

(2019) 10 PAT CK 0088

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 1549, 1962, 2117 Of 2019

Lalu Kumar @ Lal Babu And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 01-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 15, 15(3), 39(e), 39(f), 45, 47
Juvenile Justice (Care And Protection Of Children) Model Rules, 2016 — Rule 13, 13(6), 13(7), 13(8)
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 1, 1(4), 2, 2(33), 2(61), 3, 3(xii), 4, 5, 6, 7, 8, 8(2), 8(3), 9, 10, 11, 12, 13, 13(2), 14, 14(1), 14(2), 14(3), 14(4), 14(5), 15, 15(1), 15(2), 17, 18, 18(1), 18(1)(a), 18(1)(b), 18(1)(c), 18(1)(d), 18(1)(e), 18(1)(f), 18(1)(g), (18(2), (18(2)(i), (18(2)(ii), (18(2)(iii), (18(2)(iv), (18(2)(v), 18(3), 19, 19(1), 19(1)(i), 19(1)(ii), 19(3), 19(4), 19(5), 20, 21, 22, 23, 39(2), 94, 101, 101(1), 101(2), 101(3), 101(4), 101(5), 110, 110(1)
Indian Penal Code, 1860 — Section 82, 83, 302
Code Of Criminal Procedure, 1973 — Section 4, 4(2), 5, 223, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 437, 438, 439, 439(1), 439(2)
Code Of Criminal Procedure, 1898 — Section 7A, 29(B), 399, 562
Evidence Act, 1872 — Section 165

Citation : (2019) 10 PAT CK 0088

Hon'ble Judges : Ashwani Kumar Singh, J;Birendra Kumar, J

Bench : Division Bench

Advocate : Bachan Jee Ojha, Daisy Kumari, Usha Kumari, Digvijay Kumar Ojha, Uday Kumar, Zeyaul Hoda, Ajay Kumar Thakur, Ajay Kr Singh, Zeyaul Hoda

Judgement

1. In the aforementioned appeals, preferred under Section 101(5) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015'), the appellants have challenged the order passed by the Children's Court whereby their respective applications for bail have been rejected in respect of cases in which they have been made accused.

2. Since the facts of all the appeals are not relevant, as they have been referred to the Division Bench for the limited purpose, the facts are being extracted from Cr. Appeal (SJ) No. 2117 of 2019.

3. The appellant in Cr. Appeal (SJ) No. 2117 of 2019 has been made accused in Buxar (Town) P. S. Case No. 236 of 2018 dated 08.05.2018 registered inter alia under Section 302 of the Indian Penal Code. He was taken into custody on 09.05.2018 and was produced before the Juvenile Justice Board (for short 'Board'), Buxar. The Board, in exercise of powers conferred under Section 94 of the Act of 2015 determined his age to be 17 years, 2 months and 20 days on the date of commission of the offence. Since the offence alleged to have been committed by the appellant is heinous one and he had completed the age of 16 years on the date of commission of the offence, the Board conducted 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 had allegedly committed the offence and passed an order that there is a need for trial of the said child as an adult in accordance with the provisions enumerated in Section 18(2) of the Act of 2015 vide order dated 12.10.2018.

4. The appellant moved an application for bail before the Children's Court, Buxar for grant of bail in Buxar (Town) P. S. Case No. 236 of 2018, which was rejected vide order dated 11.12.2018.

5. Being aggrieved by the order passed by the Children's Court, the appellant filed an application for bail before this Court under Section 439 of the Code of Criminal Procedure, 1973 (for short 'CrPC') vide Cr. Misc. No. 7470 of 2019.

6. The aforesaid Cr. Misc. No. 7470 of 2019 was dismissed as withdrawn with liberty to the appellant to file appropriate application before the appropriate court vide order dated 23.04.2019 as the counsel for the appellant sought leave to withdraw the application on the ground of juvenility of the appellant.

7. The said order dated 23.04.2019 is set out hereinbelow :-

23.04.2019 "Heard.

Counsel for the petitioner seeks permission to withdraw this application as the petitioner is said to be juvenile.

Permission is granted.

Accordingly, this application filed in connection with Buxar (T) P.S. Case no. 236 of 2018 is dismissed as withdrawn with liberty to the petitioner to make appropriate application before the appropriate court."

8. Thereafter, the appellant filed the instant appeal under Section 101(5) of the Act of 2015 challenging the order dated 11.12.2018 passed by the Children's Court, Buxar whereby his application for grant of bail was rejected.

9. Learned Single Judge while hearing the appeal doubted maintainability of the appeal against the order of the Children's Court. After consideration of various provisions of the Act of 2015, learned Single Judge framed three questions and desired the same to be answered by a Division Bench.

10. The operative part of the order dated 09.07.2019 whereby the learned Single Judge has referred the case to Division Bench is set out hereinbelow :-

"14. After having been declared child in conflict with law even relating to Buxar (T) P. S. Case No.235 of 2018, after rejection of prayer by the Children Court, the same has been challenged through Criminal Miscellaneous. Once the prayer of an accused has been entertained by the Co- ordinate Bench under Criminal Miscellaneous, then in that circumstance, whether an appeal in terms of Section 101(5) of the Act would be entertainable while enjoying the same status. The conflicting stand coupled with the order dated 05.02.2019 passed under Cr.Misc. No.4848 of 2019 gives an impression that the issue in hand needs authoritative pronouncement as, with great respect to the esteemed brother, I did not agree. So, the matter is to be considered by the Division Bench and for that, the following points are being formulated:-

a) Whether the child in conflict with law falling in between 16 to 18 years should be acknowledged, dealt with independently relating to serious offence, heinous offences.

b) Whether the opportunity in accordance with Section 12 of the Act identifying the Board to pass an appropriate order whenever child in conflict with law is produced regarding bail matter, could also include the Children Court.

c) Whether the procedure so allowed to be followed in accordance with Section 19(1) of the Act will attract the procedure of bail to be cared under the Act or under the Code. In the background of presence of Section(1) as well as Section 101(5) of the Act.

15. Accordingly, office is directed to place the matter before the Division Bench after taking permission from Hon'ble the Chief Justice."

11. Since the reference was desired to be resolved by a Division Bench, the same has come up for consideration before this Court.

12. Subsequently, Cr. Appeal (SJ) Nos.1962 and 1549 of 2019 were filed under Section 101(5) of the Act of 2015 by the respective appellants challenging the order passed by the Children's Court, Sitamarhi whereby their respective applications for bail were rejected. Those appeals have also been referred by the learned Single Judge to the Division Bench to be heard together with Cr. Appeal (SJ) No. 2117 of 2019 as the issues involved are identical.

13. After having examined various statutory provisions under the Act of 2015 and the CrPC and the submissions advanced at the Bar in the light of reference order of the learned Single Judge, following ancillary questions of immense

significance, have emerged and need to be extensively dealt with :-

(i) Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015 ?

(ii) Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail after the transfer of his case to the Children's Court for trial by the Board ?

(iii) Whether the powers conferred on Board in the matter of bail to a person, who is apparently a child alleged to be in conflict with law are also available to the Children's Court ?

(iv) Whether seriousness of the offence alleged is a ground for rejecting the bail in case of a child in conflict with law ?

(v) Whether an appeal under Section 101(5) of the Act of 2015 or an application under Section 439 of the CrPC would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Children's Court ?

(vi) What is the scope of Section 19(1) (i) of the Act of 2015 in connection with the trial of a child as an adult ? Whether the provisions of Section 19 of the Act of 2015 are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015 ?

(vii) What is the scope of application of the provisions of CrPC after the Board transfers the trial of the case to the Children's Court having jurisdiction to try such offences and the Children's Court decides that there is a need for trial of the child as an adult ?

14. We have heard Mr. Ajay Kumar Thakur, Mr. Bachan Jee Ojha and Mr. Uday Kumar, learned advocates for the appellants, Smt. Usha Kumari and Mr. Zeyaul Hoda, learned Additional Public Prosecutors for the State and Mr. Digvijay Kumar Ojha, learned advocate for the informant of Buxar (Town) P. S. Case No. 236 of 2018.

