



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Revision Petition No. 494/2021

X S/o Laxman, Aged About 15 Years, Through Natural Guardian  
Father Laxman S/o Hurma, R/o Pal Deval Phala Batka Police  
Thana Saddar District Dungarpur (At Present In Child  
Observation Home Dungarpur).

----Petitioner

Versus

1. State, Through Pp
2. Mani Lal S/o Val Ji Yadav, Galiyana Police Station Dovda  
District Dungarpur R/o Vassi Fla Bhemela Dungarpur  
Dovda Dungarpur.

----Respondents

---

For Petitioner(s) : Mr. Jitendra Ojha through VC.  
For Respondent(s) : Mr. Arun Kumar, PP.

---

**HON'BLE MR. JUSTICE SANDEEP MEHTA**

**Order**

**01/07/2021**

**Reportable**

Though this Court had directed the learned Public Prosecutor  
by order dated 17.06.2021 to get the notices of the respondent  
No.2 complainant served through the SHO concerned. But till  
date, compliance has not been made.

Learned Public Prosecutor has raised a preliminary objection  
that the revision cannot be decided in absence of notice to the  
complainant respondent No.2 Mani Lal.

I have considered the said submission in light of the relevant  
legal provisions. It may be stated here that Sections 12, 101 and  
102 of the Juvenile Justice Act are the provisions dealing with the  
prayer for bail made on behalf of the CICL at different stages.



These provisions are quoted hereinbelow for the sake of convenience :-

**12. Bail to person who is apparently a child alleged to be in conflict with law.-** (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

*Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.*

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the





*pendency of the inquiry regarding the person, as may be specified in the order.*

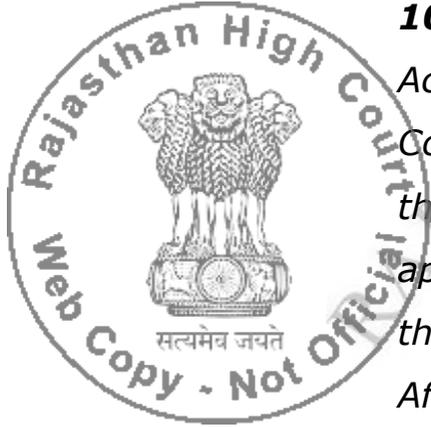
*(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.*

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

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

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

*(3) No appeal shall lie from,--*  
*(a) any order of acquittal made by the Board in respect of a child alleged to have committed an offence other than the heinous offence by a child who has completed or is above the age of sixteen years; or*

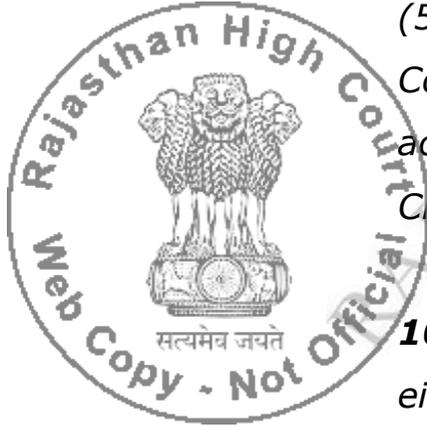




(b) any order made by a Committee in respect of finding that a person is not a child in need of care and protection.

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

(5) Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).



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

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

सत्यमेव जयते

As is apparent, an application for bail on behalf of a CICL is firstly required to be filed before the Juvenile Justice Board under Section 12 of the Act, which does not stipulate any opportunity of hearing to the complainant/victim for deciding such bail application. In case of rejection of the bail application by the Board, the CICL can approach the Children court/Sessions court concerned by filing an appeal under Section 101 of the Juvenile Justice Act. The entire scheme of Section 101 of the Juvenile



Justice Act makes it clear that there is no requirement in this provision as well to hear the complainant/victim while deciding an appeal preferred against an order rejecting bail of a CICL passed by the Juvenile Justice Board. In case, the prayer for bail of the CICL has been turned down under Section 12 of the Juvenile Justice Act and the appeal preferred thereagainst under Section 101 of the Juvenile Justice Act has also been rejected, these orders can be challenged by filing a revision in the High Court by invoking powers conferred under Section 102 of the Juvenile Justice Act. The proviso to Section 102 stipulates that the High Court shall not pass an order under this section, prejudicial to any person without giving him a reasonable opportunity of being heard. This court is made to understand that the complainants/victims are being impleaded as party respondents in the revisions under Section 102 of the Juvenile Justice Act by virtue of this proviso. However, after analyzing the entire scheme of the Juvenile Justice Act, I am of the firm view that the concept of hearing the complainant in an application for bail of a CICL under the Juvenile Justice Act be it before the Board, the appellate court or the revisional court is totally foreign to the fundamental principles underlying the welfare legislation. The legislative intent does not give any such indication, which may require notifying the complainant before proceeding to consider the prayer for bail of a CICL at any of these three stages. Suffice it to say that even if the plain language of proviso to Section 102 of the Juvenile Justice Act is literally considered, it indicates that an order prejudicial to any person may not be passed by the High Court without giving him a reasonable opportunity of being heard. Manifestly, an order of bail to an accused, moreso a CICL, can never be considered as



