IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2372 OF 2024

] .. Petitioner

vs.

State of Maharashtra] .. Respondent

Mr. Aabad Ponda, Senior Advocate a/w Prashant Patil, Swapnil Ambure, Pranav Patil, Avantika Sharma, Nida Khan, Swati Pandey, Vinayak Patil, Anant Charkhe, Vishal Nevshe and R.B.Ade for the Petitioner.

Mr. Hiten Vanegavkar, PP a/w Mrs. M.M. Deshmukh APP for the State.

Mr.Satish Govekar, ACP (Crime 2), Pune City, present.

CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, J

DATED : 25th JUNE, 2024.

<u>JUDGMENT</u> :- (PER BHARATI DANGRE, J.)

RAJSHREE KISHOR MORE
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1] In the early hours of 19.05.2024 a ghastly incident killed two young individuals in the city of Pune and the cause for the same happened to be Porsche car rashly driven by Master X, a child in conflict with law (hereinafter referred to as **'CCL'**).

It is subsequently revealed during the investigation that the CCL was driving the vehicle under the influence of alcohol and the brand new car was being driven in a high speed, which resulted

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into its crash, after hitting a motorcycle with a pillion rider and this incident gathered huge attention state wide.

2] The alleged reckless act at the hands of the CCL resulted in registration of FIR bearing No.306/2024 for the offences under Section 304A, 279, 337, 338, 427 IPC and 184, 190 and 177 of the Motor Vehicles Act (Amendment Act 2019).

A huge crowd gathered and the eye witnesses got their statements recorded about the manner in which the accident occurred, attributing rash and negligent act to the CCL and as an immediate reaction, he was held in captivity and had to face wrath of the public, who manhandled him.

The CCL was apprehended and he being a juvenile (recorded age being 17 years and 8 months) was produced before Member No.I of Juvenile Justice B30oard, Pune and Application filed by his Advocate securing his release on bail was taken up for consideration.

On the very same day i.e. on 19.05.2024, he came to be released on bail and we shall come to the said order and subsequent orders passed by the Board under the Juvenile Justice Act (Care and Protection of Children) Act 2015 (for short '**Act of 2015**') read with Maharashtra State Juvenile Justice (Care and Protection of Children) Rules, 2018, a little later.

3] We must, however, take note of the haphazard manner in which the entire prosecution agency approached the issue, being rattled by the public outcry, as the entire Society was stunned by the impact of the incident, where two young innocent persons lost

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their lives and this is a classic case as to how the law enforcing as well as the law implementing agency reacted to the public outburst and treaded on a path of owing a moral responsibility of the CCL and his entire family, by alluding and questioning the upbringing of the the child belonging to the affluent family, by projecting their approach as having less regard to the lives of a common man on the road.

Though at this stage it may be too early to record that the CCL was guilty of rash and negligent act, we are proceeding on the basis of the FIR, which accuse him of rash and negligent act, and the offence prima facie falling under the category of rash, reckless and negligent driving attracting Section 304A and the other provisions of the Indian Penal Code and, we, by any chance do not intend to go into the legality or otherwise of the penal provisions invoked in the subject FIR, nor are we any manner, have adverted to any subsequent action of the investigating agency, in registering subsequent offence against other members of the family.

Though the manner in which the entire situation has been handled by the respondents including the investigation wing, we can only express our dismay and perturbation by describing the whole approach as an unfortunate incident and hope and trust that the future course of action to be chartered, shall be in accordance with existing provisions of law, avoiding any haste.

However, at this stage, while pronouncing upon the the reliefs sought before us, in the Writ Petition we deem it necessary to discharge our solemn obligation, by adherence to the Rule of Law and we feel bound by it, though the respondents, the law

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enforcing agencies have succumbed to the public pressure, but we are of the firm opinion that the Rule of law must prevail in every situation, howsoever catastrophic or calamitous the situation may be and as Martin Luther King, has rightly observed, "Injustice anywhere is a threat to justice everywhere.".

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4] Coming to the facts in hand, upon the CCL being produced before the Member I of Juvenile Justice Board, Pune, on 19/05/2024, an order was passed directing his release on bail and the Principal Magistrate, Juvenile Justice Board and Member II of the Board, signed the order on 20.05.2024, expressing their agreement with Member I of the Board.

It will be apposite to reproduce the order, which reads thus :

"CR No.306/2024
Yerwada Police Station.

BAIL ORDER

The present application is filed by Ld. Advocate for Child-in-conflict-with-law (In Short 'CCL') to release him on bail.

2] It is contended by the Ld. Advocate for CCL that, his name is falsely implicated in the present act. If the CCL is released on bail he will neither tamper the evidence of prosecution nor try to abscond from the jurisdiction of the court. He is ready to furnish solvent surety on his behalf. He is ready to abide by the conditions imposed on him.

3] Perused of FIR and discussion with CCL and his Grand Father. His Grand Father has given assurance that, he will
keep the CCL away from the any bad company. He will concentrate on his study or any vocational course which is useful for his career. He is ready to abide by the condition imposed on him. Therefore, it is just and proper to release the CCL on bail. Hence following order is passed.

ORDER

1] The CCL is released on bail on executing his personal bond and surety bond of Rs. 7,500/- [Seven Thousand Five
Hundred Rupeesl with following conditions.

i] The parent of CCL shall take care of the CCL. They should taken care that, the CCL will never involve in the offences in like nature in future.

2] The parent of CCL is directed to keep the CCL present before the board as and when his presence is required.