15. Mr. Ajay Kumar Thakur, learned advocate appearing for the appellant in Cr. Appeal (SJ) No.1962 of 2019 submitted that seriousness of the offence alleged is not a ground for rejecting bail in a case of a child in conflict with law. He argued that there is fundamental difference between the Criminal Justice System and the Juvenile Justice System. Under the Juvenile Justice System, emphasis is placed on restoration and rehabilitation rather than on punitive action. He contended that while considering an application for bail to a child in conflict with law, Section 12 of the Act of 2015 needs to be read in consonance with three

principles mentioned in Section 3 of the Act of 2015, i.e., principle of repatriation and restoration, fresh start and institutionalization as a measure of last resort. Bail should be granted to every juvenile as a matter of right and refusal should be done as an exception only where the grounds for refusal of bail, as mentioned in Section 12 of the Act of 2015 are fulfilled. He urged that the law, as laid down in Section 12 of the Act of 2015 is equally applicable in case of a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence'. He can maintain his application under Section 12 of the Act of 2015 during the pendency of the preliminary assessment by the Board under Section 15. He can also maintain his application for bail under Section 12 of the Act of 2015 before the Children's Court after his case is transferred by the Board for trial as an adult. According to him, in view of the express provision prescribed under Section 8(2) of the Act of 2015, the powers conferred on the Board under the Act of 2015 can also be exercised by the High Court and the Children's Court. On the basis of the aforesaid submissions, he canvassed that the powers conferred on Board in the matter of bail to a person, who is apparently a child alleged to be in conflict with law are also available to the Children's Court and the High Court. He urged that the Act of 2015 does not contemplate filing of an application for bail under the provisions of the CrPC. According to him, Section 372 in Chapter XXIX of the CrPC provides that no appeal shall lie from any judgment or order of a criminal court except as provided for by the Code or any other law for the time being in force. As there is no provision in Chapter XXIX of the CrPC enabling any person aggrieved by an order granting or refusing bail by the Children's Court, no appeal under the provisions of the CrPC can be filed against any order passed by the Children's Court. He argued that any person, aggrieved by any order including order granting or refusing bail passed by the Children's Court, can assail the order by way of filing statutory appeal before the High Court under Section 101(5) of the Act of 2015. He contended that a joint reading of the Sections 19(1)(i) and 19(1)(ii) would make it clear that the said provisions give option to the Children's Court to try the transferred child as an adult or not to deal with the child as an adult. He submitted that the Children's Court is duty bound to decide as to whether or not there is need for trial of the child in conflict with law, who has been transferred before it, as an adult. It cannot dispense with its mandatory duty in this regard.

16. Mr. Bachan Jee Ojha, learned counsel appearing for the appellant in Cr. Appeal (SJ) No.2117 of 2019 adopting the submissions made by Mr. Thakur submitted that once a preliminary assessment report has been received from the Board under Section 15 of the Act of 2015, the Children's Court is obliged to examine whether or not there is any need for his trial as an adult in terms of Section 19(1) of the Act of 2015 and pass appropriate orders in this regard before proceeding ahead with his trial. He has strenuously argued that a child in conflict with law cannot be denied bail solely on the basis of the gravity of the offence and the embargo in the matter of grant of bail envisaged under the CrPC. According to him, the provisions of the CrPC cannot be pressed into service

either before the Board or before the Children's Court or before the High Court while dealing with an application for bail on behalf of a child in conflict with law either in course of inquiry or trial or appeal.

17. Mr. Uday Kumar, learned counsel appearing for appellant in Cr. Appeal (SJ) No. 1549 of 2019 has adopted the submissions made by Mr. Thakur, learned counsel for the appellant in Cr. Appeal (SJ) No.1962 of 2019.

18. Per contra, Smt. Usha Kumari, learned Additional Public Prosecutor for the State submitted that seriousness of the offence would certainly be a ground for rejecting bail in case of a child in conflict with law. She contended that changes introduced in the Act of 2015 and transfer of child in conflict with law in the age group of 16 to 18 years to the Children's Court; who have allegedly committed 'heinous offence', have been made with a purpose. They are to be tried in terms of the provisions of the CrPC and, thus, in their case, while considering bail or holding trial the provisions of the CrPC would be applicable. She contended that the bail application on behalf of a child, who is alleged to have committed a 'heinous offence' has to be filed under the provisions of Section 437 before the Board and under Section 439 of the CrPC before the Children's Court after transfer of his case for trial to the Children's Court.

19. Mr. Zeyaul Hoda, learned Additional Public Prosecutor for the State submitted that once a preliminary assessment report has been received from the Board under Section 15 of the Act of 2015, the Children's Court may accept the report and proceed further for trial of the child as an adult or take a decision as to whether there is need for trial of the child as an adult or not as stipulated under Sections 19(1)(i) and 19(1)(ii) of the Act of 2015. He argued that it is not mandatory for the Children's Court, on receipt of preliminary assessment report, to again decide as to which of the two courses provided by Section 19(1)(i) and 19(1)(ii) is to be adopted.

20. While fully concurring with the views expressed by the learned Additional Public Prosecutors, Mr. Digvijay Kumar Ojha, learned advocate appearing for the informant of Buxar (Town) P. S. Case No. 236 of 2018 submitted that considering the gravity of the problems and issues involved with the children in the age group of 16 to 18 and, in the aftermath of Nirbhaya rape case, the legislature introduced several changes in law. As per changes brought in the Act of 2015, children between age group of 16 to 18 can now be tried as an adult for 'heinous offences'. Their bail application has to be differently dealt with and based on the outcome of the trial, children falling between the aforesaid age group have to be sentenced accordingly. Thus, in their case, the principles mentioned in Section 3 of the Act of 2015 would not be applicable. Their bail application can be refused on the ground of gravity of the offence and/or other grounds under the CrPC and their cases would not be covered by the law as laid down in Section 12 of the Act of 2015, he contended.

21. Having heard the parties, in order to find out the answer to the questions to

be determined in these cases, it would be necessary to appreciate the Jurisprudence of the Juvenile Justice System in India, which led to enactment of the Act of 2015. It would also be of salience to look into history, concept and philosophy of the Juvenile Justice System chronologically.

22. Right from inception, the philosophy behind the Juvenile Justice System is to reform, rehabilitate and reintegrate a child in conflict with law and a child in need of care and protection. The philosophy in dealing with children committing offence is remarkably different from an adult committing an offence.

23 The first doctrine in dealing with children of both the categories is the doctrine of *parens patriae*. In the juvenile justice legal system, *parens patriae* is a doctrine that allows the State to step-in and serve as a guardian for children, the mentally ill, the incompetent, the elderly or the disabled persons, who are unable to care for themselves. It refers to the public policy power of the State to intervene against an absurd or negligent parents, legal guardian or informal caretaker and to act as parent of any child or individual who is in need of protection. Normally, the natural parents and family are expected to take care of their children, but when they fail the State steps into shoes of the parents and family to provide the same care and protection as their own parents and families should have provided for them.

24. With passage of time, the principle of *parens patriae* shifted to the right approach, which respects the constitutional and procedural rights of a juvenile. A child in conflict with law should be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and, which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in the society.

25. In India, the first legislation enacted for the children in distress is the Apprentices Act, 1850. It applied to children above the age of ten, and under the age of 18 years found to have committed petty offences and vagabonds. Under this Act, the children in distress were to be trained for trade and commerce. The Preamble of Apprentices Act, 1850, which explains the intent behind the enactment is set out hereinbelow:-

"For better enabling children, and especially orphans and poor children brought up in public charity, to learn trades, crafts and employments, by which, when they came to full age, may gain a livelihood."

26. In the above background, it is significant to refer to the provisions of Indian Penal Code, 1860, i.e., Sections 82 and 83. Section 82 of the Indian Penal Code deems children under 7 years of age incapable of forming an intent to commit a crime. Section 83 of the Indian Penal Code exempts child above 7 years of age and under 12, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion from criminal responsibility.

27. Thereafter, Reformatory Schools Act, 1876 and Amendment Act, 1897 were enacted for delinquent children, which empowered the government to establish reformatory schools for juvenile delinquents. Under this Act, provisions were made to keep juveniles in custody in reformatory schools for a time period of 2 to 7 years, but after attainment of the age of 18 years, they were not to be kept in reformatory schools.

28. Another important legislation for children was the Code of Criminal Procedure, 1898 (for short 'Code'). Section 29(B) of the Code provided that any person of 15 years of age, who had committed offence not punishable with death or transportation for life, would be tried by a District Magistrate or any Magistrate empowered under the Reformatory Schools Act, 1897. Thus, the juvenile delinquents were taken out of the jurisdiction of ordinary courts in the matter of trial. Section 399 of the Code provided for confinement in reformatories established by the Local Governments as a fit place for confinement instead of being imprisoned in a criminal jail for offenders under the age of 15 years and Section 562 of the Code conferred power upon the Court to release on probation of good conduct youthful offenders under 21 years of age under certain conditions instead of sentencing them to prison. These provisions along with the Reformatory Schools Act, 1897 made a significant change in the juvenile penal philosophy from punishment to reform and rehabilitation.

29. Thereafter, the recommendations made by the Indian Jail Committee (1919-1920) suggested that juvenile prisoners are amenable to reformation and their detention in prisons is undesirable, for, their simple mind may be polluted permanently by the atmosphere of Jail life. A child offender was mainly a product of unfavourable environment. He was entitled to new opportunities to grow and live in more congenial conditions. The Committee opined that juveniles could be reformed by re-education and proper treatment. It recommended that Borstal institutions should be established for reformation of juveniles. It also recommended for constitution of juvenile courts.

