

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

268

2026:PHHC:192859

CRM-M-24867-2018 (O&M)
Date of decision : 30.10.2026

Central Bureau of Investigation

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Prateek Gupta, Advocate
for the petitioner-CBI.Mr. Neeraj Poswal, AAG, Haryana
for respondent No.1-State of Haryana.Mr. Viraj Gandhi, Advocate
for respondent No. 2 (JCL Bholu).

None for respondents No. 3 and 4.

Mr. Sushil K. Tekriwal, Advocate
for the complainant.**MANISHA BATRA, J.(Oral)**

1. This petition has been filed by the Central Bureau of Investigation (*for short 'CBI'*) under Section 482 read with Section 407 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*) for transfer of the trial of Sessions Case No. 110 of 2018 titled as '***State versus Bholu***' and other miscellaneous matters arising out of FIR No. 250 dated 08.09.2017, registered under Sections 302 IPC, 25/54/59 of the Arms Act, 12 of the Protection of Children from Sexual Offences Act, 2012 (*for short 'POCSO Act'*) and 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*for short 'JJ Act'*) read with Section 34 IPC at Police Station Bhondsi, District Gurugram (re-registered by the CBI as

RC-08(S)/2017/SC-III/New Delhi) from the Court of learned Additional Sessions Judge-cum-Children's Court, Gurugram to the Court of learned Special Judge, CBI, Panchkula.

2. Briefly stated, the case pertains to the murder of a seven year old student of Class II, who has been given the imaginary name 'Prince'. The occurrence took place on 08.09.2017 in the ground floor washroom of a school at Gurugram, which has been given the imaginary name 'Vidyalaya'. The aforementioned FIR No. 250 (Annexure P-3) was registered on the statement of the father of the deceased at Police Station Bhondsi, District Gurugram. The case was initially investigated by the Gurugram Police. On the same day, the police arrested one Ashok Kumar, a conductor, on the allegation of having committed the murder of Prince. Two officials of the school, namely Francis Thomas and Jayesh Thomas (respondents No. 3 and 4), were also arrested by the police in the same FIR for various lapses. They were granted bail by this Court vide order dated 07.10.2017.

3. Vide notification dated 17.09.2017 (Annexure P-1), the Government of Haryana accorded its consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (*for short 'DSPE Act'*) to the extension of the powers and jurisdiction of the members of the Delhi Special Police Establishment to the State of Haryana for investigation of the case. Thereafter, the Government of India issued a notification dated 22.09.2017 (Annexure P-2) under Section 5(1) read with Section 6 of the DSPE Act. On the same day, the CBI re-registered the FIR as RC-08(S)/2017/SC-III/New Delhi and took up the investigation.

4. During investigation, the CBI apprehended respondent No. 2 on 07.11.2017. He was a student of Class XI in the same school and has been given

the imaginary name 'Bholu'. He was below eighteen years of age on the date of occurrence and was, thus, a child in conflict with law. As discernible from the record, the Juvenile Justice Board, Gurugram, while making a preliminary assessment under Section 15 of the JJ Act, vide order dated 20.12.2017, observed that there was a need for trial of respondent No. 2 as an adult. The case was accordingly sent to the learned Sessions Judge, Gurugram. On 22.12.2017, the learned Sessions Judge, Gurugram transferred the case to the learned Special Children's Court, Gurugram. The CBI filed the charge sheet against respondent No. 2 under Section 302 IPC before that Court on 05.02.2018. In the same charge sheet, the CBI prayed for discharge of Ashok Kumar, as no evidence was found against him. He was, accordingly, discharged by the trial Court on 28.02.2018.

5. The order dated 20.12.2017, passed by the Board, was upheld in appeal by the learned Children's Court, Gurugram on 21.05.2018. However, in a petition bearing **CRR-2366-2018**, this Court set aside both the orders on 11.10.2018 and remanded the matter to the Board for a fresh preliminary assessment. The remand was upheld by the Hon'ble Supreme Court on 13.07.2022 in **Barun Chandra Thakur v. Master Bholu and another, [2022] 10 S.C.R. 595**. On remand, the Board vide order dated 17.10.2022 again held that respondent No. 2 was required to be tried as an adult. The appeal against that order was dismissed by the learned Children's Court, Gurugram on 13.12.2022, and the revision petition bearing **CRR-452-2023** filed by respondent No. 2 was dismissed by this Court on 03.05.2023, with a direction to expedite the trial.

6. The present petition has been filed by the CBI. It is submitted in the petition that CBI has an exclusive Court of Special Judge at Panchkula

having jurisdiction all over Haryana. There is also an exclusive Court of Special Judicial Magistrate for CBI cases of Haryana at Panchkula. It is pleaded that the present case has been investigated by the CBI and, therefore, the CBI Court at Panchkula has exclusive jurisdiction to try it, in view of the different notifications issued by the Registrar General of this Court and the Government of Haryana. The notifications dated 08.02.2012 and 29.05.2013 have been annexed as Annexure P-4 *Colly*. It is the stand of the CBI that no prejudice would be caused to the accused by the transfer of trial to Panchkula.