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3] The parent of CCL is directed to keep away from joining any bad company.
4] CCL will visit R.T.O office and study all the rules and regulations and prepare presentation and submit same to Juvenile Justice Board Within 15 days and CCL will write essay of 300 words on topic in effect of road accident and their solution.
5] CCL will assist R.T.O. officer and Practice and study traffic rules for 15 days and submit report same of Juvenile Justice Board.
6] Refer CCL to muktagaon for external deaddiction Counseling after counseling report submit to the Juvenile Justice Board
7] Consult CCL to psychology and psychiatrist doctor of sasson Hospital, Pune and submit reports to Juvenile Justice Board, Pune within 15 days.

Date :- 19/05/2024

(Signature)
Principal Magistrate,
Juvenile Justice Board, Pune

(Dr.L.N. Danwade)
Member I
Juvenile Justice Board, Pune.

(Smt.K.T. Thorat)
Member II
Juvenile Justice Board, Pune."

5] The above order passed under Section 12(1) is in consonance with Section 6 of the Act of 2015, which prescribe the procedure to be followed by the Board and since the Board was satisfied that the child alleged to be in conflict with law, who was accused of an offence was apprehended and produced before it, deserve his release on bail, subject to the conditions stipulated therein.

6] Before the ink on the said order could dry, on 21.05.2024, an application under Section 104 of the Act of 2015 was filed, subsequent to insertion of Section 304 of IPC in the subject CR, premised on the basis that the CCL driving the car was not armed with requisite license for driving the car and he was heavily under the influence of liquor.

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It was also alleged that he was driving the vehicle in violation of the traffic rules, with breath necking speed, under the influence of liquor and hence it galloped and hit the Bajaj Pulsar, which was being pillion ridden and thus is responsible for death of two persons.

By referring to the order passed by the Board on 19.05.2024, the Application proceed to state that the act of the CCL was intentional, as after consuming liquor he continued to drive his four wheeler in a reckless manner and he ought to have been aware of the consequences and hence by this act, he indulged himself in a brutal act, of taking two innocent lives.

A request was, therefore, made to review the order dated 19.05.2024 in the wake of the material collected, reflecting that the CCL had consumed the liquor with his friends in large quantity and he was under its influence and this was revealed from the CCTV footage of the hotels, where he had visited and consumed the liquor for two and half hours and also indulged in smoking. On collecting the CCTV footage of the crash, where the public attempted to assault him and since there were eye witnesses to the incident, and there was huge anger in the public at large, concern was expressed about his safety.

7] This application resulted in an order being passed by the Board on 22.05.2024 to which Member I Juvenile Justice Board, Pune is also a signatory alongwith the Principal Magistrate and Member II.

The order make reference to the earlier order passed by the Board on production of the CCL and reason for exercising the

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power under Section 104, assuming to be a power of review is based on the following observation :

> **“2** On perusal of record, it appears that no case diary was produced before the Board at the lime of production. The Medical Report of the Sassoon Hospital states something different than, the production report and the social background report produced by the Investigating Officer. On having interaction with the CCL as per Juvenile Justice (Children Care and Protection) Rules and provision of Juvenile Justice (Children Care and Protection) Act, different information gathered by the CCL than the production and social background report. Thereafter, the production order has been passed by the Board Member-1, considering the reformation of the CCL. The Board Member-1 has called the say of Learned APP and Investigating Officer on the bail application on the same day. But, unfortunately, the learned APP was absent and they being unheard before deciding the said bail application. It also appears that the Investigating Officer has not made disclosure true and correct facts before the Board Member-1. Prima facie, it reveals that the Board Member-1 is misguided by the police agency. As per Section 12 of the J.J. Act, the Board Member-1 has released the CCL on bail putting some conditions for his betterment.”

8] On making reference to the application filed under Section 104 of the Act for making amendment, the order record that the notice was issued to the CCL to file his say and the Board thereafter considered the submissions advanced on his behalf as well as the submissions of the learned APP for the State and the Investigating Officer.

The Board considered the objection about maintainability of the application in form of Review Application and the argument advanced on behalf of the CCL, being focused on the aim and object of the Juvenile Justice Act, being protection of a child, from any kind of abuse and to consider his best interest, by adopting child friendly procedure, which shall be in the interest of his rehabilitation.

A specific argument was advanced on behalf of the CCL that he was already released on bail considering all the necessary aspects under the Act of 2015 and his mental, physical and social

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health was also impacted in the wake of the incident and his parents are capable to care for him and to protect him and they have appointed a security team, outside the house to ensure his safety.

The learned APP focused upon the aspect of amendment of the order, under Section 104 of the Act and offered a clarification that the application is not intended to revoke the order passed earlier and the most highlighted aspects of the accident, were placed before the Board. It was also submitted that the wrong act of the CCL had created apprehensions in the mind of common people, who had become doubtful about their safety, on the public road.

It was also argued that after the incident, the CCL became a victim of mob lynching and if released on bail, there is a moral, physical and psychological danger posed to his life. Apart from this, the board was also appraised that the father of the CCL was arraigned as a co-accused and it is a case of neglected parenting, and therefore, the custody of the CCL should be transferred to Observation Home for his safety and rehabilitation.

9] It is in the backdrop of the facts placed before the Board, with an apprehension expressed by the prosecution, the members of the board formed the following opinion:-

> **"11** Further, after completion of examination of Std.12th on 17th May 2024, the CCL left the house for making late night party with the friends in pub and parents allowed him to go to pub at late night to consume liquor and allowed to use a Porsche car to go for the party with his friends which allegedly, not even completed registration as per rules of Road Traffic Office. The said fact clearly discloses that the parent of the CCL themselves broke the rules of Motor Vehicle Act. Prima facie it also appears that the CCL has consumed liquor and without having driving licence drove the unregistered car rashly and negligently and caused death of two lives on the spot.