30. Thereafter, under the Juvenile Justice System in India, firstly the Juvenile Court was established under Madras Children Act, 1920.

31. After independence of India in 1947, the Parliament passed the first legislation on children, namely, The Children's Act, 1960. This was made applicable in centrally administered union territories and the States having no juvenile legislation were made free to adopt it. It was passed to function as model legislation and for implementation in union territories. This Act established separate child welfare courts to handle cases relating to neglected children. It also created the position of a Probation Officer to advise and assist the neglected or delinquent children. In addition, it established separate Children's Court for cases related to delinquent juveniles, thereby supporting the judicial process for delinquent and neglected children.

32. It would be relevant to note here that prior to the passing of The Children's

Act, 1960, there existed different Children's Act in different States. The most important aspect of the Children's Act, 1960 was complete prohibition of use of police station or jail under any circumstances for children covered within its purview. However, at this stage, Juvenile Justice System in India was not uniform because each State had its own standards, norms and practices.

33. The necessity of a uniform Children Act across the Country gave rise to enactment of Juvenile Justice Act, 1986 (for short 'the Act of 1986').

34. The Act of 1986 promoted the best interest of the juveniles by incorporating the important provisions of Indian Constitution. The Act of 1986 was influenced by 'United Nations Declaration of the Rights of the Child, 1959' and 'United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 1985'. The detention of juveniles in police lock-up or jail was abolished by the Act of 1986. It also recommended to establish Juvenile Homes for the reception of neglected juveniles, Special Homes for reception of delinquent juveniles and Observation Homes for the temporary reception of juveniles during pendency of the inquiry and trial and Aftercare Homes for the purpose of taking care of juveniles after discharge from Observation Homes or Special Homes. The object of the Act of 1986 was to protect juvenile from criminalization, penalization and stigmatization. The Act of 1986 repealed various Children's Acts enacted in different States and provided a uniform Juvenile Justice System in India. Boys under the age of 16 and girls under the age of 18 were defined as Juveniles.

35. Noticing various shortcoming in the Act of 1986 when India signed and ratified the 'United Nations Convention of Rights of Children' in December, 1992, the Act of 1986 was repealed and replaced by The Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000'), which came into force from 1st April 2001. The Act of 2000 defined the term 'juvenile' as a person who having not completed the age of 18 years. The statement of objects and reasons for the Act of 2000 specified that it was enacted to bring the operation of Juvenile Justice System in conformity with Convention of Rights of Children and other United Nations Instruments signed by India. It incorporated the justice as well as the right approach towards children. It dealt with juveniles in conflict with law and children in need of care and protection.

36. The Act of 2000 was amended in 2006. The Amendment Act, 2006 brought several amendments in the Principal Act. By the amendment, it was made clear that crucial date for determination of age of a juvenile in conflict with law would be the date of commission of offence. Another important change was insertion of Section 7A, which provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case. The amended Act further clarified that under any condition, a juvenile in conflict with law should not be kept in a police lock-up or jail.

37. The Act of 2000 was again amended in 2011 to address gaps in its

implementation and make the law more child friendly.

38. The brutal gang rape and subsequent death of a girl in Delhi (Nirbhaya) on 16th December, 2012 gave rise to a debate that the provisions and system under the Act of 2000 are ill equipped and needed modification to tackle the children in the age group of 16 to 18. After a long debate, the Juvenile Justice Bill was introduced in Lok Sabha on 8th August, 2014. It was passed by Lok Sabha on 7th May, 2015 and Rajya Sabha on 22nd December, 2015 and received the presidential assent on 31st December, 2015 and the Act of 2015 came into force on 15th January, 2016 with its publication in the Gazette of India.

39. The Act of 2015 governs children alleged and found to be in conflict with law and children in need of care and protection.

40. It has been enacted to fulfill the objects of the Constitution in clause (3) of Article 15, clauses (e) and (f) of Article 39, Article 45 and Article 47, which confer powers and imposes duties on the State to ensure that all needs of children are met and their basic human rights are fully protected.

41. It is worth setting out the statement of objects and reasons of the Act in full hereinbelow:-

"Statement of Objects and Reasons.- Article 15 of the Constitution, inter alia, confers upon the State powers to make special provision for children. Articles 39(e) and (f), 45 and 47 further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.

2. The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

3. The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. have highlighted the need to review the existing law.

4. Further, increasing cases of crimes committed by children in the age group of

16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offenders in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased especially in certain categories of heinous offences.

5. Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the above mentioned issues and therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re- enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children, and offences committed against children. This legislation would thus ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstance by adopting a child-friendly approach keeping in view the best interest of the child in mind.

6. The notes on clauses explain in detail the various provisions contained in the Bill.

7. This Bill seeks to achieve the above objectives."

42. Para-1 of the statement of objects and reasons is a key to unlock the legislative intent. It refers to Articles 15, 39(e) and (f), 45 and 47 of the Constitution and states that such articles confer upon the State the powers to make special provision for children. It further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.

43. Para-2 of the statement of objects and reasons requires the State to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth; (b) reinforcing the child's respect for the human rights and fundamental freedoms of others; and (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

44. Para-4 of the statement of objects and reasons is focused towards child in conflict with law in case of 'heinous offences' in the age group of 16-18 years. It states that existing provisions and system under the Act of 2000 are ill equipped to tackle child offenders in the age group of 16-18 years as the crimes by children in the said age group had increased especially in certain categories of 'heinous offences'.

45. Para-5 of the statement of objects and reasons while proposing to repeal the existing Act of 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re- integration measures for such children, re-assures the legislative intent to ensure proper care, protection, development, treatment and social re-integration of children in difficult circumstances by adopting a child friendly approach keeping in mind the best interest of the child.

46. The opening statements of the Act of 2015 contain the reasons and purposes of the Act. It is worth setting out the opening statements of the Act of 2015 hereinbelow:-

"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 re-integration, 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.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption (1993), and other related international instruments."

47. The purpose of referring to the opening statements is to indicate that care, protection and treatment by catering to children alleged and found to be in conflict with law and children in need of care and protection, their development, treatment, social re-integration, by adopting a child friendly approach in adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation continues to be the basis for all purposes and

provisions under the Act.

48. The terms 'care', 'protection', 'development', 'treatment' and 'best interests' used in the opening statements have not been defined in the Act of 2015. Hence, they shall have the meanings respectively assigned to them in any other Act as prescribed in Section 2(61) of the Act of 2015 or in dictionary.

49. The term 'rehabilitation' has also not been defined under the Act of 2015, but has been discussed under Chapter VII in Section 39 (2) of the Act of 2015 wherein it is provided that for children in conflict with law, the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there, by the order of the Board.

50. The opening statements further recognize that a duty is imposed upon the State under clause (3) of Article 15, clauses (e) and (f) of Article 39, Article 45 and Article 47 of the Constitution of India to ensure that all needs of children are met and basic human rights are fully protected.

51. Clause (3) of Article 15 of the Constitution confers a discretion upon the State, withing the meaning of Article 12 of the Constitution, to make special provisions for women and children. It permits differential treatment in favour of women and children, using the principle of reasonable classification, a classification based on sex and age.

52. Clause (e) of Article 39 of the Directive Principles of State Policy under Constitution mandates that State shall direct its policy towards securing that the tender age of children is not abused.

53. Clause (f) of Article 39 of the Directive Principles of the Constitution provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

54. Article 45 of the Directive Principles of the Constitution provides that the State shall endeavour to provide provision for free and compulsory education for children upto 6 age.

55. The opening statements further stipulate that the Government of India has acceded on 11th December, 1992 to the Convention on the Rights of the Child adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all the State parties in securing the best interest of the child.

56. The opening statements also stipulate that numerous changes were required in the existing Act, 2000 to address issues relating to care and protection of children and, therefore, the Act of 2000 has been repealed to re- enact a comprehensive legislation for children alleged and found to be in conflict with law

and children in need of care and protection taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Inter- country Adoption (1993), and other related international instruments.

57. The basic objectives specified in the opening statements of the Act of 2015, which may be regarded as Preamble to it, are sought to be achieved through all the provisions and by all the institutions and bodies established under the Act.

58. The opening statements of any enactment is the basis to understand the legislative objectives behind the Act. Every provision in the Act has to be interpreted in the manner that advances such objectives. In case of any ambiguity, the Preamble becomes the guiding light.

59. At this stage another important aspect to be kept in mind is that the Act of 2015 was enacted as the Parliament intended to tackle child offender committing 'heinous offences' in the age group of 16 to 18 years by legislating new laws which repealed the Act of 2000.

60. Having discussed the history, concept and philosophy behind the jurisprudence of the Juvenile Justice System in India and analysed the opening statements of the Act of 2015, it is now necessary to appreciate what precisely, the Act of 2015 projects.