7. During the pendency of the petition, the CBI filed an additional affidavit vide application **CRM-7657-2026**, whereby an alternative prayer has been made for transfer of the trial to any other Children's Court in the Sessions Division of Panchkula. The CBI has relied upon the existence of a Children's Court at Panchkula under Section 25 of the Commissions for Protection of Child Rights Act, 2005. It has also referred to the trial of the adult accused arising out of the same FIR before the Special Court, CBI, Panchkula and to the inconvenience in the movement of the record and the travel of the prosecution team. Reliance has also been placed upon the observations made regarding the conduct of respondent No. 2 and his family members in the order dated 06.10.2021 passed in **CRA-S-443-2021** (Annexure P-9).

8. Respondent No. 1-State has filed its reply by way of an affidavit dated 22.07.2018 of Dinesh Kumar, HPS, Assistant Commissioner of Police, Sohna, whereby it is submitted that the State has no objection if this Court comes to the conclusion that the trial may be transferred to the Court of learned Special Judge, CBI, Panchkula. Respondent No. 2 has filed a reply dated 30.10.2025 through his father, opposing the petition. He has also filed a reply dated 12.05.2026 to the additional affidavit filed by the CBI. Respondents No. 3 and

4 have been exonerated by the investigating agency. Hence, there is no representation on their behalf.

9. Learned counsel for the petitioner-CBI has argued that the investigation of the case was entrusted to the CBI vide the notifications Annexures P-1 and P-2 issued under Sections 5 and 6 of the DSPE Act. Once the investigation has been taken over by the CBI, it becomes the prosecuting agency for the case. The Court of Special Judge, CBI, Panchkula deals with the CBI cases of the entire State of Haryana, as reflected in the notification Annexure P-4 Colly. The trial of respondent No. 2 should, therefore, be conducted by that Court. No prejudice would be caused to respondent No. 2 by the transfer, as the Special Judge is also a Court of Session. In the alternative, a Children's Court also exists at Panchkula under Section 25 of the Commissions for Protection of Child Rights Act, 2005, and the trial can be transferred to that Court.

10. Learned counsel for the CBI has further argued that the proceedings against the adult accused, including police officials, arising out of the same FIR are pending before the Special Court, CBI, Panchkula. The evidence in the two cases is intertwined and the same record is required in both of them. The movement of the record and the travel of the prosecution team to Gurugram is causing inconvenience to the prosecution. Learned counsel has also referred to the conduct of respondent No. 2 and his family members, as noticed in the order dated 06.10.2021 (Annexure P-9). To buttress his arguments learned counsel for the CBI has heavily relied upon the judgment of the Hon'ble Supreme Court in ***Yakub Abdul Razak Memon v. State of Maharashtra, (2013) 13 SCC 1***. On the strength of this judgment, it is argued that the beneficial provisions of the juvenile justice law do not override a special enactment, and that the 'ends of

justice' mean justice to all the parties, including the society at large. On these premises, it is argued that the petition deserves to be allowed.

11. Learned State counsel has argued, in line with the reply filed by respondent No. 1, that the State has no objection to the transfer of the trial to the Court of learned Special Judge, CBI, Panchkula.

12. Learned counsel for the complainant, who is the father of the deceased, has supported the petition and has adopted the arguments advanced on behalf of the CBI. It is argued that the trial of respondent No. 2 and the trial of the adult accused arise out of the same occurrence and should be held by the same Court. This would enable the entire evidence to be appreciated together, and complete justice would be done to the family of the deceased.

13. *Per contra*, learned counsel for respondent No. 2 has argued that respondent No. 2 was a child in conflict with law on the date of occurrence. Once the Board directs the trial of such a child as an adult, the trial can be held only by the Children's Court having jurisdiction under Section 18(3) of the JJ Act. Section 1(4) of the JJ Act gives it an overriding effect over any other law, including the Cr.P.C. and the DSPE Act. The notifications Annexures P-1 and P-2 relate only to the power of investigation and cannot confer jurisdiction to try the case. A Court of Special Judge, CBI is meant for trial of adults and lacks the safeguards provided under Section 19 of the JJ Act. It provides no child friendly environment and no individual care plan as mandated by the JJ Act. The forum of trial is determined by the nature of the offence and the character of the accused, and not by the identity of the investigating agency.

14. Learned counsel for respondent No. 2 has further argued that the CBI itself filed the charge sheet before the Children's Court, Gurugram and participated in the proceedings without any objection. It is, therefore, estopped

from seeking transfer of the trial. Substantial number of prosecution witnesses have already been examined and the trial is in progress. A transfer at this stage may lead to a de novo trial and cause further delay. The occurrence took place at Gurugram, and respondent No. 2, his family and the school officials are based there. The inconvenience of the CBI is only administrative and is no ground for transfer under Section 407 Cr.P.C.

15. Regarding the additional affidavit, learned counsel for respondent No. 2 has argued that the alternative prayer has been raised for the first time after the filing of the reply. It is an attempt to improve the case without any amendment of the pleadings. The mere existence of a Children's Court at Panchkula does not confer jurisdiction upon it. The witnesses cited against respondent No. 2 are distinct from the witnesses in the case of the adult police officials. Section 23 of the JJ Act itself bars joint proceedings of a child with a person who is not a child. The existence of two separate trials is, therefore, a statutory requirement and cannot be a ground for transfer. The observations made in the bail proceedings were not findings on merits. They stood diluted by the grant of interim bail by the Hon'ble Supreme Court vide order dated 20.10.2022 (Annexure P-11) in Special Leave to Appeal (Crl.) No. 8691 of 2021. They have no nexus with the forum of trial. It is also argued that a composite petition under Sections 407 and 482 Cr.P.C. is not maintainable. To buttress his arguments learned counsel has relied upon the authorities cited as *National Investigation Agency v. Amritpal Singh @ Amrit Singh*, CRM-M-19293-2021, decided on 26.07.2022 (P&H); *CCL 'A' v. State (NCT of Delhi)*, 2020 SCC OnLine Del 2970 and *Satya Narain Sharma v. State of Rajasthan*, (2001) 8 SCC 607.

