

BEFORE THE JUVENILE JUSTICE BOARD

SRINAGAR

File No. 126/JJB/SGR.

Date of Institution: 08.03.2022

Date of Order: 20.04.2022

In the case of:

Mr. ABC

(Name withheld)

Through his Father

Applicant/Child in Conflict with Law (CICL)

Through Advocate: Mr. Mir Tashveeq

& Associates

VERSUS

UT of J & K through S.H.O

Police Station Nowhatta, Srinagar

(Non-Applicants)

Through A.P.P: Mr. Zaffar Iqbal Shaheen

for U.T of J & K

Case FIR No. 08/2022 of Police Station Nowhatta, Srinagar

Offences under Sections 326-A IPC

In the matter of:-

***Application under Section 12 of the
Juvenile Justice Act, 2015 seeking bail
of Child in Conflict with Law (CICL).***

CORAM:

- 1. Touseef Ahmad Magray (Principal Magistrate)***
 - 2. Dr. Khair Ul Nisa (Member)***
 - 3. Dr. Asima Hassan (Member)***
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O R D E R**20.04.2022****FACTUAL BACKGROUND:-**

1. The Applicant/Child in Conflict with Law (**hereinafter referred to as CICL**) has filed this bail application submitting therein that the Applicant/CICL came to be arrested in connection with FIR No. 08/2022 for the alleged commission of offences falling under Section 326-A read with 120-B IPC by Police Station Nowhatta. The Applicant is a Child in Conflict with Law as defined by the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 since at the time of the alleged commission of the offence, the Applicant/CICL had not attained majority. The Date of Birth certificate issued by the Srinagar Municipal Corporation clearly indicates that the date of birth of the Applicant/CICL is 20.09.2004. On 02.02.2022 the Applicant/CICL was arrested by the personnel of the above mentioned Police Station and since then the Applicant/CICL has been languishing in Observation Home, Harwan, Srinagar. The Principle of presumption of innocence is recognized as a “fundamental principle” by the J.J Act, 2015 and accordingly it shall be presumed that the Juvenile is innocent of any malafide or criminal intent. Therefore, the Applicant/CICL has a right to be treated in accordance with this presumption. The Applicant/CICL is a student and is studying in Class 8th and his studies are getting marred because of continued incarceration. The continuous confinement of the Applicant will be detrimental to his studies. A chance to learn in person at the school will create a favourable environment for the Applicant/CICL, allowing for the Juvenile’s reformation and recreation. Allowing the Applicant/CICL to be under detention at this stage of the trial would be tantamount

to draining of what could be a good period of life for the Applicant/CICL which could be used productively by the Applicant/CICL. The motion of bail under JJ Act, 2015, is very different from the bail as understood in Criminal Law. The difference lies in the fact that the JJ Act, 2015 is child centric and is reformatory. The object of the Act is to rehabilitate and reform the CICL and not to penalize him. Therefore, a chance should be given to the Applicant/CICL to tread the way of becoming a model citizen. There is no chance that if the Applicant/CICL is released on bail, it will bring him in association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice. The family setting is best for the overall development of the Juvenile. The welfare of the Juvenile is of paramount importance and it can be best served only when the Juvenile is placed in a friendly and caring environment and this can only be provided by the family of the Juvenile. The fundamental principles of the JJ Act, 2015 provide that detention pending trial should be used only as a measure of last resort and for the shortest possible period. Section 12 of the JJ Act, 2015 is worded to meet the aforementioned philosophy ensuring that children are released on bail at the earliest, irrespective of the nature of the offence. The grant of bail is the rule, and rejection, is exception. The Applicant/CICL belongs to a family of modest means. The Applicant/CICL has no prior criminal record nor has been previously convicted for the commission of a cognizable offence. Therefore, there arises the least possibility of the Applicant/CICL committing similar or other offences. The Juvenile's parents are determined to provide him with the best education possible as well as a nurturing atmosphere for his professional and personal development. Granting of bail by no stretch of interpretation means acquittal. Rather the Board transfers the alleged accused from the

Custody of Law, momentarily, and entrusting the alleged Applicant/CICL to the Custody of Sureties under the esteemed supervision of the Hon'ble Board. And that the sureties, thus become bound to produce the Applicant/CICL before the Hon'ble Board to face trial. The parents of the Juvenile are ready to abide by any terms and conditions that may be imposed by the Board while granting him bail under the supervision of his parents. Lastly, prays the instant application be allowed.