61. Some of the important provisions of the Act of 2015 with which we are concerned, are set out hereinbelow:-

"Section 1. Short title, extent, commencement and application.-

(4) Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including -

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

Section 2. Definitions:- In this Act, unless the context otherwise requires,-

(9) "best interest of child" means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development;

(12) "child" means a person who has not completed eighteen years of age;

(13) "child in conflict with law" means a child who is alleged or found to have

committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

(15) "child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child;

(20) "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

(33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

(35) "juvenile" means a child below the age of eighteen years;

(45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;

(54) "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years;

(61) all words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.

Section 3. General principles to be followed in administration of Act.- The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:-

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture

and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilised including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non- stigmatising semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalisation as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be re-united with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances.

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

(emphasis added)

Section 4. Juvenile Justice Board.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the State Government shall, constitute for every district, one or more Juvenile Justice Boards for exercising the powers and discharging its functions relating to children in conflict with law under this Act.

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with at least three years experience and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(3) No social worker shall be appointed as a member of the Board unless such person has been actively involved in health, education, or welfare activities pertaining to children for atleast seven years or a practicing professional with a degree in child psychology, psychiatry, sociology or law.

(4) No person shall be eligible for selection as a member of the Board, if he-

(i) has any past record of violation of human rights or child rights;

(ii) has been convicted of an offence involving moral turpitude, and such conviction has not been reversed or has not been granted full pardon in respect of such offence;

(iii) has been removed or dismissed from service of the Central Government or a State Government or an undertaking or corporation owned or controlled by the Central Government or a State Government;

(iv) has ever indulged in child abuse or employment of child labour or any other violation of human rights or immoral act.

(5) The State Government shall ensure that induction training and sensitisation of all members including Principal Magistrate of the Board on care, protection, rehabilitation, legal provisions and justice for children, as may be prescribed, is provided within a period of sixty days from the date of appointment.

(6) The term of office of the members of the Board and the manner in which such member may resign shall be such, as may be prescribed.

(7) The appointment of any member of the Board, except the Principal Magistrate, may be terminated after holding an inquiry by the State Government, if he-

(i) has been found guilty of misuse of power vested under this Act; or

(ii) fails to attend the proceedings of the Board consecutively for three months without any valid reason; or

- (iii) fails to attend less than three- fourths of the sittings in a year; or
- (iv) becomes ineligible under sub- section (4) during his term as a member.

Section 5. Placement of person, who cease to be a child during process of inquiry.-Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

Section 6. Placement of persons, who committed an offence, when person was below the age of eighteen years.-(1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

(2) The person referred to in sub- section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.

(3) The person referred to in sub- section (1) shall be treated as per the procedure specified under the provisions of this Act.

Section 7. Procedure in relation to Board.- (1) The Board shall meet at such times and shall observe such rules in regard to the transaction of business at its meetings, as may be prescribed and shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble as regular courts.

(2) A child in conflict with law may be produced before an individual member of the Board, when the Board is not in sitting.

(3) A Board may act notwithstanding the absence of any member of the Board, and no order passed by the Board shall be invalid by the reason only of the absence of any member during any stage of proceedings:

Provided that there shall be atleast two members including the Principal Magistrate present at the time of final disposal of the case or in making an order under sub-section (3) of section 18.

(4) In the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail, but where there is no such majority, the opinion of the Principal Magistrate, shall prevail.

Section 8. Powers, functions and responsibilities of the Board.-(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction

of such Board.

(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.

(3) The functions and responsibilities of the Board shall include-

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognising that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non- governmental organisation, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law

for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home; and

(n) any other function as may be prescribed.

Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

Section 10. Apprehension of child alleged to be in conflict with law.- (1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the

place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail.

(2) The State Government shall make rules consistent with this Act,-

(i) to provide for persons through whom (including registered voluntary or nongovernmental organisations) any child alleged to be in conflict with law may be produced before the Board;

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

Section 11. Role of person in whose charge child in conflict with law is placed.- Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

Section 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 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 fulfill 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.

Section 13. Information to parents, guardian or probation officer.-

(1) Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform -

(i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and

(ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.

2. Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board.

Section 14. Inquiry by Board regarding child in conflict with law.-(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) The inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:-

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973 (2 of 1974);

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,-

(i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Section 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.

Explanation.-For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101.

Provided further that the assessment under this section shall be completed within the period specified in section 14.

Section 18. Orders regarding child found to be in conflict with law.- (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to-

(i) attend school; or

- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

Section 19. Powers of Children's Court-(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that-

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section

(4) shall be forwarded to the Children's Court for record and follow up, as may be required.

Section 20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety.- (1) When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may-

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) decide that the child shall complete the remainder of his term in a jail:

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed.

Sections 21. Order that may not be passed against a child in conflict with law.-No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

Section 22. Proceeding under Chapter VIII of the Code of Criminal Procedure not to apply against child.- Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said Code.

Section 23. No joint proceedings of child in conflict with law and person not a child. (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

Section 101. Appeals.- (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate:

Provided that the Court of Sessions, or the District Magistrate, as the case may be, may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of thirty days.

(2) An appeal shall lie against an order of the Board passed after making the preliminary assessment into a heinous offence under section 15 of the Act, before the Court of Sessions and the Court may, while deciding the appeal, take the assistance of experienced psychologists and medical specialists other than those whose assistance has been obtained by the Board in passing the order under the said section.

(3) No appeal shall lie from,-

(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or

(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

(4) No second appeal shall lie from any order of the Court of Session, passed in appeal under this section.

(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 (2 of 1974).

(emphasis added)

Section 110. Power to make rules.-(1) The State Government shall, by notification in the Official Gazette, make rules to carry out the purposes of this Act:

Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government is required to make rules and where any such model rules have been framed in respect of any such matter, they shall apply to the State mutatis mutandis until the rules in respect of that matter are made by the State Government and while making any such rules, they conform to such model rules."

62. It would be relevant to mention here that in exercise of powers conferred by the provisions prescribed under Section 110(1) of the Act of 2015, the Central Government has framed Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (for short 'Rules') to carry out the purposes of the Act of 2015.

63. Rule 13 of the Rules being of importance in the instant case is set out hereinbelow :-

"Rule 13. Procedure in relation to Children's Court and Monitoring Authorities.-(1) Upon receipt of preliminary assessment from the Board the Children's Court

may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(2) Where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the Children's Court shall first decide the said appeal.

(3) Where an appeal has been filed under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal.

(4) Where the appeal under sub- section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and these rules.

(5) Where the appeal under sub- section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult the Children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these rules.

(6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

(7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:-

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).

(v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law

concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:-

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:-

(a) interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) After making the evaluation, the Children's Court may decide to:-

(ca) release the child forthwith; (cb) release the child on execution of a personal bond with or without sureties for good behaviour;

(cc) release the child and issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;

(cd) release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.

(vii) For the purpose of sub-rule (vi) (c) (cd) of this rule:-

(a) A Probation Officer or Case Worker or Child Welfare Officer or a fit person may be appointed as a monitoring authority.

(b) The District Child Protection Unit shall maintain a list of such persons who can be engaged as monitoring authorities which shall be sent to the Children's Court along with bi-annual updates.

(c) The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court.

(d) At the end of the first quarter the monitoring authority shall make recommendations regarding the further follow up procedure required for the child.

(e) Where the child, after release is found to be indulging in criminal activities or associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.

(f) If it is found that the child no longer requires to be monitored, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.

(g) After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter."

(emphasis added)

64. We have noticed hereinabove that the Act of 2015 classifies offences in three categories. They are: 'petty offences', 'serious offences' and 'heinous offences'.

65. 'Petty offences' are those offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment upto 3 years. 'Serious offences' are those offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment between 3 to 7 years and 'heinous offences' are those offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for 7 years or more.

66. The legislature has consciously classified the offences under different categories in order to achieve the object of the Act of 2015.

67. The Act of 2015 treats all the children below 18 years equally except in the age group of 16 to 18 years, who are alleged to have committed 'heinous offences'.

68. Section 3 of the Act of 2015 enumerates the general principles to be followed in administration of the Act. It regulates the conduct and behaviour of all persons functioning under the Act. It states that the Central Government, the State Governments, the Board and other agencies, as the case may be, while implementing the provisions of the Act shall be guided by the fundamental principles enumerated in clauses (i) to (xvi).

69. Section 4 of the Act of 2015 provides for constitution of one or more Board by the State Government for every district for exercising the powers and discharging the duties conferred or imposed on them in relation to children in conflict with law under the Act. It also provides for the composition of the Board, which shall consist of a Metropolitan or a Judicial Magistrate of the first class (not being Chief Metropolitan Magistrate or Chief Judicial Magistrate) with at least three years of experience and two social workers from two different reputed non-governmental organizations.