16. This Court has heard the rival submissions at considerable length, besides going through the material placed on record.

17. Two questions arise for consideration in this petition. The first is whether the trial of a child in conflict with law, who has been directed to be tried as an adult, can be transferred to the Court of Special Judge, CBI only because the case has been investigated by the CBI? The second is whether any ground is made out under Section 407 Cr.P.C. for transfer of the trial to a Children's Court at Panchkula, as prayed in the alternative?

18. At the outset, it may be noticed that the Cr.P.C. has been replaced by the Bharatiya Nagarik Suraksha Sanhita, 2023 with effect from 01.07.2024. Since the present petition was pending immediately before that date, Section 531(2)(a) of BNSS expressly saves it for disposal in accordance with the provisions of the Cr.P.C.

19. Coming to the first question, the entire case of the CBI rests upon the notifications annexed as Annexure P-4 Colly. The first of them is the notification dated 08.02.2012 issued by the Government of Haryana, Administration of Justice Department, which reads as under:

"In exercise of the powers conferred by **sub-section (1) of section 3 of the Prevention of Corruption Act, 1988** (49 of 1988) and in supersession of Haryana Government, Administration of Justice Department Notification No. S.O. 39/C.A. 49/1988/S.3/2011, dated the 6th April, 2011, the Governor of Haryana hereby appoints the Presiding Officer, Central Bureau of Investigation Court, Panchkula as a Special Judge for the trial of all the cases investigated by the Delhi Special Police Establishment (Central Bureau of Investigation), Government of India, **involving offences specified in clauses (a) and (b) of the said section** committed throughout the State of Haryana."

20. The notification has been issued in exercise of the powers under Section 3(1) of the Prevention of Corruption Act, 1988 (*for short* 'PC Act'). The said provision reads as under:

"3. Power to appoint special Judges.- (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint as many special Judges as may be necessary for such area or areas or for such case or group of cases as may be specified in the notification to try the following offences, namely:-

(a) **any offence punishable under this Act; and**

(b) **any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).**"

21. A conjoint reading of the notification and Section 3(1) of the PC Act makes the position clear. The Presiding Officer of the CBI Court at Panchkula has been appointed as a Special Judge only for the CBI cases involving the offences specified in clauses (a) and (b) of Section 3(1). These are the offences punishable under the PC Act and the conspiracy, attempt or abetment of such offences. The notification does not appoint the Special Judge for the trial of every case investigated by the CBI. An offence punishable under Section 302 IPC, which is the only offence for which respondent No. 2 has been charge sheeted, does not fall within its ambit. Para 10 of the petition also refers to certain notifications issued by the Registrar General of this Court. None of them has, however, been placed on record. No other provision of law has been shown which vests exclusive jurisdiction in the Special Judge, CBI to try an offence of murder merely because the case has been investigated by the CBI.

22. Section 4(3) of the PC Act also does not help the CBI. It provides that when trying any case, a Special Judge may also try any offence, other than

an offence specified in Section 3, with which the accused may, under the Cr.P.C., be charged at the same trial. The provision, thus, presupposes that the accused is being tried by the Special Judge for an offence under the PC Act. Respondent No. 2 is not charged with any such offence, and he faces trial only for the offence under Section 302 IPC. Section 4(3) cannot, therefore, be invoked to bring his trial before the Special Judge.

23. The notifications Annexures P-1 and P-2 also do not advance the case of the CBI. The notification dated 17.09.2017 (Annexure P-1) issued by the Government of Haryana, Home Department reads as under:

"In exercise of the Powers conferred under section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Governor of State of Haryana, hereby accords consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana **for investigation of** Case FIR No. 250 dated 08.09.2017 u/s 302 IPC & 25/54/59 Arms Act, 12 Protection of Children from Sexual Offences (POCSO) Act & 75 Juvenile Justice (J.J.) Act r/w Section 34 IPC Police Station Bhondsi, Gurugram and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts."

24. Pursuant to the above consent, the Government of India issued the notification dated 22.09.2017 (Annexure P-2) under Section 5(1) read with Section 6 of the DSPE Act. By that notification, the powers and jurisdiction of the members of the Delhi Special Police Establishment were extended to the State of Haryana **for investigation of** the said FIR. Both these notifications deal only with the power to investigate the case. Neither of them says anything about

the forum of trial. The ordinary rule regarding the place of trial is contained in Section 177 Cr.P.C., which reads as under:

"177. Ordinary place of inquiry and trial.- Every offence shall ordinarily be inquired into and tried by a **Court within whose local jurisdiction it was committed.**"

25. The offence in the present case was committed within the Sessions Division of Gurugram. The transfer of investigation to the CBI does not shift the trial to some other Sessions Division. In *Nahar Singh Yadav and another v. Union of India and others, (2011) 1 SCC 307*, the Hon'ble Supreme Court held that once a notification is issued by a State Government under Section 6 of the DSPE Act, the CBI steps into the shoes of the State police and assumes the role of the investigating as well as the prosecuting agency for that particular case. It is, however, nowhere held that the forum of trial also changes on that account. Rather, in that very case, the prayer of the CBI for transfer of the trial from the Court of Special Judge, CBI, Ghaziabad was declined, and the trial Court was directed to proceed with the case expeditiously.