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> Considering above aspects, it prima facie reveals that the CCL has neglected from proper pareneting by his parents and they have no control over the conduct and the behaviour of the CCL. The friends circle of the CCL also seems to be addicted of the substance abuse. Further, the learned Advocate for the CCL has submitted that the CCL is in mental depression. Therefore, he needs psychological treatment and proper counseling which is one of the condition of the bail granted on 19/05/2024. But the said condition could not be followed. The learned Advocate for the CCL submitted that the parents of the CCL have appointed a team of security guards through out in his bungalow. However, the mother of the CCL expressed her fear towards the CCL that, because of moblynching to the CCL on the date of incident, she could not follow the conditions mentioned in the bail order dated 19/05/2024. Therefore, the argument of the State that, if the custody of the CCL is handed over to his parents, will amount to abuse at the hands of society and his bad company cannot be neglected".

10] Moreso, in the order passed by the Board, it is clarified that the Application of the prosecution is not filed for cancellation of bail of the CCL and the Board is also not desirous of cancelling the bail, but it is launching the CCL for rehabilitation process as per Rule 21(1) of Juvenile Justice Rules and reference is then made to the procedure for rehabilitation to promote the best interest of the CCL.

Taking note of the social background report of the CCL, which had disclosed that he is addicted to smoking and consumption of liquor, the Board highlighted the aim and object of the act and in particular Section 3(xiii) and by invoking the power to amend the previous order dated 19.05.2024, in the best interest of the CCL for launching him in the process of rehabilitation, in light of the new material placed before it, in his restoration, without efforts of his rehabilitation was held to be not in his interest, and, hence, the earlier order came to be amended for assessment and fulfillment of the child's psychological needs as well as for his immediate safety and security of physical and psychological aspect.

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The operative portion of the order categorically reads thus :-

> "With the power enthroned in view of Section 3(iv) (vi)(vii) (xiii), Section 12, section 104 of the Juvenile Justice (Care and Protection of Children), Act, 2015 and Rule 7, Rule 21 of the Maharashtra State Juvenile Justice (Care and Protection of Children), Rules 2018, following order is passed.
> 1. For the fulfillment of immediate psychological needs and for his immediate safety and security, the Child-In-Conflict-With-Law is restored to the 'Rehabilitation Stay' at the Observation Home, Pune till 05/06/2024.
> 2. Comprehensive procedure for rehabilitation is launched for the Child-In-Conflict-With-Law. After consultation with following authorities as directed below, this period of rehabilitative state may extended subject to progress and response of Child-In-Conflict-With-Law in this rehabilitation process.
> 3. At Observation Home, Pune the Child-In-Conflict-With-Law shall undergone with rehabilitation process as directed."

11] In addition, several other directions are issued by the Board on 22.05.2024, catering to the psychological needs of the CCL, by referring him to experts and preparing for the De-addiction programme with the help of expert of 'Muktangan' De-addiction Centre.

The District Child Protection Unit and the Probation Officer is also directed to ensure participation of the child in conflict with law, while preparing his individual care plan.

12] The order also comprise of a direction in form of clause no.13, where the family members of the child are permitted to have access to him by visiting the Observation Home, Pune, subject to his physical and psychological safety and security, twice in a week between 11.00 am. to 12.00 p.m.

The concerned authorities are directed, to prepare an "Exit Plan" in consultation with the Juvenile Justice Board, so as to facilitate his return to the social main stream. In addition, an inquiry is also directed to be launched for appointment of a fit person of fit facility for the child.

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13] In continuation of this order, which directed the CCL to be restored to the rehabilitation stage at the Observation Home Pune, till 05.06.2024, an Application is again moved by the Investigation officer before the Board for extension of the period of CCL, by 14 days, on the ground that his release will create obstacle in the progress of investigation and on additional ground that parents and grand parent of CCL are already in custody and, therefore, there is nobody to look after him.

Another ground cited for extending the period of custody cited is collection of additional evidence and it is, therefore, prayed that the CCL should remain in Observation Home for further period, as requested.

14] Upon such an Application being preferred, by recording that the programme for De-addiction and psychological counselling for the CCL is in progress and by clearly brushing aside the contention that stay of the CCL in the Observation Home is like detention in judicial custody, but by securing his stay in Observation Home, would act to his welfare, the CCL is ordered to remain in Observation Home till 12.06.2024.

What is relevant to note, is the pertinent observation in the order to the effect that since videos of the incident have spread on social media and person in public have seen the CCL, and he shall be safe and secured in the Observation Home.

15] Another application is preferred for extension of stay of the CCL in observation home for further period of 14 days and by order dated 12/06/2024, the board extended his stay till

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25/06/2024, by recording that the CCL is progressing in the sessions conducted by the psychologist, who is helping him to built coping mechanisms and imbibe strategy towards life, though the final report from the De-addiction Center is not yet received.

16] It is in the above background, the present petition is filed by the petitioner, Mrs.Pooja Jain the paternal aunt of the CCL, seeking issuance of Writ of Habeas Corpus for release of the CCL forthwith, from the abjectly unlawful and arbitrary custody and incarceration. In addition, writ of certiorari is prayed for quashing and setting aside the illegal remand orders dated 22/05/2024, and 5/06/2024, passed by the Magistrate JJB, Pune, along with its effect implementation and consequent actions taken thereunder.