70. Section 5 of the Act of 2015 clarifies that when an inquiry has been initiated in respect of any child under this Act, and during the course of inquiry, if child completes the age of eighteen years, then, the inquiry may be continued by the Board and orders may be passed in respect of that person as if such person had continued to be a child.

71. Section 6 of the Act of 2015 provides that if a person, who has completed 18 years of age but is below 21 years, is apprehended for committing an offence when he was below the age of 18 years, then the person shall be treated as a child during the process of inquiry. It further states that if the person is not released on bail by the Board then the person shall be placed in a Place of Safety during the process of inquiry. If the Board after inquiry comes to the conclusion that the person has committed any offence, then the person shall be placed in a Place of Safety till he completes his term.

72. Section 7 of the Act of 2015 provides that the Board shall ensure that all procedures are child friendly and that the venue is not intimidating to the child and does not resemble regular Courts. Further, the times at which the Board shall meet and the rules that shall be observed in regard to the transaction of business at its meetings, shall be prescribed. It further states that when the Board is not sitting, a child in conflict with law may be produced before an individual member of the Board. It also states that a Board may act even in the absence of any member of the Board and no order passed by the Board shall be invalid in the absence of any member during any stage of proceedings. Section 5 of the Act of 2015 clarifies that at the time of final disposal of the case or in

making any order under Section 18(3) of the Act of 2015 at least two members including the Principal Magistrate shall be present and in the event of any difference of opinion among the members of the Board in the interim or final disposal, the opinion of the majority shall prevail. In case there is no majority then the opinion of the Principal Magistrate, shall prevail.

73. Section 8 of the Act of 2015 provides the functions and responsibilities of the Board. It states that the Board constituted for any district shall have the power to deal exclusively with all proceedings under this Act relating to children in conflict with law in the area of jurisdiction of such Board.

74. Section 8(2) of the Act of 2015, which is noteworthy for us provides that the powers conferred on the Board under the Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them as provided under Section 19 of the Act of 2015 or in appeal, revision or otherwise.

75. Section 8(3) of the Act of 2015 specifies the functions and responsibilities of the Board, but those are only illustrative and not exhaustive and any additional functions may be prescribed in the rules to be framed under the Act.

76. On a careful consideration of the provisions prescribed under Section 8 of the Act of 2015, specially its sub-section (2), the answer to the third question "Whether the powers conferred on Board in the matter of bail to a person, who is apparently a child alleged to be in conflict with law are also available to the Children's Court" becomes abundantly clear.

77. In view of clear, unambiguous and specific stipulation in Section 8(2) of the Act of 2015, which provides that the powers conferred on the Board under the Act may also be exercised by the High Court and the Children's Court, we unhesitatingly conclude and hold that in the matter of grant of bail to a person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, the powers conferred on the Board under the Act of 2015 are also available to the Children's Court.

78. The third question for determination is answered, accordingly.

79. Section 9 of the Act of 2015 provides that when a Magistrate, who is not empowered to exercise the powers of Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child then in such a case the Magistrate shall, without any delay, record his opinion and forward the child immediately, and send record of the proceeding, to the Board having jurisdiction over the proceeding. In case, a person alleged to have committed an offence claims that he was a child on the date of commission of the offence before a court other than a Board, or is the court itself is of the opinion that the person was a child on the date of commission of the offence, then the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of the person, and shall record a finding on the matter, stating the age of the person as nearly as may be. This

section further clarifies that such a claim can be raised before any court and it shall be recognized at any stage, even after final disposal of the case. Such a claim shall be determined in terms of the provisions contained in the Act and the rules made under the Act even if the person is ceased to be a child on or before the date of commencement of the Act. This section further states that if the court finds that a person has committed an offence and was a child on the date of commission of the offence, it shall forward the child to the Board for passing orders and the sentence. If any order and the sentence is passed by the court, it shall be deemed to have no effect in such case. This section also states that in case a person is required to be kept in protective custody, while the person's claim of being a child is being inquired into, then such person may be placed, in the interim period, in a 'Place of Safety'.

80. Chapter IV of the Act of 2015 deals with procedure in relation to child in conflict with law.

81. Section 10 under Chapter IV of the Act of 2015 provides that as soon as a child alleged to be in conflict with law is apprehended by the police, he shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer. The special juvenile police unit or the designated child welfare police officer shall produce the child before the Board without any loss of time, but within a period of 24 hours of apprehending the child excluding the time necessary for the journey from the place where the child was apprehended. It clarifies that in no case a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail. It also provides that the State Government shall make rules consistent with the Act to provide for persons through whom (including registered voluntary or non-governmental organization) any child alleged to be in conflict with law may be produced before the Board and to provide for the manner in which the child alleged to be in conflict with law may be sent to an Observation Home or Place of Safety as the case may.

82. Section 11 under Chapter IV of the Act of 2015 provides that any person in whose charge a child in conflict with law is placed shall while the order is in force have responsibility of the child as if the said person was the child's parent and responsible for the child's maintenance. It further clarifies that the child shall continue to stay in the person's charge for the period stated by the Board. The person shall continue to have charge of the child even when the child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

83. Another important provision, which is noteworthy for us is Section 12 in Chapter IV of the Act of 2015, which deals with bail to a person who is apparently a child alleged to be in conflict with law.

84. While interpreting Section 12, the Board is duty bound to be guided by the fundamental principles enumerated in Section 3 of the Act of 2015, specially the principles of 'best interest', 'repatriation' and 'restoration' of child. The

fundamental principles in Section 3(xii) provides that a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry. The gravity and nature of the offence are immaterial for consideration of bail under the Act of 2015. As per Section 12 of the Act of 2015, an application for bail is not decided by reference to classification of offences, as bailable or non-bailable under the CrPC. All persons alleged to be in conflict with law and apparently a child when apprehended must be released except in the following three circumstances when there is reasonable ground for believing that :-

- (i) The release is likely to bring that person into association with any known criminal;
- (ii) The release is likely to expose the said person to moral or psychological danger; and
- (iii) The release would defeat the ends of justice.

85. In all cases, the Board is required to record its reason, if it refuses to release the child on bail and the circumstances that laid to such a decision. Taking surety is not essential for ordering release of the child on bail. The child may be released without surety also. The child may be placed under the supervision of a 'probation officer' or under the care of any 'fit person' after release on bail. It further provides that in case the court has directed release of the child on bail after fulfilling certain conditions, but the child is unable to fulfill those conditions in the next seven days, the Board shall modify those conditions.

86. The Board is vested with the power to grant bail to any person, who has not completed the age of 18 years irrespective of the nature of offence being 'bailable' or 'non-bailable' or specified in any of three categories of the Act, as 'petty offences', 'serious offences' and 'heinous offences'.

87. Our irresistible conclusion, on dealing with the provisions prescribed under Section 12 of the Act of 2015, to answer the fourth question "Whether seriousness of the offence alleged is a ground for rejecting the bail in case of a child in conflict with law ?" is, thus, plain and simple. Seriousness of the offence alleged cannot be made a ground for rejecting bail in case of a child in conflict with law.

88. Thus, the fourth question for determination is answered, accordingly.

89. The reason for our answer is that the principle of bail under the Act of 2015 is not the same as enumerated under Chapter XXXIII of the CrPC. Bail and not institutionalization continues to be the principle under the Act.

90. Section 13 of the Act of 2015 provides that where a child alleged to be in conflict with law is apprehended, the Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform the parents or guardian of such child, if they can be found, and direct them to be present at the Board

before which the child is produced. The Probation Officer, or if no Probation Officer is available, the Child Welfare Police Officer, shall also inform the Probation Officer or in his absence a Child Welfare Officer to prepare the social investigation report containing information regarding antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry. Section 13(2) of the Act of 2015 provides that if a child is released on bail, the Probation Officer or the Child Welfare Officer shall be informed by the Board.

91. Section 14 of the Act of 2015 provides for inquiry by the Board regarding a child in conflict with law.

92. Section 14(1) of the Act of 2015 provides that where a child alleged to be in conflict with law is produced before a Board, then the Board shall hold an inquiry in accordance with the provisions of the Act and may pass such orders in relation to the child as it deems fit under Sections 17 and 18 of the Act of 2015.

93. Section 14(2) of the Act of 2015 provides that inquiry under this section shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

94. Section 14(3) of the Act of 2015 provides that a preliminary assessment in case of 'heinous offences' under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

95. Section 14(4) of the Act of 2015 provides that in case of 'petty' or 'serious offences', if inquiry by the Board remains inconclusive even after the extended period, the proceedings shall stand terminated. Proviso to this section provides that for 'serious' or 'heinous offences', in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

96. Section 14(5) of the Act of 2015 provides the following steps to be taken by the Board to ensure fair and speedy inquiry.

97. Section 15 of the Act of 2015, which enumerates special provisions to tackle the child offenders committing 'heinous offences' in the age group of 16 to 18 years is equally important for us. If a child in the age group of 16 to 18 years is alleged to have committed 'heinous offence', as defined in Section 2(33) of the Act, the Board is required to conduct a preliminary assessment.