26. Further, respondent No. 2 is a child in conflict with law and the forum of his trial is governed by the JJ Act. The relevant provisions of the JJ Act are reproduced as under:

"1(4) **Notwithstanding anything contained in any other law for the time being in force**, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including:

(i) apprehension, detention, **prosecution**, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection."

"2(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;"

"18(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child 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.**"

"19. Powers of Children's Court.- (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that:

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, **considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;**

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an

individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a **place of safety till he attains the age of twenty-one years** and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required."

"23. No joint proceedings of child in conflict with law and person not a child.- (1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, **there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.**

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child."

27. Section 1(4) of the JJ Act opens with a *non obstante* clause. It applies the Act to all matters concerning children in conflict with law, and the word 'prosecution' has been expressly included in it. Under Section 18(3), the trial of a child directed to be tried as an adult is to be transferred to the Children's Court having jurisdiction to try such offences. The legislature has not left the choice of forum to the investigating agency. Section 19 lays down the manner in which the Children's Court is to conduct such a trial. It has to keep in view the special needs of the child, the tenets of fair trial and a child friendly atmosphere. It has also to ensure an individual care plan, placement of the child in a place of safety till the age of twenty-one years and an annual follow-up report. These safeguards are specific to the Children's Court and are not attached to the Court of a Special Judge, CBI. Section 23 further bars joint proceedings of a child with a person who is not a child.

28. The second notification forming part of Annexure P-4 Colly is the notification dated 29.05.2013 issued by the Government of Haryana, Women and Child Development Department, which designates the Children's Courts in the State of Haryana, reads as under:

"In exercise of the powers conferred by Section 25 of the Commission for Protection of Child Rights Act, 2005 (Central Act 4 of 2006) and in supersession of Haryana Government, Women and Child Development Department. Notification No. 92 SW (4)-2011, dated the 18th March, 2011 and Notification No. 205 SW (3)-2013, dated xxxth March, 2013 and with the concurrence of the Chief Justice of Punjab and Haryana High Court, the Governor of Haryana hereby specifies **all the Session Judges and Additional Sessions Judges, except the Additional Session Judge (Adhoc) Fast Track Courts, at each district headquarter, to be the Children's Court**, for the purpose of providing

speedy trial of offences against children or violation of child rights under the said Act.

Further, as per provision to Sub-section (1) of Section 28 of the Protection of Children from Sexual Offences Act, 2012 (Central Act 32 of 2012), the Children's Court under the said section of the Commission for Protection of Child Rights Act, 2005 (Central Act 4 of 2006), **shall also be a Special Court under the Protection of Children from Sexual Offences Act, 2012** to try offences, under the Act."

29. Thus, the CBI has itself placed on record a notification which designates the Sessions Judges and Additional Sessions Judges at each district headquarter as Children's Courts. These Courts are also Special Courts under the POCSO Act. Therefore, they answer both the limbs of the definition of 'Children's Court' contained in Section 2(20) of the JJ Act. The Court of learned Additional Sessions Judge-cum-Children's Court, Gurugram is the Children's Court having jurisdiction over the present case. In view of the notification dated 29.05.2013, the Presiding Officer of the Court at Panchkula, being a Sessions Judge or an Additional Sessions Judge at a district headquarter, may well also be a Children's Court. However, the CBI seeks transfer of the case to that Court in its capacity as a Special Judge under the Prevention of Corruption Act, 1988, which has no relation to an offence under Section 302 IPC. Even if the transfer is treated as one to that Court in its capacity as a Children's Court, the first prayer merges with the alternative prayer for transfer to a Children's Court at Panchkula. Such a transfer can be ordered only if a case is made out under Section 407 Cr.P.C., which is considered hereinafter.

30. The scheme of Sections 15, 18 and 19 of the JJ Act was explained by the Hon'ble Supreme Court in ***Barun Chandra Thakur's case (supra)***, which arose out of the preliminary assessment of respondent No. 2 himself. It was held

that the order of preliminary assessment decides whether a child aged between sixteen and eighteen years, alleged to have committed a heinous offence, is to be tried by the Board or as an adult by the Children's Court. The Hon'ble Supreme Court noticed the serious consequences which follow when a child is tried as an adult by the Children's Court. The relevant observations are reproduced as under:

"45. The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, **is to be tried as an adult by the Children's Court or by the Board itself**, treating him to be a child. There are two major consequences provided in the Act, 2015, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the said removal of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to section 24(1)...

46. **These consequences are serious in nature and have a lasting effect for the entire life of the child.** It is well settled that any order that has serious civil consequences, reasonable opportunity must be afforded..."

