



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27<sup>TH</sup> DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR JUSTICE S VISHWAJITH SHETTY

CRL.R.P. NO. 1372 OF 2022

**BETWEEN:**

...PETITIONER

(BY SRI A.N RADHA KRISHNA, ADV.)

**AND:**

STATE OF KARNATAKA  
BY K.M. DODDI POLICE  
REPRESENTED BY THE  
STATE PUBLIC PROSECUTOR  
HIGH COURT BUILDINGS  
BENGALURU - 560 002.

...RESPONDENT

(BY MRS. RASHMI JADHAV, HCGP)

THIS CRL.R.P. IS FILED U/S.102 OF JEVENILE JUSTICE (CARE AND PROTECTIONS OF CHILDREN) ACT 2015 PRAYING TO SET ASIDE THE ORDER DATED 24.08.2021 PASSED BY THE LEARNED PRINCIPAL SESSIONS JUDGE AT MANDYA IN CRL.A.NO.360/2021 CONFIRMING THE ORDER DATED 10.12.2020 PASSED THE JUVENILE JUSTICE BOARD, MANDYA IN J.C.NO.26/2020 DISMISSING THE BAIL, APPLICATION BY THE PETITIONER, CONSEQUENTLY ENLARGE HIM ON BAIL IN S.C.NO.6/2021 AND 3/2021 PENDING ON THE FILE OF THE LEARNED PRINCIPAL DISTRICT AND SESSIONS JUDGE, MANDYA (IN CR.NO.110/2020) OF K.M.DODDI POLICE, FOR THE OFFENCE P/U/S.302,341,120-B,109 R/W SEC.34 OF IPC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, THE COURT MADE THE FOLLOWING:



**ORDER**

1. This criminal revision petition under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act') has been preferred by the child in conflict with law/petitioner challenging the judgment and order dated 24.08.2021 passed by the Court of Principal Sessions Judge, Mandya, in CrI.A.No.360/2021 and the order dated 10.12.2020 passed by the Juvenile Justice Board, Mandya (for short, 'the Board'), in FIR No.5/2020 (JC.No.26/2020).

2. Heard the learned Counsel for the petitioner and the learned HCGP on behalf of the respondent-State.

3. Facts leading to filing of this petition as revealed from the records that may be necessary for the disposal of this petition are, on the basis of the complaint lodged by CW-1 - Ningamma, a criminal case was registered against the petitioner and others in Crime No.110/2020 for the offences punishable under Sections 341, 302, 120B, 109 read with 34 IPC. It is averred in the complaint that her son Raghu was murdered by the petitioner at the instance of other accused persons and during the course of investigation, the petitioner was arrested and he is in custody.



4. The petitioner, initially, had filed an application under Section 12 of the Act before the Board seeking bail and the Board before considering the same, passed orders under Section 15 of the Act on 10.12.2020, and accordingly held that the bail application did not survive before it for consideration. The petitioner instead of challenging the said order in accordance with law, had filed a separate application under Section 439 Cr.PC before the Court of Principal Sessions Judge, Mandya, in S.C.No.3/2021 which was dismissed on 08.02.2021. Challenging the said order passed in S.C.No.3/2021, petitioner had approached this Court in Crl.R.P.No.605/2021. In the said revision petition, the learned Counsel for the petitioner sought permission to withdraw the revision petition with liberty to exhaust the remedy of filing an appeal under Section 101 of the Act. This Court had, therefore, dismissed the said revision petition with liberty as prayed. The petitioner, thereafter, has preferred Crl.A.No.360/2021 before the Court of Principal Sessions Judge, Mandya, under Section 101 of the Act. The same was dismissed by the Appellate Court on 24.08.2021. It is under these circumstances, the petitioner is before this Court in this revision petition.



5. Learned Counsel for the petitioner submits that the petitioner being aged below 18 years as on the date of the alleged incident, ought to have been granted bail having regard to Section 12 of the Act. He submits that the Board as well as the Appellate Court have failed to properly appreciate Section 12 of the Act.

6. Per contra, learned HCGP appearing for the respondent-State has argued in support of the impugned orders and submits that the petitioner has attempted to escape from the Observation Home, Mysuru, and in this regard, a separate case has been registered in Crime No.63/2021. He submits that the material on record would go to show that the petitioner has not been co-operating for speedy disposal of the case and it is under these circumstances, his bail application has been rightly rejected, and accordingly, prays to dismiss the petition.