98. In order to determine, in case of a child in the age group of 16 to 18 years alleged to have committed a 'heinous offence', whether he should be transferred to the Children's Court to be tried as an adult, the Board has to follow certain essential steps.

99. Firstly, it must conclusively determine that the child in conflict with law before it is above the age of 16 years, but below the age of 18 years on the date of commission of the offence. The determination of age is very crucial for the child as the same has the potential to expose him to the possibility of being transferred to the Children's Court to be tried as an adult.

100. Secondly, if the Board comes to the conclusion that the child before it was 16 years or above, but below the age 18 years on the date of commission of the offence, it would be required to conclusively determine whether the offence alleged to have been committed by him is a 'heinous offence' or not.

101. Thirdly, transfer of a child for trial as an adult can only be done after preliminary assessment by the Board. The word 'shall' in Section 15(1) indicates that it is mandatory for the Board to conduct 'preliminary assessment'. The 'preliminary assessment' has to be conducted to assess :-

- (1) Child's mental and physical capacity to commit alleged offence;
- (2) Child's ability to understand consequences of the offence; and
- (3) the circumstances in which the child allegedly committed the offence.

102. Fourthly, after the preliminary assessment, the Board is required to further determine whether it would deal with the case of the child itself or transfer him to the Children's Court.

103. The aforesaid mandatory requirements are to be carefully conducted while determining whether a child should be transferred to the Children's Court to be tried as an adult or not. The legislature has provided that for the purpose of preliminary assessment the Board may take assistance of an experienced psychologist or psycho-social worker or other experts.

104. It needs to be kept in mind at this juncture that Section 14(3) of the Act of 2015 obligates that preliminary assessment in case of 'heinous offences' under Section 15 should be completed within three months by the Board from the date of first production of the child before the Board.

105. If the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board then the Board shall follow the procedures, as far as may be, for trial in summons case under the CrPC. In case, the Board after preliminary assessment under Section 15 of the Act passes an order that there is need for trial of such child as an adult, it may order for transfer of the case to the Children's Court having jurisdiction to try such offence.

106. Now, the stage is set for answering the first and the second questions : "(i) Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015 ?" ; and "(ii) Under which provision of law, a child, who has completed or is above the age of 16 years and

is alleged to have committed a 'heinous offence' can maintain his application for release on bail after the transfer of his case to the Children's Court for trial by the Board ?"

107. The Act of 2015 is a complete code in itself. The legal proposition that a special act (the Act of 2015 in the present case) shall override the provisions of the general act (CrPC) is unexceptionable. At this stage, it would be profitable to refer to Sections 4 and 5 of the CrPC, which are set out hereinbelow :-

"Section 4. Trial of offences under the Indian Penal Code and other laws.- (1) All offences under the Indian Penal Code(45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Section 5. Saving.- Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

108. A conjoint effect of Section 4(2) read with Section 5 of the CrPC is that all offences, whether under the Indian Penal Code or under any other law, have to be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the CrPC, unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, in which case an enactment will prevail over those of CrPC. The jurisdiction under Section 4 of the CrPC is comprehensive and to that extent till no valid machinery is set up under any Act for investigation or trial, the jurisdiction of the machinery provided under the CrPC cannot be said to have been excluded.

109. As a natural corollary, since the Act of 2015 is a special act, which contains provision for bail, the same shall prevail over those of the CrPC. From a close reading of Section 12, it would be evident that it is the only provision under the Act of 2015, which deals with grant of bail to a child in conflict with law. Section 12 does not debar a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' from maintaining his application for release on bail during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015 or from maintaining an application for release on bail after the transfer of his case to the Children's Court for trial.

110. For the reasons aforesaid, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 during the

pendency of preliminary assessment by the Board under Section 15 of the Act of 2015.

111. For the same reasons, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 after the transfer of his case to the Children's Court.

112. The first and second questions for determination are answered, accordingly.

113. At this stage, in order to determine the remaining issues one has to keep in mind Section 18 of the Act of 2015, which provides that where the Board is satisfied on inquiry that a child, irrespective of his age, has committed a 'petty offence', or a 'serious offence', or a child below the age of 16 years has committed a 'heinous offence', then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit, pass any of the dispositional order, as discussed in clauses (a) to (g) of Section 18 (1) of the Act of 2015.

114. Additionally, the Board may also pass orders, as indicated in Section 18(2) (i) to (v) of the Act of 2015.

115. Further Section 18(3) of the Act of 2015 provides that where the Board, after preliminary assessment under Section 15 of the Act of 2015, comes to the conclusion that there is need for trial of the child as an adult, it may order, transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

116. The sixth question framed by us is in two parts. The first part is "What is the scope of Section 19(1)(i) of the Act of 2015 in connection with the trial of a child as an adult ?" and the second part is "Whether the provisions of Section 19 of the Act are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015?"

117. The answer to the above question will also be in two parts.

118. Upon a case of a child having been transferred to the Children's Court, a duty has been cast upon the Children's Court to further decide about the suitability of the child to be tried as an adult.

119. The words used in Section 19(1)(i) and 19(1)(ii) give two options to the Children's Court. First, to try the transferred child as an adult and second not to deal with child as an adult.

120. The Children's Court is required to record its reason while arriving at a conclusion whether the child should be treated as a child or as an adult, in view of Rule 13 (6) of the Rules.

121. In case, the Children's Court decides to deal with child as a child, it has to conduct an inquiry as a Board following the procedures for trial of summons case in accordance with the provisions of Section 18 as would appear from the words used in Section 19(1)(i) of the Act of 2015.

122. In case, it decides to try the child as an adult, it shall follow the procedures, as prescribed by the CrPC for the purpose of trial by Sessions Court and pass appropriate orders after trial without prejudice to the provisions of Sections 19 and 21 of the Act considering special 'needs of the child' the tenets of 'fair trial' and maintaining a 'child friendly' atmosphere as provided under Section 19(1)(i) of the Act of 2015.

123. The aforesaid discussion answers the first part of the sixth question.

124. Having analysed scope of Section 19(1)(i) of the Act of 2015, now let us examine the second part of sixth question framed by us : "whether the provisions of Section 19 of the Act of 2015 are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015?".

125. The opening expression used in Section 19(1) is "after the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide" gives an impression that the Children's Court may or may not decide in terms of Section 19 whether or not there is need for trial of the child as an adult.

126. However, if Section 19(1)(i) of the Act of 2015 is read together with Rule 13(6) of the Rules framed by the Central Government, which stipulates that the Children's Court shall record its reason while arriving at a conclusion whether the child is to be treated as an adult or as a child, it would be evident that the provisions of Section 19(1) are not optional.

127. The expression used in Rule 13(6) of the Rules is 'shall' and thus mandates the Children's Court to record its reason while arriving at a conclusion whether the child is to be treated as an adult or a child.

128. Hence, the answer to the second part of sixth question is that the provisions of Section 19(1) of the Act of 2015 are mandatory. The Children's Court cannot dispense with the requirement of deciding as to whether there is need to try the transferred child as an adult or to deal with the transferred child as a child. In other words, the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015.

129. Thus, the second part of sixth question for determination is answered, accordingly.

130. The provisions under Section 19 mandates that Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include

an individual care plan for rehabilitation of child, including follow-up by the probation officer or the District Child Protection Unit or a social worker. The Children's Court is also required to ensure that the child, who is found to be in conflict with law, is sent to a Place of Safety till he attains the age of 21 years, thereafter, the person shall be transferred to a jail.

131. Proviso to Section 19(3) of the Act of 2015 provides that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided, to the child during the period of his stay in the Place of Safety.

132. Section 19(4) of the Act of 2015 provides that the Children's Court shall ensure that there is periodic follow-up report every year by the probation officer or the District Child Protection Unit or a social worker to evaluate the progress of the child in place of safety and to ensure that there is no ill-treatment to the child in any form.

133. Section 19(5) of the Act of 2015 provides that reports under sub-section (4) shall be forwarded to the Children's Court for record and follow-up, as may be required.

134. On a reading of Section 19 of the Act of 2015 in isolation, it would appear that the Children's Court may order for long period of stay in each case insisting stay of the child in Place of Safety till he attains the age of 21 years and, thereafter, he shall be transferred to jail. However, if we read Section 19 with Section 20, the impression would be quite different.

135. Section 20 of the Act of 2015 provides that when a child in conflict with law attains the age of 21 years and is yet to complete term of his stay, then the Children's Court shall provide for a follow-up by the probation officer or the District Child Protection Unit or a social worker or by itself. The purpose of follow-up is to evaluate if the child has undergone reformatory changes and if the child can be a contributing member of the society. Such evaluation has to be based on the progress records of the child under Section 19(4) of the Act of 2015 along with evaluation. Such evaluation has to be made only if the child has attained the age of 21 years, but has yet to complete the term of stay.