We have heard learned Senior Counsel Mr.Ponda for the petitioner, who in light of the scheme of the Act of 2015, would assertively submit that in scheme of the enactment, once a child is directed to be released on bail, he cannot be sent to an Observation Home at any rate in the wake of mandate of Section 39 (2) and definitely not under the guise of rehabilitation and social integration.

By relying upon Section 6(2) of the Act of 2015, he would submit that at any rate even keeping the child in place of safety during the process of inquiry, is permissible only when he is not on bail and once bail is granted, in terms of Section 12(1) of the Act, there is no question of falling back on the proviso appended to sub-section (1) of Section 12. Continuing his reading of sub-

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section(2) and (3) of Section 12, he would submit that the restoration of a Juvenile or a Child in observation home or place of safety is contemplated only when the bail is denied to him.

Mounting a scathing attack on the approach adopted by the Board, subsequent to the release of CCL on bail on 19/05/2024, Mr. Ponda would submit that Section 104 of the Act, is a provision incorporated to carry out an amendment to the order passed by the Board or the committee, but this power to amend is restrictive and is relatable to orders passed as to the institution to which the child is sent or to the person under whose care or supervision, he is to be placed, and according to him by no stretch of imagination this power is akin to the power of review. Submitting that the impugned order was passed purportedly under Section 104 of the Act of 2015, he would invite our attention to the scope of the provision, which according to him do not permit recalling of the bail, granted by the Board or its cancellation, only on the ground that the child is not safe on being released on bail, as according to him, the prosecution had never assailed this order either by filing appeal or adopting any procedure, which is otherwise available to it.

According to Mr. Ponda, the seriousness of the issue gets more compounded, as the bail granted in favour of CCL is not cancelled or set aside by the competent authority, but continue to remain in force, and as a result he continue to be on bail, but yet detained in Observation Home, although he has not been subjected to any re-arrest for committing more serious offence and the bail having been denied to him on that count. According to him, the

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Principal Magistrate, Juvenile Justice Board, has passed a completely illegal order directing that the child will stay in the Observation Home, at the same time while the bail granted in his favour is in force, though he ought to be a free person, once directed to be released on bail on 19/05/2024.

17] While arguing in favour of his petition seeking issuance of Writ of Habeas Corpus, Mr. Ponda would press into service two primary grounds, being the order detaining the CCL being affected by vice of lack of jurisdiction and he would place reliance upon the decision of the Apex Court in the case of ***Gautam Navlakha vs. NIA***[1] and particularly paragraph no. 80 thereof, setting out the two categories, when indulgence can be shown, being lack of jurisdiction and an order of remand being absolutely illegal.

18] Opposing the said petition, Mr. Hiten Venegavkar, the Public Prosecutor would vehemently submit that the subsequent order passed by the Board in no way has cancelled the bail granted in favour of the CCL, but what is done in exercise of powers under Section 104, is change of the custody of CCL, and now he is put in an observation home, which is in his own interest, for ensuring his safety and for his rehabilitation.

When specifically asked, whether the bail order in favour of the CCL remain intact, Mr. Venegavkar answered in the affirmative and according to him the order passed by the Board at a subsequent point of time in the wake of the changed circumstances is within the four corners of Section 104.

1 (2022) 13 SCC 542

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Questioning the maintainability of the petition seeking issuance of Writ of Habeas Corpus, he would rely upon the decision of the Bombay High Court in case of ***Naresh Goel vs. Directorate of Enforcement and ors.***[2] and according to him, it is categorically held that, when there is no challenge to the remand order, under Section 167 of CrPC and when the remand orders are passed by the competent court, the writ in the nature of Habeas Corpus shall not lie.

Mr. Venegavkar would submit that the said decision has considered the law laid down on the subject till date, being summarized in case of ***V. Senthil Balaji vs The State Represented by Deputy Director and Ors.***[3] **,** that no Writ of Habeas Corpus would lie and any plea of illegal arrest shall be made before the Magistrate since custody becomes judicial and once it is brought to the notice of the Writ Court that the person at the time of filing of the petition was in judicial custody, the custody having been granted by a Court of competent jurisdiction, Writ of Habeas Corpus cannot be entertained, subject to only exceptional circumstances.

19] On consideration of the submissions advanced, it is necessary for us to examine two aspects; whether the Writ Petition seeking a writ in the nature of Habeas Corpus deserve consideration with the prayer clauses contained therein and secondly whether the course adopted by the Juvenile Justice Board, Pune is permissible in the scheme of the Juvenile Justice (Care and Protection of Children) Act, 2015.

2 SCC OnLine Bom 2446
3 *(2024) 3 SCC 51*

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We would prefer to answer the second question ahead of the first.

The Juvenile Justice (Care and Protection of Children) Act, 2015, is an enactment 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 the matters in the best interest of children and for their rehabilitation through the processes provided in form of institutions and bodies established.

The Juvenile Justice (Care and Protection of Children) Act, 2015 conform to Article 39(e) and (f) as well as Article 45 and 47 of Chapter IV of the Constitution of India, which make the State responsible for ensuring that all needs of children are met and their basic human rights are protected. On ratification of the United Nations Convention on the rights of children, which required State parties to undertake all appropriate measures in case of a child, who is accused of violating any penal law, the Act includes provision for treating the child in a manner consistent with promotion of child's sense of dignity and worth, by re-enforcing the child's respect for the human rights and fundamental freedom of others and by promoting his re-integration into the Society.

The term 'Child' under the Act, means a person, who has not completed 18 of age and 'Juvenile' is defined to mean a child below that age.