31. The Children's Court is, thus, the forum specifically chosen by the legislature for the trial of such a child, along with the safeguards contained in Section 19 of the JJ Act. Reference can also be made to *CCL 'A's case (supra)*, wherein the Delhi High Court observed that a child sent up for trial as an adult

before a Children's Court does not become an adult. He continues to be a juvenile in conflict with law, who is only to be treated differently on account of the heinous nature of the offence alleged against him.

32. The mandatory nature of the procedure prescribed by the JJ Act for the trial of a child in conflict with law has been emphasised by the Hon'ble Supreme Court in *Thirumoorthy v. State represented by the Inspector of Police, 2024 INSC 247*. In the said case, the charge sheet against a child in conflict with law was filed directly before a Sessions Court, without any preliminary assessment by the Board. The Hon'ble Supreme Court held that the procedure under Sections 15 and 19 of the JJ Act is mandatory. As the trial had been conducted *de hors* that procedure, the entire proceedings, right from the investigation till the conviction, were held to be vitiated. The relevant observations are reproduced as under:

"35. **The procedure provided under Sections 15 and 19 has been held to be mandatory** by this Court in the case of *Ajeet Gurjar v. State of Madhya Pradesh*. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word 'may' used in the said provision be read as 'shall'. It was also held that holding of an inquiry under 19(1)(i) is not an empty formality...

36. It was further held that the Children's Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, **all actions provided under Section 19 are mandatorily required to be undertaken by the Children's Court.**

XXX XXX XXX

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are **in gross**

violation of the mandate of the Act and thus, the entire proceedings stand vitiated.

XXX XXX XXX

42. All the proceedings taken against the accused appellant are vitiated as being in total violation of the mandatory procedure prescribed under the JJ Act."

33. It is, thus, evident that the obligations cast upon the Children's Court under Section 19 of the JJ Act are mandatory and are to be discharged by the Children's Court alone. If the trial of respondent No. 2 were to be held by the Court at Panchkula in its capacity as a Special Judge, CBI, as prayed by the CBI, the mandatory procedure prescribed under Section 19 of the JJ Act would not be followed. The very foundation of the proceedings would then be put in jeopardy. The trial would then be open to challenge on the principle laid down in *Thirumoorthy's case (supra)*. Such a course would defeat the very object of an early and effective trial, for which the CBI seeks the transfer.

34. Reference can also be made to the recent judgment of the Hon'ble Supreme Court in *Sagar v. State of Haryana, 2026 INSC 692*, decided on 13.07.2026. In the said case, the Children's Court had proceeded with the trial of a child in conflict with law as an adult, without passing an order under Section 19(1) of the JJ Act. Following *Thirumoorthy's case (supra)*, the Hon'ble Supreme Court held that the requirement of Section 19(1) is mandatory and substantive in nature, and its non-compliance vitiates the entire trial. The conviction was, therefore, set aside and the appellant was acquitted. The Hon'ble Supreme Court also directed that the first duty of the Children's Court, after taking cognizance of a matter transferred to it under Section 18(3), is to pass a reasoned order under Section 19(1) upon due assessment of the child in conflict

with law. This judgment further underlines that the trial of such a child carries statutory obligations which only a Children's Court can discharge.

35. An identical question was considered by this Court in *Amritpal Singh's case (supra)*, on which heavy reliance has been placed by learned counsel for respondent No. 2. In that case, the National Investigation Agency had sought transfer of the trial of a juvenile, who had been directed to be tried as an adult, from the Children's Court, Tarn Taran to the Special NIA Court, Mohali. Section 13(1) of the National Investigation Agency Act, 2008 expressly provides that every scheduled offence investigated by the Agency shall be tried only by the Special Court. This Court held that the non obstante clause in Section 13(1) of that Act gives it an overriding effect only upon the Cr.P.C. On the other hand, Section 1(4) of the JJ Act, which is a later enactment, overrides any other law for the time being in force. It was held that the JJ Act would, therefore, prevail and the jurisdiction would vest in the Children's Court. It was further held that the plea of speedy trial, similarity of procedure or the rank of the Presiding Officer cannot confer jurisdiction upon a Court. The relevant observations are reproduced as under:

"35. Another argument raised by the learned counsel for the petitioner was that the Special Court constituted under the NIA Act provides speedy trial and rather under Section 19 it has been so provided that the trial by Special Court will have precedence and the Special Court shall hold the trial on day-to-day basis. However, the said argument although seems to be attractive but does not cut any ice. **The argument of speedy trial, if any, cannot be given preference when issue of jurisdiction of Court is involved. The jurisdiction of a Court can neither be taken away nor vested in a particular Court on the basis of aforesaid argument.**

36. ...The argument raised by the learned counsel for the petitioner that in both the legislations the Court is held by Presiding Officer of the rank of Sessions Judge/Additional Sessions Judge and therefore, **no prejudice would be caused to the respondent is also not sustainable in view of the fact that such a reasoning cannot become a ground for conferring a jurisdiction upon a particular Court.** In the present case, the jurisdiction is vested in the Children's Court under Section 18(3) of the JJ Act, 2015 and by virtue of Section 1(4) of the Act, the provisions of the Act will have an overriding effect upon any other law for the time being in force...

