


**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION (FOR REGULAR BAIL) NO. 1400  
of 2025**

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Versus  
STATE OF GUJARAT

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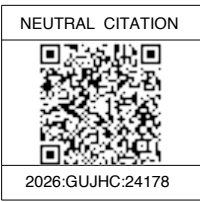
**Appearance:**

MR AN PATHAN with MR A A ZABUAWALA(6823) for the Applicant(s) No. 1  
MR BHARGAV PANDYA, ADDITIONAL PUBLIC PROSECUTOR for the  
Respondent(s) No. 1  
SAHIL Y PATEL(8985) for the Respondent(s) No. 1  
TAHIR M KHAN(8984) for the Respondent(s) No. 1

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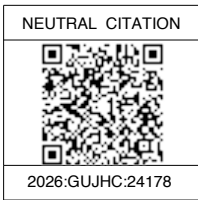
**CORAM: HONOURABLE MS. JUSTICE GITA GOPI****Date : 06/04/2026****ORDER**

1. **RULE.** Learned advocates appearing for the respective respondents waives service of notice of Rule.
2. The applicant herein is the child in conflict with law (CCL) aged about 13 years, through his father, under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to in short as the 'JJ Act') has made a prayer to quash and set aside the judgment and order dated 19.07.2025 passed by the learned Additional Sessions Judge-Children's Court Surat

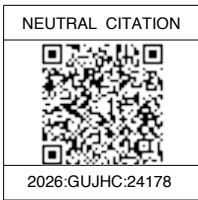


in Criminal Appeal No.579 of 2025 as also the order dated 08.07.2025 passed by the Juvenile Justice Board (JJB), Surat in CRMA J No.9976 of 2025 in connection with the First Information Report (FIR) being C.R. No.'A' Part No.11210070250575 of 2025 registered with Bhestan Police Station, Surat City for the offences punishable under Sections 103(1), 61(2)(A) and 52 of the Bharatiya Nyaya Sanhita, 2023 and under Section 135 of the Gujarat Police Act, and to release CCL on regular bail.

3. The Probation Officer's Report dated 22.08.2025 as well as the Report of the Clinical Psychologist dated 23.08.2025 are produced on record. Further, the Report of the learned Principal Magistrate, JJB Board, Surat dated 20.03.2026, reflects that about 13 witnesses have been examined, and out of 57 cited witnesses, 24 are material witnesses. The Principal Magistrate of JJB, Surat has stated that he would be in a position to conclude the matter within six months.
4. Learned advocate Mr. A.N. Pathan for the present CCL

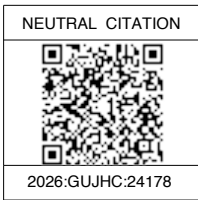


submitted that the involved CCL's are five in number. At the time of the incident, they were aged (i) 13 years 1 month 11 days (ii) 11 years 3 months 13 days (iii) 10 years 1 month 2 days (iv) 12 years 4 months 22 days and (v) 13 years 21 days. The deceased was 16 years of age. Learned advocate Mr. Pathan submitted that the present CCL is the CCL No.5 against whom allegations is that he had given knife blows almost 3 in number to the deceased. Referring to the post mortem report, learned advocate Mr. A.N. Pathan submitted that about 23 injuries have been recorded which are stab wounds, incise wounds, abrasions etc. It is further submitted that there are no eye witnesses to the incident and body of the deceased was found in an open ground, beside Royal Park Society. It is also submitted that the Police Inspector, Besthan Police Station has reported to the Principal Magistrate of the Juvenile Justice Board on 27.04.2025 which states that all the five CCL's and the deceased were friends and all of them were residing in the same lane. As per the police, the deceased was abusing the CCL's in an indecent manner and was calling the CCL's in a very abusive vulgar language. The word



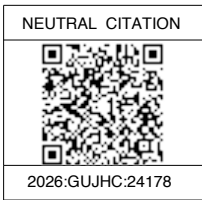
which had been used by the deceased has been referred to in the Report and is also recorded by the police that the deceased used to beat the CCL's with stones and would also remove their underwears. It is further stated therein that the deceased was teasing the CCL's in an abusive way by referring to the mother of CCL No.3 as having eloped with some person named in the Report.