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The Act of 2015 has defined the child care institution in Section 2(21) to mean Children Home, open shelter, observation home, special home, place of safety, Specialized Adoption Agency, any fit facility recognised under the Act for providing care and protection to children, who are in need of such services.

'Place of safety' is also defined in the Act to mean any place or institution, not being a police lockup or jail, established separately or attached to an observation home or a special home, as the case may be, to receive and take care of the children alleged or found to be in conflict with law, by an order of the Board, both during inquiry and ongoing rehabilitation on being found guilty, for a period and the purpose as specified in the order.

20] The General Principles to be followed in administration of the Act of 2015 are specifically set out in Section 3 and the most prominent among them includes the following principle, to which even the impugned order makes reference.

> *"(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."*

Amongst the two other principles which deserve to be highlighted, is the principle of institutionalization as contemplated in Section 3(xii) to be adopted as a last resort after making a reasonable inquiry. Further Section 3(xvi) must also be kept in mind as the child/juvenile has a right to receive fair treatment, which include right to fair hearing, rule against bias

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and the right to review, by all persons or bodies, acting in a judicial capacity under the Act.

The distinct provisions in the statute, therefore, have to be imperatively construed in the light of its preamble and the object, for which the special law is enacted, with Section 3, providing a guiding factor.

21] Section 10 of the Act of 2015 clearly specify that as soon as the child alleged to be in conflict with law is apprehended by the police, he shall be placed under the charge of special juvenile police unit or the designated child welfare police officer, and he shall be produced before the Board, without any loss of time but within period a period of twenty-four hours and in no case the child shall be placed in a police lockup or lodged in jail.

Section 12 of the Act is the provision as regards grant of bail to a person, who is apparently a child alleged to be conflict in law and it would be apt to reproduce the said provision:

> *"**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 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*

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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 fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

22] The reading of the aforesaid provision clearly reflect, that at the time when the child is produced before the Board, who is accused of having committed bailable or non-bailable offence, he shall, be released on bail with or without surety or may be placed before the supervision of a probation office or under the care of any fit person. However, if it appear to the Board that the circumstances indicated in the proviso do exist, then the Board shall record the reasons and circumstances denying the bail.

If a child is not released on bail by the officer in-charge, then he shall be kept in observation home or place of safety as the case may be or if such a person is denied bail, then the Board shall send him to observation home or place of safety, for such period during the pendency of inquiry regarding that person.

The Act further adumbrate the procedure of inquiry to be carried out by the Board, which is expected to ensure fair and speedy inquiry, which is imperatively to be concluded within specific period.

Under Section 15, it is permissible, to conduct preliminary assessment with regards to the mental and physical capacity of a child who is above age of 16 years, so as to try him as an adult as per Section 18 of the Act.

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23] In the scheme of the enactment Chapter VII provides for Rehabilitation and Social Re-integration and though this provision is a focal point of the enactment, it would be necessary to refer to sub-section (2) and (3) thereof which reads thus:

> *"39 (2) 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.*
>
> *(3) The children in need of care and protection who are not placed in families for any reason may be placed in an institution registered for such children under this Act or with a fit person or a fit facility, on a temporary or long-term basis, and the process of rehabilitation and social integration shall be undertaken wherever the child is so placed."*

Keeping in view the aim of the enactment, Section 40 provide for restoration and protection of child by adopting different measures as suggested by the committee.

24] Observation Homes as provided in Section 47 of the Act are the institutions established by the State Government in every district or group of districts either by itself or through voluntary or non-governmental organisations, which are registered under Section 41 of the Act for temporary reception, care and rehabilitation of any child alleged to be in conflict with law, during the pendency of any inquiry under the Act.

Whereas place of safety, children home, fit facility and special homes have been assigned different connotation and functioning under the Act.

Under the Act of 2015, there is a provision for appeal in form of Section 101, which permit any person aggrieved by the order made by the Committee or by the Board to prefer an appeal to the Children's Court within 30 days from the date of passing of the

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order, except in the situation contemplated therein. A person aggrieved by the order of the Children's Court can thereafter file an appeal to the High Court in accordance with the procedure specified in Code of Criminal Procedure. Similarly Section 102 is a power of Revision to be exercised by the High Court upon an application received by in that behalf or on its own motion.

Section 104 of the Act, is the power which has been invoked in the present case and we deem it appropriate to reproduce sub-section (1) there of, which reads to the following effect:

> *"**104. Power of the Committee or the Board to amend its own orders:-** (1) Without prejudice to the provisions for appeal and revision contained in this Act, the Committee or the Board may, on an application received in this behalf, amend any orders passed by itself, as to the institution to which a child is to be sent or as to the person under whose care or supervision a child is to be placed under this Act:*
>
> *Provided that during the course of hearing for amending any such orders, there shall be at least two members of the Board of which one shall be the Principal Magistrate and at least three members of the Committee and all persons concerned, or their authorised representatives, whose views shall be heard by the Committee or the Board, as the case may be, before the said orders are amended."*

25] Section 110 is the power to make rules, to be exercised by the State Government and pertinent to note that as far as Section 104 is concerned there is no power conferred in the State Government to make rules for its working and necessarily, Section 104 will have to be followed in reference to it even by the State Government.

26] From the statutory scheme enumerated above, in the backdrop of its object, being to provide succour to the children, and seggregate them and avoid their incarceration alongwith

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adults, the statute being not only a beneficial legislation, but is also a remedial one. It must be borne in mind that while giving effect to the provisions, one must bear in mind the moral and psychological components of criminal responsibility, as it is one of the factor in defining a 'Juvenile'. The statute, therefore, necessarily will have to be construed having regard to its object and the purpose which it intend to achieve in the ordinary state of affairs and consequences flowing therefrom.