xxx xxx xxx

40. After giving my thoughtful consideration to the aforesaid facts and circumstances as well as the legal position especially considering the effect of Section 1(4) of the JJ Act, 2015, it is held that **when an FIR is registered under a Scheduled Act prescribed under the NIA Act and a juvenile has been directed to be tried as an adult by the Children's Court, then the jurisdiction would vest in the Children's Court and not in the Special Judge under the NIA Act."**

36. In reaching the above conclusion, this Court relied upon the judgments of the Hon'ble Supreme Court in *Partap Singh v. State of Jharkhand and another, (2005) 3 SCC 551* and *Independent Thought v. Union of India and another, (2017) 10 SCC 800*. In *Partap Singh's case (supra)*, a Constitution Bench held that the juvenile justice law is a beneficial and remedial legislation. It must be construed so as to advance the cause of those for whose benefit it has been made. In *Independent Thought's case (supra)*, it was held that the statutes concerning the rights of children are special laws on a special subject of legislation. Such subject-specific legislations must prevail and take precedence

over the provisions of a general law. This Court also considered *Yakub Abdul Razak Memon's case (supra)*, wherein the Terrorist and Disruptive Activities (Prevention) Act, 1987 was held to prevail over the Juvenile Justice Act, 2000. That judgment was distinguished, as the TADA Act had been repealed long before Section 1(4) was inserted in the Juvenile Justice Act, 2000 with effect from 22.08.2006. The overriding clause could not, therefore, operate upon a law which was no longer in force. In *Amritpal Singh's case (supra)*, as in the present case, both the enactments were in force and the later one, i.e. the JJ Act, contained a clear *non obstante* clause.

37. Reliance can also be placed upon *National Investigation Agency v. Abid Mushtaq Mir, Crl. A(D) No. 1 of 2024, decided on 29.07.2024*, wherein the High Court of Jammu and Kashmir and Ladakh took the same view. In that case, a juvenile directed to be tried as an adult for offences under the Unlawful Activities (Prevention) Act, 1967 was held triable by the Special Court under the Protection of Children from Sexual Offences Act, 2012, which is a Children's Court, and not by the Special NIA Court. It was observed as under:

"9. ...The JJ Act, 2015 will apply for offence committed by the child under any enactment... **The provisions of the JJ Act will override any other provision of law for the time being in force which brings child in conflict with law** and Section 1 (4) of the JJ Act speaks so in unmistakeable terms. The sanctity of non-obstante clause occurring in Section 1 (4) of the JJ Act has to be maintained and followed... **The severity of punishment under UA(P) Act cannot be the reason to oust the jurisdiction of particular court where the trial is required to be held in view of the Special provisions of law.**"

38. As noticed above, learned counsel for the CBI has heavily relied upon ***Yakub Abdul Razak Memon's case (supra)***. In that case, the Hon'ble Supreme Court noticed the contention of one of the appellants in the Bombay bomb blasts case. He was 17 years and 3 months old on the date of the offence and pleaded that his case ought to have been dealt with under the Juvenile Justice Act, 2000, and not under TADA. The answer to this contention was given by the Hon'ble Supreme Court in the following words:

"...The question does arise as to whether the statutory provisions of JJ Act would have an over-riding effect over the provisions of TADA **which left long back and was admittedly not in force on 22.8.2006**. Thus, the question does arise as what is the meaning of the law for the time being in force. This Court has interpreted this phrase to include the law in existence on the date of commencement of the Act having over-riding effect and the law which may be enacted in future during the life of the Act having over-riding effect...

Thus, we do not think that the JJ Act would have an over-riding effect on TADA **which was not in existence on the date of commencement of the provisions of Section 1(4) of JJ Act**.

TADA, being a special act, meant to curb the menace of terrorist and disruptive activities **will have effect notwithstanding the fact that JJ Act is general and beneficial legislation**. On perusal of aims and objects of TADA, it is clear that the act is brought into the statute books to deal with a special category of persons, viz., Terrorists."

39. A careful reading of the above paras shows that the decision turned on features which are absent in the present case. Firstly, TADA had lapsed long before Section 1(4) was inserted in the Juvenile Justice Act, 2000 with effect

from 22.08.2006. The overriding clause could not, therefore, operate upon a law which was no longer in force. In the present case, the offence was committed on 08.09.2017, when the JJ Act of 2015 was in force. Section 1(4) of that Act expressly extends to the prosecution of children in conflict with law. Secondly, TADA was a special statute enacted to deal with terrorists. It vested exclusive jurisdiction in the Designated Courts and contained its own overriding clause in Section 25. The offence alleged against respondent No. 2 is under Section 302 IPC, which is a general law. No statute vests the trial of such an offence in the Special Judge, CBI, and the notification dated 08.02.2012 is confined to the offences under the PC Act.

40. Thirdly, the Hon'ble Supreme Court observed that the Act of 2000 had itself carved out certain exceptions and could not, therefore, prevail over TADA in all circumstances. Under the JJ Act of 2015, the legislature has itself provided for the trial of a child aged between sixteen and eighteen years as an adult in case of a heinous offence. At the same time, it has specifically chosen the Children's Court as the forum for such a trial. The exception, therefore, operates within the JJ Act and not outside it. In fact, the principle applied in ***Yakub Abdul Razak Memon's case (supra)***, that a special law will prevail over a general law, supports respondent No. 2. The JJ Act is a special law on the subject of children, as held in ***Independent Thought's case (supra)***, while the IPC and the Cr.P.C. are general laws. This is also the reason why ***Yakub Abdul Razak Memon's case (supra)*** was distinguished by this Court in ***Amritpal Singh's case (supra)***.