7. I have carefully considered the arguments addressed and also perused the material available on record.

8. The petitioner, after his arrest, had filed an application under Section 12 of the Act with a prayer to release him on bail. After receipt of the said application, the Board had



proceeded to pass an order under Section 15 of the Act which provides for a preliminary assessment of the juvenile, wherein a juvenile aged between 16 to 18 years is involved in committing a heinous crime, for the purpose of testing whether the juvenile can be deemed to be considered as an adult and can be tried before a criminal court under Section 6 of Cr.PC in accordance with the ordinary procedure of law and on passing of an order under Section 15 of the Act regarding the preliminary assessment of the juvenile and if it finds that there is a need for trial of the said juvenile as an adult, then the Board may order transfer of trial of the case to the Children's Court having jurisdiction to try such offence. The term 'Children's Court' is defined under Section 2(20) of the Act, which reads as under:

*"(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."*

9. Section 15 of the Act provides the mechanism for determination of mental and physical capacity of the juvenile



aged between 16 to 18 years regarding the commission of offences and the consequences thereof, in order to presume such juvenile as an adult by employing legal fiction. The juvenile, therefore, need not be an adult as on the date of committing the crime, but if his age is between 16 to 18 years, depending upon the preliminary assessment as provided under Section 15 of the Act, in law such juvenile can be considered as an adult. Such an enquiry provided under Section 15 of the Act has immense ramification on such a juvenile aged between 16 to 18 years, and therefore, it is of paramount importance that such an enquiry as provided under Section 15 of the Act is required to be conducted strictly following the provisions of law in its letter and spirit. The purpose of such preliminary assessment test is to ascertain as to whether the juvenile is required to be tried as adult by the Children's Court or by the Board.

10. From a reading of Section 15 of the Act, it is evident that the Board is required to conduct the preliminary assessment test with regard to the mental and physical capacity of the juvenile to commit the heinous offence and also his ability to understand the consequences of the offence and the



circumstances in which he allegedly committed the offence. For the purpose of arriving at a just conclusion, the Board while conducting such a preliminary assessment test, is required to take the assistance of experienced psychologists and other experts as provided under Section 15 of the Act. After securing necessary reports from these experts, it is for the Board to pass an independent order by applying its mind to the facts of the case, and therefore, an order under Section 15 of the Act needs to demonstrate satisfaction regarding the mental, physical capacity of the juvenile to commit the heinous offence and his ability to understand the consequences of the offence and the circumstances in which he committed the offence. The Hon'ble Supreme Court in the case of **SHILPA MITTAL VS STATE OF NCT OF DELHI & ANOTHER - AIR 2020 SC 405**, at paragraph 18 has observed as under:

*"18. The Children's Court constituted under the Act of 2015 has to determine whether there is actually any need for trial of the child as an adult under the provisions of Cr.PC and pass appropriate orders in this regard. The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining child-friendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be*



*tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in sub-section (2) of Section 19. Furthermore, under Sub-section(3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformatory services, educational services, skill development, alternative therapy, counselling, behaviour modification, and psychiatric support is provided to the child during the period the child is kept in the place of safety."*

11. From the aforesaid analysis, it is very clear that in a case where the juvenile aged between 16 to 18 years is brought before the Court with an allegation of having committed heinous offence as defined under Section 2(33) of the Act, a duty is cast on the Board to pass an order regarding the preliminary assessment of the said juvenile under Section 15 of the Act. In the present case, after the petitioner filed an application under Section 12 of the Act before the Board for grant of bail, the Board prior to passing any order on his application for bail, proceeded to consider his case under Section 15 of the Act, and accordingly, has passed the order dated 10.12.2020 holding that the Board is satisfied that there





is a need for trial of the petitioner as an adult by the Children's Court and in the result, the Board held that his bail application did not survive for consideration, and accordingly, rejected the same. It is this order which was questioned by the petitioner in Crl.A.No.360/2021 before the Principal Sessions Judge, Mandya, under Section 101(1) of the Act pursuant to the liberty reserved to him by this Court in Crl.R.P.No.605/2021.