With a presumption of innocence of any malafide or criminal intent upto the age of 18 years, as contemplated in Section 3 alongwith the imperative mandate of treating the child with equal dignity and rights, Section 12 has introduced a mandatory provision for grant of bail, when a child, who is alleged to have committed either bailable or non-bailable offence, and he is apprehended or detained by the police or he appears or is brought before the Board, when he shall be released on bail, with or without surety, or if the Board deems it fit, he can be placed under the supervision of the Probation Officer or under the care of any fit person.

The proviso appended to sub-section (1), provide for circumstances which offer justification for not releasing a child on bail, but it is pertinent to note that the proviso can be invoked at the stage, when the power is exercised by the Board under Section 12 and definitely not at a subsequent stage. It is only when the person is not released on bail by the officer in-charge of police station in case of a bailable offence or by the Board, in case of a non-bailable offence, a child shall be sent to Observation Home or a place of safety, which are institutions authorised to temporarily

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receive a child, so that he can be taken care of and rehabilitated, during the pendency of the inquiry under the Act.

One thing is, however, evidently clear, that the detention in the Observation Home or place of safety is only in the circumstance, when the child is not released on bail or when he is not placed under the supervision of the Probation Officer or under the care of any fit person.

27] Since rehabilitation and social integration is the hallmark of the juvenile justice legislation, with an individual care plan, preferably through family based care, is contemplated by restoring the child with his family or guardian with or without supervision or sponsorship, sub-section (2) of Section 39 contemplate this process to be undertaken in the Observation Home, if the child is not released on bail.

Observation Home, therefore, comes as an alternative mechanism for hosting a child for initiation of the process of rehabilitation and social integration. The housing of a child in an Observation Home is, however, permissible only when he is not released on bail, but when he is, there is no question of confining him in an Observation Home.

28] Section 104 of the Act of 2015 will have to be read in light of the other statutory provisions and, therefore, when it contemplate amendment in any order passed by the Board, on a plain reading of the provision, as it stands, it is clear, that the

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amendment can be only, 'as to the institution to which child is to be sent or as to the person under whose care or supervision a child is to be placed under the Act'.

The scope of amendment is, therefore, limited to varying the institution or a person under whose care a child is placed, which necessarily do not involve deprivation of his liberty, if the child is on bail, where he is temporarily released, awaiting the outcome of trial, subject to the condition of pledging some amount to guarantee his appearance in the Court or subject to such other conditions, which the Court may deem fit to impose. The underlying principle used for releasing an accused on bail in modern legal system is to secure his freedom.

The discretionary relief of grant of bail, is to be exercised by the competent authority, on consideration of different parameters and as laid down by the Apex Court in the case of ***Shahzad Hasan Khan Vs. Ishtiaq Hasan Khan***[4] ***.*** The pertinent observations therein, we must reproduce :-

> "Liberty secured through a process of law, which is administered keeping in mind the interest of the accused, the near and dear ones of the victims, who lost their life and feel helpless and believe that there is no justice in the world, as also the collective interest of the community, so that parties do not lose faith in the institution and indulge in private retribution. "

29] When the power to release a child produced, is conferred on the Board, which comprise of a Metropolitan Magistrate or a Judicial Magistrate of First Class or Chief Executive Magistrate, a legally trained mind alongwith two social workers, who are entrusted with the responsibility of exercising the discretion of releasing a person on bail, being guided by the requisite

4 *(1987)2 SCC 684*

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parameters and once the CCL is released on bail, he is released from the custody of police, who had apprehended him, on account of his involvement in an alleged offence, either bailable or non-bailable, and his freedom is secured to him, awaiting his trial, though in certain circumstances, the order can be revoked and he can be referred in custody.

However, without recalling the order passed by the Board, which had released him on bail, by invoking Section 104, and by justifying it on the pretext that the Board only placed him in an 'Observation Home', is an argument, which definitely contradicts the purpose with which he was released on bail i.e. set free, pending the inquiry/trial.

The reference to the word 'institution' to which the child is to be sent under Section 104(1) is with reference to cases where bail is refused or not granted under sub-section (2) and (3) of Section 12 of the Act. Similarly the use of the words, 'in whose care or supervision' a child is to be placed is contained in sub-section (1) of Section 104 is relatable to the words used in sub-section (1) of Section 12, viz. a care of a person like a family member or the supervision of the Probation Officer. This would envisage only changing the order passed under sub-section (1) of Section 12, so as to alter only the person in whose care or the Probation Officer under whose supervision the child had been ordered to be placed and definitely would not cover a situation of remaining or restoring the child to a Observation Home, particularly when he is on bail and is entitled to be 'free'.

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30] In passing the order dated 21.05.2024, the Board has thus misguided itself, by exercising the power under Section 104 and directing that the child will stay in Observation Home, though it has clarified that he continue to be on bail and if it was so, then he ought to be a free person, subject to the orders passed by the Board earlier i.e. on 19.05.2024, as it is the stand adopted by Respondents that the same is not cancelled, but only amended. Depriving the CCL of his freedom by confining him in the Observation Home, definitely runs contrary to its own order passed on 19.05.2024.

31] Pertinent to note that continuing with the same illegality, though being on bail, repeated applications are moved by the Investigating Officer before the Juvenile Justice Board at Pune, for extension of his detention in Observation Home, by further period of 14 days and surprisingly on the grounds of his release amounting to obstacle in progress of investigation or his further detention is necessasry in Observation Home for collection of additional evidence etc.