2. The Ld. A.P.P **Mr. Zaffar Iqbal Shaheen** has filed the objections which are part of the file. The Ld. A.P.P has objected to the application on the grounds that the Applicant/CICL is involved in the commission of a non-bailable offence, hence cannot claim bail as a matter of right. The Applicant/CICL is involved in the commission of a heinous offence under Section 2 (33) JJ Act 2015. Applicant/CICL has committed and actively aided in the commission of this horrendous act which shows depravity of mind and cannot be treated as an act which can be dubbed as a child's mistake during youth hood. It is a ghastly act done with passion to ravish the life of the victim. The Applicant/CICL if released would certainly expose him to moral, physical or psychological danger and it is pertinent to mention the fact that the rage in society against the offender is simmering, so that the physical safety of the Applicant/CICL is best possible at the observation home as his release would expose him to physical injury or even mob-lynching, which may be carried by the relatives or friends of the victim or other anti-social elements in the society who may take law in their own hands. His release would also defeat the ends of justice as the victims family would be psychologically affected by the decision as they are already devastated by the offence committed against the victim. Further, it would embolden many other sick minded delinquents to

commit similar offences. The Applicant/CICL has lost parental control and hence cannot be reformed or re-integrated by way of parental care, love or attention. Hence, his safety, reformation can be possible only if he continues to be lodged at the reformatory observation home. Lastly prayed that the instant application be rejected as the prosecution strongly opposes this application in the interest of justice, equity, and public order in the society at large.

3. **Perused the final report of the case as same stands presented before this Board on 22.02.2022. After perusal of the final report, it transpires that Investigating Officer has concluded that the offences under Section 326-A, 120-B IPC are prima facie found to be attributed against the CICL and presently the case is listed before Board for the preliminary assessment of CICL in accordance with the mandate of Juvenile Justice Act, 2015, in which next date of hearing is 04.05.2022.**

4. **Legal Cum Probationary Officer (LCPO) Srinagar, associated with District Child Protection Unit, Srinagar** has submitted **Social Investigation Report (SIR)** of the CICL which is part of the file, which transpires that the CICL was manipulated by main culprit. He was accompanying the main culprit in this case to the spot of commission of this offence. CICL and main culprit were known to each other and on the day of commission of offence main culprit namely Sajid asked CICL to accompany him for committing the said grave offence. He had tempted CICL that he would give new clothes to him if he accompanied him to the spot of incident and would throw acid on the victim. CICL denied to throw the acid on the victim but agreed in accompanying him (Sajid main Accused) to the place of

occurrence. Further, submits that CICL must go through strict and proper rehabilitation. He must be kept under stringent supervision.

5. **Case History** of CICL is submitted by Probation Officer associated with Observation Home Harwan, Srinagar wherein it has been found that CICL is presently living in a nuclear family system. He is a student of 8th Standard. Peer group influence, Parental neglect and lack of moral and social education are the basic reasons for delinquency of CICL. It appeared that CICL is in need of proper counselling and guidance for the purpose of becoming a good human being. Moreover, parents of the CICL should also be given moral and ethical sessions so that they can guide their child in a proper manner.