5. Learned Additional Public Prosecutor appearing for the respondent-State Mr. Bhargav Pandya submitted that as per the report of the Police, the Police have relied on the statement of the CCL and the CCTV footage. The post mortem had concluded that the incident had taken a serious turn by way of brutal injuries in the form of incise blows and hence, it is submitted that the CCL should be continued to be kept in the Observation Home so that his behaviour could be corrected there and urged that the present application be rejected.
6. Learned advocate appearing for the complainant Mr. Tahir M. Khan submitted that CCL had taken the life of the deceased brutally on account of the mental

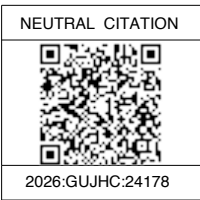


culpability of all the CCL's and more specifically, the present applicant could be easily said to be the cause of the incident. It is further submitted that all the CCL's had pre-planned the murder and had called the deceased under a false pretext. With a knife, they had given fatal blows, the present CCL is alleged to have given blows on the vital parts of the body, which resulted into the death of the deceased and prayed that the present application be rejected.

7. It is the case of the police that on 24.04.2025 at about 3.00 in the afternoon, all the CCL's had gathered and discussed about the abusive conduct of the deceased and his addressing with vulgar words the name of the mother and sisters and was harassing them and therefore, they had decided to do away with him. The report of the Police has addressed the term used by the CCL's as 'game kari nakhvi'. The police has referred that present CCL had brought a knife from his house which he had given to the CCL No.2, the CCL No.2 had given the knife to CCL No.4 which the CCL No.4 had kept it in his house. On 25.04.2025 in the morning, at about 10 o' clock, CCL

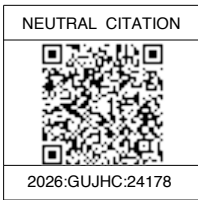


No.3 and CCL No.2 both had brought knives from their house and had kept it in the house of CCL No.3 and thereafter, in the afternoon at 12.30 in the lane opposite the grocery shop of CCL No.3 with the knife tucked on his waist was present, at that time, the CCL No.2 had come there and even the present CCL thereafter had gone to the place. The CCL No.3 and CCL No.2 had called the deceased from his house and all of them had brought him opposite the grocery shop. All the CCL's had asked the deceased to come with them to jointly offer Namaaz at the Jainam Masjid at Asmanagar. Saying so, all the CCL's took the deceased at the said mosque and there all the five CCL's ,together informed the deceased that they were going to eat 'biryani'. All the 5 CCL's took the deceased to the wall of the Chindi Godown, near Jainam Masjid, Asmannagar, New Bhistan Junction. At that time, the CCL's informed the deceased that they would be going to eat 'biryani' at the place situated over the wall and therefore, all the CCL's as well as the deceased jumped the wall with the support of some heavy chindi bags allowing them to go in the opposite side of the wall. Thereafter, all the CCL's informed the deceased that they



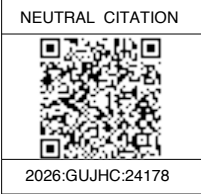
were playing prank, as there was nothing like 'biryani', hence, the deceased got angry on them and started abusing them and the deceased thereafter, moved away towards the wall and had made an attempt to jump the wall, at that time, it is alleged that the present CCL had taken the knife from CCL No.3 and gave a blow on the right side of the deceased, the deceased turned towards present CCL and the second injury was given on the stomach, the deceased fell down, at that time, the injury was given at the neck. It is alleged that there were incessant knife blows given on the deceased and thereafter, CCL No.2 had taken the knife and had given blows to the deceased on the back, on the stomach and hands. The deceased was profusely bleeding and all the CCL's left the scene and ran away.

8. The incident had taken place in the afternoon and the dead body was found on the next day morning. The interim conduct of the CCL has not been brought on record. The police has stated that the CCTV image has captured that all the six had gone together while only five had returned back. The panchnama of the CCTV footage



has not been drawn. The fact as could be noted by the police is that the deceased was continuously harassing the CCL's, bullying them and was virtually abusing them with indecent addresses. The deceased was also taunting the CCL's about the conduct of the mother of one of the CCL's. It appears that all the CCL's could not inform about the conduct of the deceased to any of the adults at home. Harassed by the attitude and behaviour of the deceased they decided to take such steps.