41. In the same judgment, the Hon'ble Supreme Court also explained the expression 'ends of justice', on which reliance has been placed by the CBI. It was observed as under:

"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.**"

42. These observations do not advance the case of the CBI. The ends of justice are to be served within the four corners of the statute and mean justice according to the law of the land. The law of the land, contained in Section 18(3) read with Section 1(4) of the JJ Act, places the trial of respondent No. 2 in the Children's Court. Justice to all the parties also points the same way. The family of the deceased, the witnesses and respondent No. 2 are all at Gurugram, and the trial there is at an advanced stage. The interest of the society lies in an early conclusion of the trial, and not in shifting it to another forum for the convenience of the prosecuting agency. Thus, *Yakub Abdul Razak Memon's case (supra)* is of no help to the CBI.

43. The present case stands on an even stronger footing. In *Amritpal Singh's case (supra)*, the NIA Act expressly provided for the trial of scheduled offences only by the Special Court, and the JJ Act was still held to prevail. In the present case, there is no statutory provision vesting the trial of an offence under Section 302 IPC investigated by the CBI exclusively in the Special Judge, CBI. The notification dated 08.02.2012 is confined to the offences under the PC Act. The arrangement relied upon by the CBI is, at best, an administrative one. It cannot override the mandate of Section 18(3) read with Section 1(4) of the JJ

Act. The plea of no prejudice also cannot vest jurisdiction in a Court, as held in *Amritpal Singh's case (supra)*. Similarly, the no objection given by the State cannot confer upon the Special Judge, CBI a jurisdiction which the law does not give to it. It is settled since *Kiran Singh and others v. Chaman Paswan and others, [1955] 1 S.C.R. 117* that a defect of jurisdiction cannot be cured even by consent of the parties, wherein the Hon'ble Supreme Court observed as under:

"It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. **A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties.**"

44. Though the above observations were made in a civil case, the principle is of general application. The first prayer made in the petition is, therefore, not sustainable.

45. Coming to the alternative prayer, respondent No. 2 has objected to it being raised through an additional affidavit. The power of the High Court under Section 407 Cr.P.C. is, however, wide. Under Section 407(2), it may be exercised on the report of the trial Court, on the application of a party interested or on the High Court's own initiative. The alternative prayer is, therefore, being considered on merits, rather than being rejected on a technical ground. Section 407(1) Cr.P.C. reads as under:

"407. Power of High Court to transfer cases and appeals.- (1)
Whenever it is made to appear to the High Court-

(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(b) that some question of law of unusual difficulty is likely to arise, or

(c) that an order under this section is required by any provision of this Code, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice,

it may order-

(i) that any offence be inquired into or tried by any Court not qualified under sections 177 to 185 (both inclusive), but in other respects competent to inquire into or try such offence;

(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(iii) that any particular case be committed for trial to a Court of Session; or

(iv) that any particular case or appeal be transferred to and tried before itself."

46. The scope of the power of transfer in relation to a case which, by statute, is triable only by a particular class of Courts was explained by a three Judge Bench of the Hon'ble Supreme Court in ***Gurcharan Dass Chadha v. State of Rajasthan, [1966] 2 S.C.R. 678***. The case was triable only by a Special Judge under the Criminal Law Amendment Act, 1952. It was held that the condition requiring trial by a Special Judge is a sine qua non, which can be met only by transferring the case to another Special Judge. The territorial condition, on the other hand, merely distributes work among Special Judges and must yield to the power of transfer. The relevant observations are reproduced as under:

"There is no comparison between the first sub-section and the second sub-section of s. 7. The condition in the second sub-section of s. 7 is not of the same character as the condition in the first sub-section. **The first sub-section creates a condition which is a sine qua non for the trial of certain offences. That condition is that the trial must be before a special Judge.** The second sub-section distributes the work between special Judges and lays emphasis on the fact that trial must be before a special Judge appointed for the area in which the offence is committed. This second condition is on a par with the distribution of work territorially between different Sessions Judges and Magistrates. An order of transfer, by the very nature of things must, some times, result in taking the case out of the territory..."

47. Section 18(3) of the JJ Act does not merely prescribe a territorial forum. It specifically directs transfer of the trial to the Children's Court having jurisdiction to try such offences. Applying the same reasoning, the requirement of Section 18(3) of the JJ Act that the trial of a child directed to be tried as an adult must be held by a Children's Court is a sine qua non. The power of transfer under Section 407 Cr.P.C. can be exercised only within that limit. The trial can, at the most, be transferred from one Children's Court to another Children's Court, if a case for the same is made out. It cannot be transferred to a Court which does not answer the description of a Children's Court. This is a further reason why the first prayer of the CBI cannot be granted, even by invoking Section 407 Cr.P.C.

48. A Children's Court at Panchkula would be a Court of equal jurisdiction and would also satisfy the above requirement. This Court can, therefore, transfer the trial to it if a case is made out under Section 407 Cr.P.C.

