2(14) of JJ Act).

16. Section 1(4) of JJ Act gives all overriding effect of this Act over any other law for the time being in force in which Section 1(4)(i) deals about Children in Conflict with Law (CICL) in respect of apprehension, detention, prosecution, penalty, imprisonment, rehabilitation and social reintegration, whereas, Children in need of Care and Protection are dealt with as per Section 1 (4) (ii) which contemplates mechanism in respect of rehabilitation, adoption, reintegration and restoration of such children.

17. For discussion purpose, Section 8 (2) , Section 101 (5) and 102 of JJ Act are relevant for consideration, therefore, they deserve reproduction:-

“8. Powers, functions and responsibilities of the Board.-

(1) xxxxxx xxx

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise.

101. Appeals:-(1) to (4) xxx xxx xxx

(5). Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973.

102. Revision.- The High Court may, at any time, either on its own motion or on an application received in this behalf, call for the record of any proceeding in which any Committee or Board or Children's Court, or Court has passed an order, for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such order in relation thereto as it thinks fit:

Provided that the High Court shall not pass an order under this section prejudicial to any person without giving him a reasonable opportunity of being heard.”

18. Similarly, one has to see the controversy from the vantage point that JJ Act is a beneficial legislation and being so, it attracts fundamental rule of interpretation of statutes that it must be construed or interpreted so as to advance the cause of legislation for the benefit of subject and not to frustrate its intendment. Apex Court in the case of Pratap Singh Vs. State of Jharkhand & Anr.

(2005) 3 SCC 551 has given guidance in following words:-

"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."

19. Considering the Aims / Objects of JJ Act and the position that it is beneficial legislation as well as perusal of Section 8 (2) of JJ Act, it appears that Act contains sufficient leverage to achieve the goal of Juvenile Justice. High Court (and the Children's Court) are given powers of suo moto cognizance also by inserting the Word "or otherwise" as figured in Section 8 (2) of JJ Act. The words "or otherwise" would therefore include the bail plea that is filed before the High Court as a proceeding of first instance, otherwise than as an appeal or a revision from an order of the JJ Board (or the Children's Court) denying bail and the rule of ejusdem generis would not apply in the present case because of the very fact that the rule of ejusdem generis is attracted where a restricted meaning is given to the general word accompanying the specific word, only when intended by the legislature but herein, the word 'otherwise' used by the legislature is having other proceeding apart from appeal or revision, which can also include suo moto cognizance and even deciding the petition / application as a Court of first instance.

20. Considering the rule of ejusdem generis as rule of construction, the Apex Court in the case of State of Bombay and Ors. Vs. Hospital, Mazdoor Sabha, AIR 1960 SC 610 has held as under:-

"(9)It is, however, contended that, in construing the definition, we must adopt the rule of construction noscuntur a sociis. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in "Words and Phrases" (Vol. XIV, p. 207) :

"Associated words take their meaning from one another under the doctrine of noscuntur a sociis, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it;Such doctrine is broader than the maxim Ejusdem Generis." In fact the latter maxim "is only an illustration or specific application of the broader maxim noscuntur a sociis." The argument is that certain essential features or attributes are invariably associated with the words "business and trade" as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition though their normal import

may be much wider. We are not impressed by this argument. It must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear, that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service."

(Emphasis supplied)

21. In the case of *Lila Vati Bai Vs. State of Bombay*, 1957 SCR 721, Supreme Court given guidance in following words:-

"12....The rule of *ejusdem generis* is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes the duty of the courts to give those words their plain and ordinary meaning. In our opinion in the context of the object and mischief of the enactment there is no room for the application of the rule of *ejusdem generis*....."

(emphasis supplied)

22. Recently, Division Bench of Chhattisgarh High Court in the case of *Tejram Nagrachi Juvenile Vs. State of Chhattisgarh through the Station House Officer*, 2019 SCC Online(Chh.) 24 opined that an application for grant of bail under Section 437 Cr.P.C. or 439 of Cr.P.C. would not be maintainable in the case of a juvenile. Similarly, Division Bench of this Court in the case of *Ankesh Gurjar @ Ankit Gurjar Vs. The State of M.P.*, 2021 (1) MPLJ (Cri) 403 also clarified the position that anticipatory bail is not maintainable in the case of a juvenile in view of legislative intent and Section 12 of the JJ Act.

23. Learned Single Judge of High Court of Delhi at New Delhi, in the case of *CCL 'A' Vs. State (NCT of Delhi)*, (Bail Application No. 2510/2020 decided on 19th October, 2020) discussed at length about the true import of relationship between Section 8,12 and 102 of JJ Act.

24. Therefore, it can be infer on the basis of Section 8 (2) and Section 12 of JJ Act that, High Court may entertain a bail plea as if it is a proceeding of first instance. However, it would be considered on the parameters of Section 12 of JJ

Act.

25. Beside, that Section 102 of JJ Act gives revisional power to the High Court and said powers can be exercised at any time even on its own motion also. If it is seen with Section 8 (2) of JJ Act then it appears that even suo moto also, High Court can call for the record of any proceedings and therefore, juvenile need not to necessarily come through JJ Board and appellate Authority to file revision once he availed the remedy before JJ Board and Appellate Authority. Once, an order has been passed rejecting the bail application of juvenile by JJ Board and by appellate Authority and even by High Court under revisional jurisdiction, then another revision by way of repeat bail application can be considered by the High Court under revisional jurisdiction without coming through the hierarchical set up again and again.

26. Same is applicable for a CICL, who is sent up for trial as an adult before the Children's Court.

27. Therefore, in cumulative analysis, even if a revision is preferred by petitioner under Section 102 of the JJ Act, it also gives sufficient powers on its own motion also to call for the record of any proceeding and therefore, contention of the complainant that petitioner /juvenile has no remedy under the JJ Act is misplaced. Revisional powers are sufficiently elaborated in the JJ Act and being special statute and by impact of Section 1(4) of JJ Act, provisions of this Act has overriding effect over other laws, therefore, in the present case even revision before High Court at this stage is also maintainable against the order of rejection of bail application by Children's Court.

28. So far as merit part is concerned, from the nature of allegations and the fact situation it appears that petitioner misused the liberty and he committed another offence subsequent to this case also and his case is now being prosecuted in Children's Court and therefore for the time being petitioner must involve in reparative and reformatory mode and must come out as a better citizen. Therefore, for course correction, petitioner's application for the time being is rejected and liberty is granted to renew the prayer after some time and if possible with some better particulars about his disposition towards reformatory measures during his stay at observation home.

29. Revision petition stands dismissed with liberty as aforesaid.