12. The learned Sessions Judge, without appreciating that the order impugned before him was an order passed under Section 15 of the Act which is appealable under Section 101(2) of the Act, has proceeded to consider the appeal as if it is a bail application and has rejected the appeal. Section 101(2) of the Act, reads as under:

**"101. Appeals.-(1) xxx**

*(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."*



13. From the reading of the said provision of law, it is very clear that whenever an appeal is filed challenging the order passed under Section 15 of the Act, the Sessions Court/Children's Court deciding the appeal shall take the assistance of experienced psychologists and medical specialists other than those whose assistance has been already taken by the Board in passing the order under Section 15 of the Act. In the present case, no such exercise has been undertaken by the learned Sessions Judge, and on the other hand, the learned Sessions Judge has dealt with the appeal as if it is an appeal arising out of the order passed under Section 12 of the Act rejecting the bail application filed by the juvenile. The learned Sessions Judge has completely misread the scope of an appeal under Section 101(2) of the Act which arises from an order passed under Section 15 of the Act.

14. Though in the present case, the appeal has been filed invoking Section 101(1) of the Act, since the order impugned in appeal is one passed under Section 15 of the Act, the appeal lies only under Section 101(2) of the Act and not under Section 101(1) of the Act. This aspect has been lost sight of by the learned Sessions Judge.



15. From the reading of Section 18(3) of the Act, it is clear that once an order is passed by the Board stating that there is a need for trial of the juvenile 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, and accordingly, in the present case, the Board has passed an order in exercise of its power under Section 18(3) of the Act. Once such an order is passed by the Board, it has no jurisdiction to consider the bail application pending before it, and therefore, the Board had rightly rejected the same on the ground that the same will not survive for consideration. As against the said order, the juvenile has an option to file an appeal before the Sessions Court under Section 101(2) of the Act or he may also choose to file an application under Section 12 of the Act before the Children's Court to which his case is transferred in compliance of the requirement under Section 18(3) of the Act by the Board after having passed an order under Section 15 of the Act.

16. The Bombay High Court in the case of **SHUBHAM @ BABLU MILIND SURYAVANSHI VS THE STATE OF MAHARASHTRA** (Bail Application No.2282/2021, disposed of on 21.10.2022), considering the question whether on being tried



as an adult, is the juvenile denuded the statutory right available to him under Section 12 of the Act, has answered the said question in the negative and has held that the application under Section 12 of the Act by the juvenile against whom an order under Section 15 of the Act is passed for trying him as an adult is maintainable and he need not file an application under Section 439 Cr.PC for grant of bail. The parameters for considering the application for bail by a juvenile under Section 12 of the Act are clearly distinguishable from the application one under Section 439 Cr.PC. As against the orders passed under Section 12 of the Act, an appeal lies to the competent court under Section 101(1) of the Act whereas against the order passed under Section 15 of the Act appeal lies to the competent court under Section 101(2) of the Act.

17. Section 12 of the Act provides that a juvenile who is brought before the Board shall be released on bail notwithstanding anything contained in the Code of Criminal Procedure, 1973, or any other law for the time being in force with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo in not releasing the juvenile on bail under this Section



is the proviso to the said Section which prescribes that if there appears reasonable ground for believing that the release is likely to bring the juvenile into association with any known criminal or expose the juvenile to moral, physical or psychological danger or the juvenile's release would defeat the ends of justice.

18. Undisputedly, the petitioner was aged 16 years 11 months 9 days at the time of committing the crime and after recording the reasons and complying with the requirement of Section 15 of the Act, the Board has recorded a finding that the petitioner is required to be tried as an adult by the Children's Court. In spite of the petitioner challenging the said order in appeal before the Sessions Court, it is always open to him to also file an application under Section 12 of the Act for grant of bail. If the same is filed, the Sessions Court is required to consider the same strictly in compliance of the requirement of Section 12 of the Act. Since the learned Sessions Judge has failed to consider the appeal arising out of an order passed under Section 15 of the Act in compliance of the requirement of Section 101(2) of the Act, the impugned judgment and order



passed by the Sessions Court in Crl.A.No.360/2021 cannot be sustained. Accordingly, the following order:

19. The revision petition is allowed. The order dated 24.08.2021 passed by the Principal Sessions Judge, Mandya, in Crl.A.No.360/2021 is set aside and the appeal is remitted to the learned Sessions Judge for fresh consideration in accordance with law. It is open for the petitioner to file an application seeking bail under Section 12 of the Act and if such an application is filed, the Sessions Court is directed to consider the same strictly with the requirement of Section 12 of the Act. Considering the fact that the petitioner is likely to complete three years in custody within a short period, the Sessions Court is directed to consider and dispose of the criminal appeal and the application under Section 12 of the Act, if any, filed by the petitioner, within a period of one month from the date of receipt of a copy of this order.

**SD/-  
JUDGE**