ARGUMENTS:-

6. Ld Counsel for the Applicant/CICL while arguing has reiterated that there are reasonable grounds for believing that the Applicant is innocent and is not guilty of such offences as are alleged against him and that he is not likely to commit any offence while on bail. The continuous arrest/detention of the child, in view of his tender age may not serve any useful purpose for his growth, development and betterment. And that the Applicant will appear before the board or any other court, during pendency of the investigation/trial in the case and that his guardian shall properly look after the delinquent child and secure him away from the company of known criminals. From a bare reading of the provision of Section 12 of the Juvenile Justice Act, 2015 i.e J. J Act, it appears that the intention of the legislature is to grant bail to the Juvenile irrespective of the nature of gravity of the offence alleged to have been committed by him, and bail can be declined only in such cases where reasonable

grounds are there for believing that the release is likely to bring the Juvenile into association of any known criminal or expose him to moral, physical or psychological danger, or that his release would defeat the ends of justice. Meaning thereby, as per the aforesaid provision, a Juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12 (1) of the J.J Act is available. In support of his arguments he has cited **(i). Jiya-Uddin (Minor) Thru. His.....Vs State of U.P & Anr Criminal Revision No. 1234 of 2018, (ii). Pradeep Kumar Vishwakarma Vs State of U.P Criminal Appeal No. 3526 of 2018.**

7. Learned APP for prosecution has also submitted that the Hon'ble Board is to take into consideration the Social Investigation Report prepared by the Probation Officer or Child Welfare Officer or Social Worker within a period of 15 days from the 1st production of CICL before the Board for ascertaining the circumstances in which the alleged offence was committed by the CICL U/S 8(e). The object being that solely rejecting a bail application on the basis of police report should not be the only norm rather a whole some view of the circumstances be taken into consideration for deciding a bail application. The Hon'ble Board should take into consideration, the third condition for the denial of bail i.e release would defeat ends of justice. Term "ends of justice" is not defined in the act. It means preservation of a proper balance between constitutional (statutory rights of an individual) and rights of people at large to have law enforced. The Hon'ble Board has also take into account the effect and impact of grant of bail to the juveniles on the victims family in particular and its adjoining society in general. This offence being a heinous offence within the meaning of Section 2 (33) and read with Section 15 of J.J. Act, the CICL has to be subjected to preliminary assessment

under Section 15 (1) as the CICL is of 16 Years age and it is important to ascertain his ability to understand the consequences of the offence and must be decided under Section 14(3). However the mentioned Section does not put any rider on the grant or refusal of bail to the CICL. The exception of heinous offence alleged to be committed by the Juvenile of 16 Years of age and above upto 18 Years, with mature, mental facility has been carved out in the J.J Act of 2015. The earlier J.J Act of 2000 was not carrying any such exception regarding the age of Juvenile, which was upto the age of 18 Years. This exception of 16-18 Years was created after the shameful happening of Nirbhaya case in the capital of the country as a whole. As one of the accused in the said case had claimed to be juvenile and escaped the adequate punishment only on account of juvenility, though he was mentally and physically mature. Hence it is humbly submitted that the instant bail application be rejected in the interest of justice.

8. Heard and Considered.

FINDINGS:-

9. The Board perused the Bail Application, Final Report, Objections filed by the Ld. APP, perused the entire record as well as considered the rival arguments advanced by the Ld Counsel for the Applicant and Ld. APP. Perused Social Investigation Report (SIR), Case History of the CICL prepared by Probation Officers. Besides, by the way interpretation of the law on the subject by the Hon'ble Apex Court and various other Hon'ble High Courts of our country in catena of judgments have laid down, that the following material consideration which the Courts/ Boards should keep in mind while granting/refusing bail in non-bailable offences to Juveniles:-

- ❖ ***That the Board must duly consider the nature and circumstances of the case;***
- ❖ ***That the liberty of the child must be balanced against the larger interest of the society and the state;***
- ❖ ***That the nature of the charge is the vital factor and the facts and circumstances play a predominant role;***
- ❖ ***That the rehabilitation/reformation to which the child may be liable also bears upon the matter;***
- ❖ ***That the judicial discretion must be exercised by the Board with utmost care and circumstances;***
- ❖ ***The peculiar facts and circumstances of the case be considered;***
- ❖ ***Social position or status of the CICL;***
- ❖ ***Whether the grant of bail would thwart the course of justice, or defeat the ends of justice?***

10. Furthermore, Fundamental Principles of Care and Protection of Children guaranteed under the Juvenile Justice (Care & Protection of Children) Act, 2015 reads as:

- ❖ ***That the child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementation of all measures for dealing with the child.***
- ❖ ***That in all the decisions taken within the context of administration of juvenile justice, the principle of best interest of the child shall be the primary consideration.***
- ❖ ***That 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.***
- ❖ ***That the child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.***

11. Tested against the backdrop of the totality of the aforementioned governing principles, the peculiar facts and circumstances of the case and considering the welfare of the child, although admittedly the offences attributed to the CICL are classified as **heinous** as per the Juvenile Justice (Care and Protection of Children) Act, 2015, but the liberty of the children must be balanced against the larger interest of the society and the State, and bail to juvenile shall be norm and denial exception that too if case falls within one of the exceptions carved by Proviso to Section 12 (1) of JJ. Act, 2015.

12. The Board observed that from a bare reading of the provisions of Section 12 of Juvenile Justice (Care & Protection of Children) Act, 2015, it appears that the intention of the legislature is to grant bail to the children irrespective of the nature or gravity of the offence alleged to have been committed by him, and bail can be declined only on reasonable grounds. **A juvenile has to be released on bail mandatorily unless and until the exceptions carved out in proviso to Section 12(1) of the Juvenile Justice (Care & Protection of Children) Act, 2015 itself are made out. The exceptions are noted being:-**

- ❖ ***A reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal;***
- ❖ ***His release is likely to expose him to any moral, physical or psychological danger; and***
- ❖ ***His release would defeat the ends of justice.***

Meaning thereby, as per the aforesaid provision, a juvenile can be denied the concession of bail, if any of the three contingencies specified under Section 12(1) of Juvenile Justice (Care & Protection of Children) Act, 2015 is available.

13. Now, coming to the case under hand, the allegation (case of prosecution) against the CICAL is that Police Station Nowhatta, Srinagar received an information through reliable sources, that on 01.02.2022 at about 17:30 hours, some unknown person or persons threw acid over the face of an unidentified girl at Usmania Colony Wantpora, Nowhatta and after this attack, the unknown Accused fled away from the spot. On receiving this information, FIR Number 08/2022 under Section 326-A was registered in Nowhatta Police station and investigation was set into motion. During investigation it came out that this was a well-planned criminal conspiracy hatched between main Accused Sajid Altaf Rather (A-1), and his associates namely Mohammad Saleem Ali (A-2) and later with CICAL. The conspiracy was to teach a lesson and take revenge from the victim in this case, as she had rejected marriage proposal of main Accused namely Sajid Altaf Rather. In furtherance of this conspiracy main Accused brought Sulphuric acid from his associate namely Mohd Saleem Kumar and threw the acid on the victim's face while, his another associate CICAL accompanied him for this criminal act. During course of investigation it was found that Accused, Sajid Altaf also associated third Accused CICAL in the conspiracy, when he took him along to commit the act of throwing acid on the face of the victim. The third Accused CICAL willingly accompanied the main Accused, Sajid Altaf on Scooty by sitting in back seat. After the criminal Act, he came back with the main Accused, Sajid on same Scooty and got busy in routine works. His conduct post the incident wherein he didn't inform anyone about the crime, also clearly points out that he was part of conspiracy and execution of the criminal act in this case. All the three Accused (A1, A2) and CICAL were part of the criminal conspiracy even though they may have joined the conspiracy at different times but there was clear

meeting of minds. Further, the fact that all the three Accused are residents of same locality and are well known to each other since long reinforces this. Investigation has fully established that the criminal act of throwing acid on the face of victim was in furtherance of conspiracy hatched by main Accused Sajid, in association with Accused, Saleem and CICL. The motive was to teach the victim a lesson as she had rejected marriage proposal of Accused, Sajid Altaf Rather.