9. The Probation Officer's Report does not explicitly state anything about the incident. The order of the JJB also does not reflect of having perused the social investigation report. The order rejecting the application under Section 12 of the JJ Act by the Board does not deal explicitly on the facts of the case. The learned Magistrate, JJB has not considered the provision of Section 12 of the JJ Act and appears to have dealt with the case as under the Code of Criminal Procedure, 1973 (hereinafter referred to in short as 'the Code'). Even the learned Additional District Judge has not referred to any report of the Probation Officer nor has called for the clinical psychologist report, which is



before this court referring to the present CCL aged about 14 years to have average intelligence. Further, the order of the appellate court also does not refer to the reasons for rejecting the Appeal under Section 101 of the JJ Act.

10. In the case of **Child in Conflict with Law Through Savitaben Vitthalbhai Vasava Vs. State of Gujarat**, 2022 (0) AIJEL-HC 244005 (passed in CRR No.901 of 2021 on 28.04.2022), it has been observed as under:

*“17. Section 12 of the JJ Act, 2015 which deals with the grant of bail to a child expressly contains the nonobstante phrase to be as “.... 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 ...”. This very provision in Section 12 clarifies that provisions of Cr.PC is excluded in the case of bail plea of the child. Further, it requires to be noted that Section 12 is a specific provision under the special statute that deals with the matter of bail and accordingly, the application of Section 439 of the Cr.PC is also necessarily excluded. Cr.PC contains a corresponding clause which is for application on special lines. Considering this aspect in case of a bail application on behalf a child, it would be required to be concluded that such bail plea would not be maintainable under Section 439 of Cr.PC.*

*19. Non-applicability of Section 439 of Cr.PC in case of child in conflict with law has been appreciated by various High Courts. This Court would like to refer to the decision of the High Court of Delhi in the case of CCL ‘A’ v. State (NCT of Delhi) in Bail Application No.2510/2020 (dated 19.10.2020), where the Court had observed as*



under :-

*"44. In formulating the above position, this court finds support in the view taken by the Division Bench of the Chhattisgarh High Court in Tejram Nagrachi Juvenile vs. State of Chhattisgarh Through the Station House Officer<sup>4</sup>, where the Division Bench has opined that an application for grant of bail under section 437 Cr.P.C. or 439 Cr.P.C. would not be maintainable in the case of a juvenile. The relevant paras of the judgment are as under:*

*"7. A conjoint analysis of the provisions contained in Sections 437 and 439 of the Code viz a viz Sections 8, 10 and 12 of the Act, 2015 would discern that while there are certain general guidelines under Sections 437 & 439 of the Code, power in respect of grant of bail to a juvenile is more liberal in the nature of command under Section 12(1) that whenever an apparent juvenile alleged to have committed a bailable or nonbailable offence is detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code 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. The only rider for not releasing the apparent juvenile is that whenever there appears reasonable grounds for believing that the release is likely to bring that person (Juvenile) into association with any known criminal or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances that led to such a decision. This rider as contained in proviso to Section 12(1) requires the Board to record reasons for denying the bail. It would mean that ordinarily the bail is to be allowed to a juvenile. The denial being exceptional on certain reasons to be recorded by the Board as provided in the proviso. This special provision is not contained under Section 439 of the Code.*

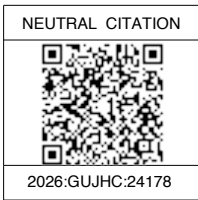
*"8. .... While there is no denial of the fact that when the Court of Sessions exercises appellate power under Section 101(2) and the High Court exercises revisional power under Section 102 of the Act of 2015, it shall exercise power of the Board provided under Section 8(2), but this power of the Board would also be available to the*



*Court of Sessions or to the High Court when it proceeds to examine the plea of juvenile for grant of bail whenever such occasion arises on account of bail application of juvenile being rejected under Section 12 of the Act of 2015. Therefore, by use of the term "otherwise" in Section 8(2), jurisdiction under Section 439 of the Code would not be attracted which is otherwise excluded by use of the term "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force", as occurring in Section 12 (1)." (emphasis supplied)*