136. Section 20 of the Act of 2015 empowers the Children's Court to release a child from the Place of Safety without being sent to jail on attaining the age of 21 years. Now, at this stage, what would be relevant to be kept in mind is that though 'heinous offences' include offences for which the minimum punishment under the Indian Penal Code or any other law is imprisonment for 7 years or more, on attaining age of 21 years, the Children's Court may release the child on such condition as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay. Thus, the minimum imprisonment of 7 years or more in the definition of 'heinous offences' is for the purpose of determining as to which matters may be transferred to the Children's Court.

137. Section 21 of the Act of 2015 provides that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release for any such offence either under the provisions of the Act or under the provisions of Indian Penal Code or any other law for the time being in force.

138. Section 22 of the Act of 2015 provides that despite anything contrary contained in CrPC or any preventive detention law for the time being in force, no proceeding shall be instituted and no order shall be passed against any child under Chapter VIII of the said CrPC.

139. Chapter VIII of the CrPC deals with preventive measures that may be taken by the police in maintaining law and order. This Chapter's title is 'security for keeping the peace and for good behaviour' and contains elaborate provisions on the powers of the Executive Magistrate to take measures with a view to prevent commission of offence of breach of peace or disturbance of public tranquility.

140. Eventually, preventive measures are prohibited against children including passing of sentence to execute a bond with or without sureties for keeping the peace. The measures provided in Chapter VIII of the CrPC, which are to be taken mostly by the Executive Magistrate are completely prohibited in case of children in conflict with law. In other words, the Act of 2015 bars any role of the Executive Magistrate vis-a-vis children.

141. Section 23 of the Act of 2015 provides that in spite of anything contained in Section 223 of the CrPC or any other law for the time being in force, no joint proceeding shall be conducted of a child alleged to be in conflict with law with a person who is not child. It also provides that if during inquiry by the Board or by the Children's Court, the person alleged in conflict with law is found to be not a child then that person shall not be tried along with child.

142. Having analysed the ambit and scope of the provisions prescribed under Sections 18 to 23 of the Act of 2015 in extenso, the stage is set for determining the seventh question, i.e., : "what is the scope of application of the provisions of CrPC after the Board transfers the trial of the case to the Children's Court having jurisdiction to try such offences and the Children's Court decides that there is a need for trial of the child as an adult ?".

143. On a perusal of the provisions prescribed under Section 18(3) of the Act of 2015, it is quite clear that it provides for transfer of the 'trial' of the case to the Children's Court by the Board after preliminary assessment.

144. Here, the word 'trial' under Section 18(3) of the Act is of extreme importance. The transfer is made by the Board to the Children's Court only for the purpose of 'trial' and nothing else.

145. It is well settled position in law that in case of 'trial' before the Sessions Court, the trial shall be treated to have commenced when charges are framed under Section 228 of the CrPC.

146. We have seen hereinabove that under Section 19 of the Act of 2015, after the receipt of preliminary assessment report, the Children's Court has to decide as to whether there is a need for 'trial' of the child as an adult as per the provisions of the CrPC or there is no need for 'trial' of the child as an adult. The expression "as per the provisions of the Code of Criminal Procedure, 1973" used in Section 19(1)(i) of the Act of 2015 refers to applicability of the provisions of the CrPC in the matter of trial of the child as an adult.

147. Rule 13 of the Rules prescribes procedure in relation to Children's Court and monitoring authority. Rule 13(7) of the Rules provides that where the Children's Court decides that there is no need for 'trial' of the child as an adult, shall decide the matter itself and, it may conduct inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and the Rules. However, Rule 13(8) of the Rules provides that where the Children's Court decides that there is a need for 'trial' of the child as an adult, it shall follow the procedure prescribed by the CrPC of 'trial' by Sessions Court and maintaining a 'child friendly' atmosphere.

148. Thus, Section 18(3) read with Section 19(1)(i) of the Act of 2015 and Rule 13(7) and (8) of the Rules would make it evident that in case the Children's Court decides that there is a need for 'trial' of the child as an adult, it shall follow the procedure prescribed by the CrPC of 'trial' by Sessions Court.

149. The CrPC provides four types of trial. They are:-

- (i) Trial before a Court of Sessions;
- (ii) Trial of warrant cases by Magistrates;
- (iii) Trial of summons cases by Magistrate; and
- (iv) Summary trials.

150. Sections 225 to 237 deal with warrant cases by a Court of Sessions, Sections 238 to 250 deal with warrant cases by Court of Magistrates, Sections 251 to 259 provide procedure for 'trial' of summons cases by Magistrates and Sections 260 to 265 make provisions relating to summary trials.

151. Under the scheme of the Act of 2015, as far as the Children's Court is concerned, only 'heinous offences' can be transferred to it for the purposes of 'trial' by the Board. The 'heinous offences' defined under the Act of 2015 are those, which prescribe minimum punishment of 7 years or more under the Indian Penal Code or any other law for the time being in force.

152. Situated, thus, in our view, the scope of application of the provisions of CrPC, after the Board transfers the 'trial' of the case to the Children's Court to try such offences and the Children's Court decides that there is a need for 'trial' of the child as an adult, is that while holding the 'trial', the Children's Court would follow the procedures prescribed in the CrPC for holding trial before a Court of Sessions. In other words, in course of trial the proceedings prescribed in Chapter

XVIII from Sections 225 to 237 of the CrPC, which deal with trial of warrant cases by a Court of Sessions would only be applicable while trying a child as an adult subject to exceptions indicated under the Act of 2015.

153. The seventh question for determination is answered, accordingly.

154. Now, what remains to be answered is the the fifth question, i.e., "whether an appeal under Section 101(5) of the Act of 2015 or an application under Section 439 of the CrPC would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Children's Court ?"

155. While considering the above question, we would like to analyse the provisions prescribed in Section 101 of the Act of 2015.

156. Section 101 of the Act of 2015 deals with appellate jurisdiction under the Act. Section 101(1) of the Act of 2015 provides that subject to the provisions of the Act, any person aggrieved by an order of the Board may prefer an appeal before the Children's Court within 30 days from the date of such order. Thus, the right to appeal is vested with the child in conflict with law, the victim and the State under the aforesaid provision.

157. Proviso to Section 101(1) of the Act of 2015 deals with the power to condone the delay caused in filing the appeal. It is clarified that Court of Sessions may entertain the appeal even after the expiry of the said period of 30 days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time and such appeal shall be decided within a period of 30 days. Hence, if an appeal is preferred after the expiry of the period of 30 days, an application for condonation of delay in filing the appeal can be filed before the Court of Sessions and not before the Children's Court. In order to ensure speedy disposal of such an application for condonation of delay, the proviso states that such an appeal should be decided within a period of 30 days.

158. Section 101(2) of the Act of 2015 makes provision for appeal against the order of the Board passed under Section 15 of the Act of 2015, after making preliminary assessment into a 'heinous offence' of a child in conflict with law. It lays down that an appeal against an order of preliminary assessment shall lie before the Court of Sessions. It provides that in deciding the appeal against the preliminary assessment findings, the Court of Sessions may take the assistance of experienced psychologists and medical specialists, but these psychologists and medical specialists should not be the same whose assistance was availed of by the Board in making preliminary assessment under the Act of 2015.

159. It is of salience to note that Section 101(2) of the Act of 2015 mentions that an order relating to transfer of children after preliminary assessment under Section 15 is appealable before the Court of Sessions meaning thereby that suitability of the child being transferred or not for trial as an adult can be made by the Court of Sessions at this stage under the appellate jurisdiction. It is further important to note that even if no appeal is filed and a case is transferred

for trial to the Children's Court by the Board, the Children's Court is mandated to make its own inquiry to determine the suitability of the child to stand trial as an adult under Section 19(1)(i) of the Act of 2015.

160. It is noteworthy that Rule 13 of the Rules has created some confusion regarding forum of appeal. Rule 13 refers to the 'Children's Court' as the appellate court under Section 101(1) and (2) of the Act of 2015. Since Rules are subordinate legislation, in case of any conflict with the enabling Act, the provisions of the Act would prevail. Hence, an appeal against the order of the Board passed after making preliminary assessment into a 'heinous offence' under Section 15 of the Act of 2015 would be maintainable before the Court of Sessions and not before the Children's Court.

161. It would be interesting to note here that Section 101(2) of the Act of 2015 does not mention, who can file the appeal. However, when we give a closer look to Section 15(2) of the Act of 2015, we notice that the order of the Board to dispose of the matter by itself shall be appealable under the said provision. This would mean that an order passed by the Board not transferring the child in conflict with law after preliminary assessment to the Children's Court shall also be appealable under Section 101(2) of the Act of 2015. Thus, under Section 101(2) of the Act of 2015, against the order passed under Section 15 of the Act not only a child in conflict with law, but also a victim has been conferred with the right to appeal.