The above grounds ought to have been pressed, when the question of releasing the CCL on bail was under consideration and to determine whether the CCL was entitled for his release on bail, and definitely not at the time when he is already a free man, on securing bail in his favour by a competent authority i.e. the Board, a statutory body constituted under the Act with the power conferred to released a child on bail or refuse the same, in exercise of the power under Section 12(1) of the Act of 2015.

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32] The subsequent orders extending the Observation Home custody on two occasions, are the orders passed without jurisdiction, as without cancelling the bail, it is not permissible to remand him to any custody, when it may be even an Observation Home, there is no provision in the Act to adopt such a course.

The Juvenile Justice Board has, therefore, clearly erred in assuming the power to detain the CCL in Observation Home, contradicting its own earlier order releasing him on bail, by construing its subsequent order, as amendment of the earlier order, which is a grossly erroneous assumption, as there is no question of confining a free child, who is already on bail.

Reliance placed in the order, on Sections 3(iv), (vi), (vii) and (xiii), Section 12 and Section 104 of the said Act of 2015 and Rule 7 and 21 of the Maharashtra State Juvenile Justice (care and Protection of Children), Rules, 2018, as being the source of power to pass such an order is completely misplaced. Section 3 (iv), (vi), (vii) and (xiii) deal with general principles of, best interest of the child, safety of the child, positive natures, repatriation and restoration and reuniting with family. Whereas Rule 7 deals with the role and functions of the Board, while Rule 21 deals with procedure for rehabilitation. None of these provisions, let alone Sections 12 and 104, would authorize detention, in an Observation Home of a child who is on bail."

33] Once we have arrived at a conclusion that the order passed by the Board on 22/5/2024 by invoking Section 104 of the Act of 2015 and the other relevant provisions, is illegal and

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beyond the powers conferred under the statute and therefore illegal, we shall now answer the objection of Mr.Venegavkar about the maintainability of a Petition seeking writ of Habeas Corpus, as he would heavily fall back upon the decision of this Court in case of ***Naresh Goyal*** (supra).

In the said decision, the argument was advanced in favour of maintainability of writ of Habeas Corpus, considering that the arrest was ex-facie illegal, being without jurisdiction and the remand orders passed by the Competent Court were without application of mind, and rather passed in a mechanical manner, resulting in complete violation of Article 21 and 22(1) of the Constitution.

The contention raised being, no remand orders could rectify the illegality committed by the prosecution, as it was the duty of the Remanding Court to ensure that the constitution and statutory safeguards were complied with, but there was a failure on part of the Competent Court to do so.

Opposing the relief, the counsel for Directorate of Enforcement, objected to the maintainability of the petition on the ground that the writ can be issued only when it is found that the person is in custody without any authority of law, or has been illegally detained. The argument advanced was, several remand orders have been passed and the petitioner was in judicial custody and it was therefore, open for him to challenge the remand orders before the appropriate forum, and as on date, the petitioner was found to be in lawful custody by virtue of judicial orders.

By referring to the precedents in form of the authoritative pronouncements in case of ***Ram Narayan Singh Vs. State of Delhi***[5],

5 1953(1) SCC 389

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Kanu Saniyal, **District Magistrate, Darjeeling**,[6] and **V. Senthil Balaji** (supra).

Mr.Venegavkar had urged that neither the arrest of the petitioner was ex-facie illegal nor are the remand orders and he would draw benefit from the following observations of Their Lordships of the Apex Court;

> *"The writ of Habeas Corpus shall only be issued when the detention is illegal. As a matter of rule, an order of remand by judicial officer, culminating into a judicial function cannot be challenged by way of writ of Habeas Corpus, while it is open to the person aggrieved to seek other statutory remedies. When there is non-compliance of the mandatory provisions along with a total non-application of mind, there may be a case for entertaining a writ of Habeas Corpus and that too, by way of challenge."*

34] By referring to the facts in the case involving various dates of remand, when the petitioner was sent to judicial custody, it was recorded that admittedly, none of the remand orders after filing of the petition was challenged and the contention on behalf of the petitioner was recorded, to the effect that the arrest and the first and second remand order itself being illegal, subsequent orders need not be challenged.

It is in this background the Court determined the issue whether the arrest of the petitioner was illegal since the grounds of arrest were not furnished to him, but noting that this ground was never raised at the time of first remand or second remand and this position being not disputed, finding no infirmity in the arrest order, the request for issuance of writ of Habeas Corpus was declined by clearly recording that it is open for the petitioner to avail statutory remedies.

6 1974(4) SCC 141

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35] In contrast, in case of ***Gautam Navlakha*** (supra), while dealing with the scope of Section 167(2) of the Code of Criminal Procedure, a provision in form of default bail, a broader approach was adopted by holding that the provision would not ordinarily embrace house arrest, but it being a deprivation of liberty, it was qualified as detention under Section 167 of Cr.P.C.