causing prejudice to any person, may it be the complainant/victim. Bail to an accused furthers the concept of liberty to a person arrested/confined by sanction of law and is virtually an extension of the principle of fundamental right of liberty guaranteed by Article 21 of the Constitution of India. If at all, the legislature had intended to give a right of hearing to the complainant in proceedings of bail, under the Juvenile Justice Act specific insertions to this effect could have been made in Sections 12, 101 and 102 of the Juvenile Justice Act as are available in the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, another special legislation. It has been specifically mandated in the Section 15-A of the SC/ST Act that a victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding.

Thus, it is clear that there is no legislative mandate under the Juvenile Justice Act that the victim should be notified before hearing the bail application of a child in conflict with law, be it before the Juvenile Justice Board, Appellate Court or before the High Court exercising the revisional powers under Section 102 of the Juvenile Justice Act.

It seems that without any basis, a practice has been adopted of impleading the complainant as a party in a revision for bail of a juvenile under Section 102 of the Juvenile Justice act. Numerous instances have come before the court, wherein, in cases involving multiple accused, of which few are adults and one is juvenile, the bail applications of the adult offenders are decided much earlier, whereas the juvenile continue to languish in the Observation Home, awaiting service of notice on the complainant. This anomalous situation is absolutely unwarranted and has to be



resolved by taking a pragmatic, legal and logical view of the situation.

Thus, the preliminary objection raised by the learned Public Prosecutor that the complainant has to be notified before deciding this revision is turned down.

I have heard and considered the submissions advanced by learned counsel representing the petitioner and the learned Public Prosecutor and have gone through the impugned orders.

The petitioner child 'X' son of Laxman in conflict with law (identity of the child has been protected in view of the direction given by Hon'ble the Supreme Court in the case of **Shilpa Mittal vs. State of NCT of Delhi & Ors. reported in AIR 2020 SC 405**) has been confined in connection with FIR No.143/2021 registered at Police Station Dovda, District Dungarpur for the offences under Sections 341 and 395 of the IPC and is lodged at the Child Observation Home, Dungarpur. The bail application preferred on his behalf by his natural guardian (father) Laxman under Section 12 of the Juvenile Justice Act stands rejected by the Principal Magistrate, Juvenile Justice Board, Dungarpur by order dated 03.06.2021. The appeal preferred against the said order under Section 101 of the Juvenile Justice Act also stands rejected by the learned Special Judge, Children Court (Sessions Judge and Children Human Protection Act), Dungarpur by order dated 08.06.2021. These two orders are assailed by the petitioner through his natural guardian in this revision preferred under Section 397 of the Cr.P.C. read with Section 102 of the Juvenile Justice Act.

The petitioner is a young boy of less than 16 years as per the order rejecting bail. He is confined in the observation home in



connection with the above mentioned offence and the matter is pending investigation. The Principal Magistrate, Juvenile Justice Board has rejected the bail of the petitioner expressing that in case, the petitioner is released on bail, there is every likelihood of his coming into contact with known offenders and such a course of action may also cause risk to his own mental, physical and psychological state. In the opinion of this Court, there is no foundation for such apprehension. The apprehension expressed regarding the likelihood of the petitioner coming into contact with other offenders can be taken off by requiring his natural guardian to furnish a suitable undertaking.

In view of the facts noted above, I am of the opinion that petitioner child is entitled to be enlarged on bail.

Consequently, the instant revision is allowed. The impugned order dated 08.06.2021 passed by the learned Special Judge, Children Court (Sessions Judge and Children Human Protection Act), Dungarpur and the order dated 03.06.2021 passed by learned Principal Magistrate, Juvenile Justice Board, Dungarpur are set aside. It is ordered that the accused-petitioner '**X**' **S/o Laxman** arrested in connection with FIR No.143/2021 registered at Police Station Dovda, District Dungarpur shall be released on bail; provided **his natural guardian (father) Ramesh** furnishes a personal bond of Rs.50,000/- and two surety bonds of Rs.25,000/- each to the satisfaction of the learned court below with the stipulation to appear before the Board on all dates of hearing and as and when called upon to do so. **He shall also furnish an undertaking in the Juvenile Justice Board that he shall ensure that the petitioner is kept in a protective atmosphere and does not come into contact with**



**known/unknown offenders during the pendency of the inquiry.**

**(SANDEEP MEHTA),J**

40-Tikam/-



RAJASTHAN HIGH COURT



सत्यमेव जयते