14. **Bail in the instant case can be refused on the ground that release of CICL at this juncture would certainly defeat the ends of justice. Ends of Justice have been interpreted by courts in different manner. No universal formula can be laid down but justice to society as a whole has to be borne in mind while interpreting ends of justice. All that this Board wishes to say is that for the present, the Board is seized of this bail matter, there is a reasonable assurance about the charge being prima facie credible. It is true that the merits of the case or prima facie tenability of the charge, like an adult, is not entirely decisive to the fate of the bail plea. At the same time, it is not altogether irrelevant. The gravity of the charge, manner of its perpetration, circumstances in which the offence is alleged to have been committed, its immediate and not so immediate impact on the society at large and the locality, in particular, besides its impact on the aggrieved family, are all matters to be taken into reckoning while judging a juvenile's bail plea. All these factors are relevant under the last disentitling clause postulated under the proviso to Section 12 (1) of the Act, which says that release of the juvenile would 'defeat the ends of justice'. After all 'defeat the ends of justice' is not a word of art. It has been thoughtfully introduced**

by the legislature to arm the Board with a right to overcome an otherwise absolute right to bail, where in the totality of the circumstances, release on bail would adversely impact the law and order and the equilibrium of an ordered society.

15. Hon'ble Apex Court in *Essa @ Anjum Abdul Razak Memon Vs State of Maharashtra 2013 (13) SCC 456* has given a guidance as to what the term "Ends of Justice" connotes. The relevant paras are reproduced herein below:-

"374. It has always been the subject matter of debate as what does the words "the ends of justice" mean, for the reason "that it is one of those questions to which the resigned wisdom applies that man cannot find a definitive answer, but can only try to improve the question". (Vide: L. Vijay Kumar vs. Public Prosecutor, A.P., AIR 1978 SC 1485).

375. In Delhi Development Authority vs. Skipper Construction Co. (P) Ltd. and Another, AIR 1996 SC 2005, this Court observed that it is advisable to leave the power undefined and uncatalogued, so that it remains elastic enough to be moulded to suit the given situation.

376. While dealing with such an issue, the court must not lose sight of the fact that meaning of "ends of justice" essentially refers to justice to all the parties. This phrase refers to the best interest of the public within the four corners of the statute. In fact, it means preservation of proper balance between the Constitutional/Statutory rights of an individual and rights of the people at large to have the law enforced. The "ends of justice" does not mean vague and indeterminate notions of justice, but justice according to the law of the land. (Vide: State Bank of Patiala & Ors. vs. S.K. Sharma, AIR 1996 SC 1669; and Mahade Vs Govind Gharge & Ors. vs. The Special Land Acquisition

Officer, Upper Krishna Project, Jamkhandi, Karnataka, (2011) 6 SCC 321)

377. Thus, the law has to be interpreted in such a manner that it develops coherently in accordance with the principles, so as to serve, even-handedly, the Ends of Justice”.

16. In the instant case alleged act of Applicant/CICL wherein he accompanied the main Accused to commit the alleged crime and post occurrence behaviour of Applicant/CICL, all point out to the fact that CICL needs reformation of highest degree so as to make him understand that the norms of society and laws of land are to be adhered to. The release at this juncture of CICL on bail will not serve the ends of justice. Rather, his placement at Observation Home, Harwan, Srinagar is in his best interest at this juncture as he has shown signs of reformation which shall continue for the time being.

CONCLUSION:-

17. So coming to the conclusion, the Board is not inclined to grant bail to the Applicant/CICL at this stage. Taking into the considerations the nature and gravity of allegations and overall circumstances, Board is of the opinion that release at this stage of CICL on bail would certainly defeat the Ends of Justice. Accordingly the instant bail application is dismissed and shall be attached with Final Report of the instant case.
18. Any observation made hereinabove shall be confined to the disposal of this bail application and shall not have any bearing on the enquiry pending before the Board with regard to the Applicant/CICL which will always be conducted in accordance with the General

Principles of Care and Protection of Children as envisaged under Section 3 of Juvenile Justice Act, 2015. Disposed off.

**Announced
20.04.2022
Obaid**

***Touseef Ahmad Magray (Author)
Principal Magistrate***

I, Concur.

I, Concur.

***Dr. Khair Ul Nisa
Member***

***Dr. Asima Hassan
Member***