Pronouncing upon the issue whether a writ of Habeas Corpus would lie against an order of remand under Section 167, by referring to the decision in case of ***Manibhai Ratilal Patel Vs. State of Gujarat and ors***,[7] which had taken a view that a writ of Habeas Corpus shall not be entertained when a person is committed to judicial custody or police custody by the Competent Court by an order which *prima facie* does not appear to be without jurisdiction or passed in an absolutely mechanical or wholly illegal manner, reference was made to a decision in case of ***SFIO Vs. Rahul Modi,***[8] which had laid down the position of law as below:-

> *"19 The law is thus clear that in a Habeas Corpus proceedings, a Court is to have regard to the legality or otherwise of the detention at the time of return and not with reference to the institution of the proceedings".*

It is in this background the circumstances in which the writ of Habeas Corpus shall lie, were clearly stipulated in the following words:-

> *"If the remand is absolutely illegal or the remand is afflicted with the vice of lack of jurisdiction, a Habeas Corpus petition would indeed lie. Equally, if an order of remand is passed in an absolutely mechanical manner, a person affected can seek the remedy of Habeas Corpus. Barring such situations, Habeas Corpus petition will not lie."*

7 (2013) 1 SCC 314
8 2019(5) SCC 260

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36] We have no hesitation in coming to a conclusion that in the present case, both the conditions are clearly attracted, as the remand of the CCL, by three distinct orders passed by the Board is absolutely illegal as the impugned order, are afflicted with vice of lack of jurisdiction and further orders of remand being passed by the Board, in an absolutely mechanical manner, without considering the most significant and pivotal fact that the CCL continue to be on bail and there is no cancellation or revocation of the order, enlarging him on bail.

37] The act of the respondent therefore, squarely fall within the parameters laid down in ***Gautam Navlakha*** *(supra)* for entertaining a writ in the nature of Habeas Corpus and in addition, we must also note that the petitioner, the paternal aunt of the CCL, who has filed the present petition has also prayed for quashing and setting aside of the remand orders, on the ground that it is illegal, which include the order dated 22/5/2024 as well as the subsequent orders of remand and the consequent actions based thereupon.

Looking to the manner in which the entire matter has been dealt with by the Investigating Agency and also the various orders passed by the Board upon the application preferred by it, we must clearly express that this is one of the fit case where we shall exercise our jurisdiction by issuing a writ in the nature of Habeas Corpus, as prayed for in prayer clause (a) and issue a writ in the nature of certiorari for quashing the subsequent orders remanding the CCL to Observation Home.

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38] In any case, by virtue of sub-section (4) of Section 1 of the Act of 2015, the matters concerning apprehension, detention, prosecution, imposition of penalty and procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection, shall be governed by the provisions of the Act, notwithstanding anything contained in any other law for the time being in force.

In the absence of any provision in the Act of 2015 for remand of the child/juvenile, the procedure adopted by the Board in extending the remand of the CCL from time to time by 14 days, as contemplated under Section 167(2)(b) of the Code of Criminal Procedure, is not applicable in case of a child who is already released on bail in exercise of powers under Section 12(1) of the Act of 2015.

39] *Fiat Justitia Ruat Caelum*, a latin phrase, which connote, “Let justice be done though the heavens fall”, clearly convey a principle in law, that justice must be realized regardless of consequences and Just decisions may be made at whatever cost it comes.

It is our bounden duty to prioritize justice above everything else, and definitely, we are not swayed away by the uproar created upon occurrence of the ghastly mishap, for which allegedly the CCL is personally responsible and which has resulted in loss of two innocent lives. We have all sympathies for the victim and their families but as a Court of Law, we are bound to implement the law as it stands.

Law is an objective thing and there it stands, irrespective of whether it entails any hardship. Provisions of law must be

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applied equally to all and shall definitely treat everyone equally, as the dominant approach of doctrine of equality is equal justice, which would encompass equal protection of law. The administration of law should not degenerate into its choicest application in arduous and wary situations and it impermissible to have its inconsistent application, dependent upon who stands before us, and in what situation, justice is pleaded.

40] The outcry, as a knee jerk reaction to the accident, resulting into a clarion call of "*see the accused's action and not his age*", will have to be overlooked upon assimilating that the CCL is a child under the Juvenile Justice Act, being under 18 years and regardless of his crime, he must receive the same treatment, which every other child in conflict with law is entitled to receive, as the purpose of the Act of 2015 is to ensure that children who come in conflict with law are dealt with separately and not like adults. Though the accident caused by the CCL is the most hapless incident and a demand is made by the prosecution to accuse him of 'heinous offence' and try him as adult, which may receive due consideration as per law, we are bound by the scheme formulated by the legislature, for ensuring that all resources are mobilized including those of family and community, for promoting the well being of a children by facilitating their development and by providing an inclusive and enabling environment, to reduce the vulnerabilities they may face, and also the need for intervention under this Act, and, hence, we have permitted the benefit conferred by the special legislation, to be availed by the CCL, a child in conflict with law.

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For the aforesaid reason, we issue a writ of Habeas Corpus directing the release of the CCL from the Observation Home where he is detained, despite being released on bail by a validly passed order by the Board on 19/5/2024 forthwith. We also quash and set aside the impugned order dated 22/5/2024 and the subsequent orders dated 5/6/2024 and the order dated 12/6/2024, which have authorized the continuation of the CCL in the Observation Home which, according to us, is illegal, as the orders being without jurisdiction conferred on the Board.

41] At this stage, we must however clarify that since the rehabilitation and reintegration of the child in the Society is a primary object of the Act of 2015 and because of the orders passed being in the Observation Home, if the CCL is referred to a Psychologist or undergoing therapies with the de-addiction centre, the same shall be continued with the CCL participating in these sessions on the given time and date, though he shall continue to remain in his home or any safe place, being on bail and the conditions imposed upon him by the order dated 19/5/2024 shall continue to govern him.

In addition we also direct that the CCL shall continue to be under the supervision of the petitioner, his paternal aunt, who shall ensure the compliance of the necessary direction issued by the Board to assist him to be rehabilitated.

The petition is therefore, made absolute in terms of prayer clauses (a) and (b).

(MANJUSHA DESHPANDE, J.) **(BHARATI DANGRE, J.)**

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