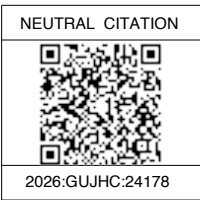
*20. The law therefore, is clear on the aspect that since Section 12 of the JJ Act bears a non-obstante clause which indicates legislative intent that the source of power to grant bail under the JJ Act, 2015 is independent from that of the Cr.PC. Thus, it can be said to be concluded that Section 439 of the Cr.PC is not applicable on the issue of grant or denial of bail to a child alleged to have committed bailable or non-bailable offence who is to be dealt with by the Special Statute, i.e. JJ Act, 2015 which contains the specific provision for bail under Section 12 of JJ Act, 2015."*

11. The JJB as well as the learned Appellate Court was required to give the reasons explaining as to how the release of the CCL would be detrimental to the ends of justice. Even without calling for the Report of the Probation Officer and the Report of the Clinical Psychologist, the bail application of the present CCL, aged about 14 years has been dealt with. Both the Courts, i.e. learned JJB as well as the learned Appellate Court has dealt with the application for bail of the present CCL as if they were dealing with of a heinous crime



committed by an adult.

12. This Court has dealt in detail with the criteria to be taken into consideration while dealing with the CCL. In light of the judgment of the **Child in Conflict with law v. State of Gujarat** dated 15.09.2025 in **Criminal Miscellaneous Application No.1024 of 2023**, it is requested to the learned JJB's and the Children's Court to be sensitive while they are dealing with the bail application of CCL's below the age of 16 even in heinous crimes. Random rejection of the bail application is not warranted by the President of JJB as well the Appellate Court since the bail application have to be dealt with under Section 12 of the JJ Act and not in accordance with the provisions of Cr.P.C., i.e. under Sections 437 or 439 of Cr.P.C.
13. Taking into consideration the facts of the case, it is clear that the deceased was continuously bullying the CCL's. There is no eye witness to the incident, the incident had taken place during the day. The mental capability and mental state of the CCL's understanding the



consequences of their act, have not been addressed by the JJB as well as the Children's Court, of a child aged about 14 years.

14. The case of **Barun Chandra Thakur Vs. Master Bholu & Anr.**, in Criminal Appeal No.950 of 2022, was declared on 13.07.2022 [(2023) 12 SCC 401]. The Hon'ble Supreme Court while dealing with section 15 of the J.J. Act for preliminary assessment of child in conflict with law, observed as under :-

*“65. While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive, behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgement, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.*

*66. Cognitive maturation is highly dependent on hereditary factors. Emotional development is less likely to affect cognitive maturation. However, if emotions are too intense and the child is unable to regulate emotions effectively, then intellectual insight/knowledge may take a back seat.*

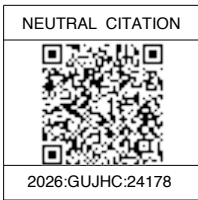
*70. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his*



*level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his intellectual understanding.*

**71.** *Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know risks to themselves. Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions / actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited ability to deeply understand the long-term consequences of their actions can lead to impulsive / reckless decision making."*

15. In the result, in view of the aforesaid discussion and observations, the Revision Application is allowed. The present CCL is ordered to be released on regular bail in connection with the aforesaid FIR, upon his father executing a personal bond in the sum of Rs.10,000/- (Rupees Ten Thousand Only) with a surety of the like amount before the JJB.



16. It is directed that the Probation Officer shall monitor the conduct of the CCL and shall quarterly submit the report before the JJB till completion of the trial. Moreover, if the Probation Officer considers any necessity of sending the child for any behavior modification then necessary therapy and psychiatric support be provided to the CCL .

16.1. The father of the juvenile to ensure that the juvenile will not fall into bad company.

17. Hence, the judgment and order dated 19.07.2025 passed by the learned Additional Sessions Judge, Surat in Criminal Appeal No.579 of 2025 as also the order dated 08.07.2025 passed by the Juvenile Justice Board (JJB), Surat in CRMA J No.9976 of 2025 are set aside.

18. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

Sd/-

**(GITA GOPI, J)**

CAROLINE / DB # 37