162. Section 101(3) of the Act of 2015 prohibits appeal against an order of acquittal made by the Board except in case of a child alleged to have committed a 'heinous offence', who has completed or is above the age of 16 years.

163. Section 101(4) of the Act of 2015 prohibits filing of second appeal from any order of the Court of Sessions.

164. The term 'appeal' is not defined in the Act of 2015. However, it is well settled position in law that an appeal is a rehearing by a superior court on both law and fact. In an appeal, the court of superior jurisdiction determines the question whether the order of the court from which the appeal is brought was right on the material which the court had before it.

165. Section 101(5) of the Act of 2015 provides that any person aggrieved by the order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the CrPC. Thus, the right to appeal is vested with child in conflict with law, the State and the victim whosoever is aggrieved by the order of the Children's Court. It is the only provision in the Act of 2015 under which an aggrieved person can challenge any order, including order granting or rejecting an application for bail by the Children's Court.

166. Section 1 (4) of the Act of 2015 gives an overriding effect to the Act over any other legislation or legislative provisions, i.e., inconsistent with it. It states that the provisions of the Act shall apply to all matters of children in need of care

and protection and children in conflict with law, including- (i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law; (ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

167. The non obstante clause gives primacy to the Act in all matters concerning a child in conflict with law and a child in need of care and protection.

168. In view of non obstante clause, every definition of offence, every punishment and every procedure, which is inconsistent with any of the provisions of the Act of 2015 shall have no effect in matters concerning a child in conflict with law.

169. Since a right to appeal is neither a natural nor an inherent right and is a creature of statute, there cannot be any right of appeal, unless it is expressly provided in the statute. It is a substantive right and not merely a procedural right.

170. In view of clear language of the provisions prescribed under Section 101(5) of the Act of 2015, any person aggrieved by the order of the Children's Court may challenge the order by way of an appeal before the High Court. The phrase 'any order' would also include order granting or rejecting bail.

171. Chapter XXIX in the CrPC containing Sections 372 to 394 deals with the provisions of appeal arising from any judgment or order of a criminal court. Section 372 of the CrPC provides that no appeal shall lie from any judgment or order of a criminal court except as provided for by the CrPC or by any other law for the time being in force. There is no provision in Chapter XXIX of the CrPC enabling any person aggrieved by an order granting or rejecting bail by the Children's Court to file an appeal during the pendency of the trial.

172. Thus, Section 439 of the CrPC cannot be invoked as an appeal against an order granting or rejecting bail by the Children's Court.

173. Reference to the words "with the procedure specified in the Code of Criminal Procedure, 1973" used in Section 101(5) of the Act of 2015 cannot be misconstrued as conferring right to any person aggrieved by an order granting or rejecting bail by the Children's Court to file an application for grant of bail under Section 439(1) of the CrPC or an application for cancellation of bail under Section 439(2) of the CrPC before the High Court.

174. Since the Act of 2015 provides for an appeal against any order of the Children's Court and the non obstante clause provision of Section 1(4) of the Act of 2015 gives primacy to the Act, any application under provisions of the CrPC either for grant of bail under Section 439(1) or for cancellation of bail under Section 439(2) would be impermissible in law.

175. In the backdrop of the position of law as discussed above, the fifth question

for determination is answered by us holding that against an order granting or refusing bail passed by the Children's Court, no application for grant of bail under Section 439(1) or for cancellation of bail under Section 439(2) of the CrPC shall lie before the High Court. The remedy open to the person aggrieved under such circumstances is only an appeal under Section 101(5) of the Act of 2015.

176. We are further of the view that the 'phrase' "in accordance with the procedure specified in the Code of Criminal Procedure" does not allude to application of the entire CrPC to the Act of 2015. The said reference to the CrPC in Section 101(5) of the Act of 2015 only means that the procedure, and not the substantive Sections, prescribed under Chapter XXIX shall apply to the appeal that could be filed under the said Section. To clarify further, the appeal, in terms of Section 101(5) has to be considered on the basis of material available on the record, i.e., material produced before the Board under Section 13 of the Act of 2015 and considerations arrived at in terms of Section 12 of the Act of 2015 for the purpose of grant of bail and not the considerations of grant of bail in terms of Sections 437, 438 and 439 of the CrPC. The reference in Section 101(5) to "procedure specified in the Code of Criminal Procedure" does not enlarge the scope of sub-sections to create a substantive right in terms of Section 439 of the CrPC in Section 101(5) of the Act of 2015.

177. The fifth question for determination is answered, accordingly.

178. We, thus, sum up the references by holding as under:-

Q. (i). Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015?

A. For the reasons recorded hereinabove, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015.

Q. (ii). Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail after the transfer of his case to the Children's Court for trial by the Board ?

A. For the reasons recorded hereinabove, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 after the transfer of his case to the Children's Court.

Q. (iii). Whether the powers conferred on the Board in the matter of bail to a person, who is apparently a child alleged to be in conflict with law are also available to the Children's Court ?

A. In view of clear, unambiguous and specific stipulation in Section 8(2) of the Act of 2015, which provides that the powers conferred on the Board under the Act may also be exercised by the High Court and the Children's Court in the matter of grant of bail to a person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, the powers conferred on the Board under the Act of 2015 are also available to the Children's Court and the High Court.

Q. (iv). Whether seriousness of the offence alleged is a ground for rejecting the bail in case of a child in conflict with law?.

A. Seriousness of the offence alleged cannot be made a ground for rejecting bail under the Act of 2015.

Q. (v). Whether an appeal under Section 101(5) of the Act of 2015 or an application under Section 439 of the CrPC would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Children's Court?

A. Against an order granting or refusing bail passed by the Children's Court, no application for bail or cancellation of bail under Section 439(1) or 439(2) of the CrPC shall lie before the High Court and against such an order only an appeal under Section 101(5) of the Act of 2015 would be maintainable. The 'phrase' "in accordance with the procedure specified in the Code of Criminal Procedure" does not allude to application of the entire CrPC to the Act of 2015. The said reference to the CrPC in Section 101(5) of the Act of 2015 only means that the procedure, and not the substantive Sections, prescribed under Chapter XXIX shall apply to the appeal that could be filed under the said Section. To clarify further, the appeal, in terms of Section 101(5) has to be considered on the basis of material available on the record, i.e., material produced before the Board under Section 13 of the Act of 2015 and considerations arrived at in terms of Section 12 of the Act of 2015 for the purpose of grant of bail and not the considerations of grant of bail in terms of Sections 437, 438 and 439 of the CrPC. The reference in Section 101(5) to "procedure specified in the Code of Criminal Procedure" does not enlarge the scope of sub-sections to create a substantive right in terms of Section 439 of the CrPC in Section 101(5) of the Act of 2015.

Q. (vi). What is the scope of Section 19(1)(i) of the Act of 2015 in connection with the trial of a child as an adult? Whether the provisions of Section 19 of the Act of 2015 are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015 ?

A. Upon a case of a child having been transferred to the Children's Court, a duty has been cast upon the Children's Court to further decide about the suitability of the child to be tried as an adult. The words used in Section 19(1)(i) and 19(1)(ii) of the Act of 2015 give two options to the Children's Court. First, to try the transferred child as an adult and second not to deal with child as an adult. The

Children's Court is required to record its reason while arriving at a conclusion whether the child should be treated as child or an adult in view of Rule 13 (6) of the Rules. In case, the Children's Court decides to deal with child as a child it has to conduct an inquiry as a Board following the procedures for trial of a summons case in accordance with the provisions of Section 18 as would appear from the words used in Section 19(1)(i) of the Act of 2015. In case, it decides to try the child as an adult, it shall follow the procedure as prescribed by the CrPC for the purpose of trial by Sessions Court and pass appropriate orders after trial without prejudice to the provisions of Sections 19 and 21 of the Act of 2015 considering special 'needs of the child' the tenets of 'fair trial' and maintaining a 'child friendly' atmosphere as provided under Section 19(1)(i) of the Act of 2015.

The provisions of Section 19(1) of the Act of 2015 are mandatory. The Children's Court cannot dispense with the requirement of deciding as to whether there is need to try the transferred child as an adult or to deal with the transferred child as a child.

Q. (vii). What is the scope of application of the provisions of CrPC after the Board transfers the trial of the case to the Children's Court having jurisdiction to try such offences and the Children's Court decides that there is a need for trial of the child as an adult?

A. The procedure followed by the Children's Court for trial of a child as an adult would be of a warrant case and the proceedings in Chapter XVIII prescribed under Sections 225 to 237 of the CrPC, which deal with warrant cases by a Court of Sessions only would be applicable while trying a child as an adult, subject to exceptions indicated under the Act of 2015.

179. The above answers to the questions framed by us, answer the questions of law referred by the learned Single Judge. Hence, we remit these appeals to the learned Single Judge to pass appropriate orders in accordance with law.