The principles governing transfer of criminal cases were laid down by the Hon'ble Supreme Court in *Abdul Nazar Madani v. State of Tamil Nadu and another, (2000) 6 SCC 204*, wherein it was held that the apprehension of not getting a fair trial must be reasonable and not imaginary. Convenience of the parties and the witnesses is also a relevant consideration, but it means the convenience of all concerned and not of the applicant alone. The relevant observations are reproduced as under:

"7. The purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under Section 407 and anywhere in the country under Section 406 Cr.P.C. **The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary, based upon conjectures and surmises.** If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any court or even at any place, the appropriate court may transfer the case to another court where it feels that holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case. Convenience of the parties including the witnesses to be produced at the trial is also a relevant consideration for deciding the transfer petition. **The convenience of the parties does not necessarily mean the convenience of the petitioners alone** who approached the court on misconceived notions of apprehension. **Convenience for the purposes of transfer means the convenience of the prosecution, other accused, the witnesses and the larger interest of the society."**

49. The test of reasonable apprehension had, in fact, been laid down much earlier in *Gurcharan Dass Chadha's case (supra)*, wherein it was observed as under:

"The law with regard to transfer of cases is well-settled. **A case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done.** A petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. It is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, **a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not...**"

50. These principles were reiterated by the Hon'ble Supreme Court in *Nahar Singh Yadav's case (supra)*. It was a case in which the CBI itself had sought transfer of a trial pending before the Court of Special Judge, CBI, Ghaziabad. The Hon'ble Supreme Court held that an order of transfer is not to be passed as a matter of routine. It also laid down the broad factors which are to be kept in mind while considering such a prayer. The relevant observations are reproduced as under:

"24. Thus, although no rigid and inflexible rule or test could be laid down to decide whether or not power under Section 406 of the Cr.P.C. should be exercised, it is manifest from a bare reading of sub-sections (2) and (3) of the said Section and on an analysis of the decisions of this Court that **an order of transfer of trial is not to be passed as a matter of routine or merely because an interested party has expressed some apprehension about the proper conduct**

of a trial. This power has to be exercised cautiously and in exceptional situations, where it becomes necessary to do so to provide credibility to the trial. Some of the broad factors which could be kept in mind while considering an application for transfer of the trial are:-

(i) when it appears that the State machinery or prosecution is acting hand in glove with the accused, and there is likelihood of miscarriage of justice due to the lackadaisical attitude of the prosecution;

(ii) when there is material to show that the accused may influence the prosecution witnesses or cause physical harm to the complainant;

(iii) **comparative inconvenience and hardships likely to be caused to the accused, the complainant/the prosecution and the witnesses**, besides the burden to be borne by the State Exchequer in making payment of travelling and other expenses of the official and non-official witnesses;

(iv) a communally surcharged atmosphere, indicating some proof of inability of holding fair and impartial trial because of the accusations made and the nature of the crime committed by the accused; and

(v) existence of some material from which it can be inferred that the some persons are so hostile that they are interfering or are likely to interfere either directly or indirectly with the course of justice."

51. In the same judgment, the Hon'ble Supreme Court quoted with approval the following observations made in *Maneka Sanjay Gandhi and another v. Rani Jethmalani, (1979) 4 SCC 167*:

"Assurance of a fair trial is the first imperative of the dispensation of justice and **the central criterion for the court to consider when a motion for transfer is made is**

not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer..."

52. Reference can also be made to *Captain Amarinder Singh v. Prakash Singh Badal and others, (2009) 6 SCC 260*, wherein a three Judge Bench of the Hon'ble Supreme Court held that a mere allegation of apprehension does not suffice for transfer of a criminal case. The apprehension must not only be entertained but must also appear to the Court to be reasonable. On the other hand, in *Mrudul M. Damle and another v. CBI, New Delhi, [2012] 5 S.C.R. 919*, a CBI case was transferred to the place where 88 out of 92 witnesses were located. It was held that expeditious disposal is a facet of fair trial and speedy trial is a fundamental right. It was further observed that a trial in which the witnesses have to travel from distant places is bound to linger on for years. The convenience of the witnesses was thus treated as a reason for holding the trial where the witnesses were, and not for taking it away from them.

53. Tested on the above principles, no case for transfer is made out. No material has been placed before this Court to show that a fair and impartial trial cannot be had at Gurugram. There is no allegation of bias against the trial Court, nor is it alleged that the State machinery is acting in collusion with the accused. No question of law of unusual difficulty is likely to arise in the trial. The occurrence took place in a school at Gurugram and the FIR (Annexure P-3) was registered there. The family of the deceased, respondent No. 2 and his family, and the school are all located there. The trial is going on before the Children Court at Gurugram. The CBI did not seek stay of the proceedings before the trial

Court, and the trial has thus progressed for several years. The occurrence is of the year 2017. Any transfer at this advanced stage would only delay the trial further. It would not be in the interest of the prosecution, the family of the deceased or respondent No. 2. The support extended by the complainant to the petition does not alter this position. The joint appreciation of evidence sought by him is barred by Section 23 of the JJ Act, and an early conclusion of the trial at Gurugram would serve the cause of the family of the deceased far better than a transfer at this stage. The comparative inconvenience of all concerned, which is one of the factors noticed in *Nahar Singh Yadav's case (supra)*, is clearly against the transfer.

54. The plea that the evidence is intertwined with the case of the adult accused pending at Panchkula also does not help the CBI. Section 23 of the JJ Act forbids joint proceedings of a child with a person who is not a child. The two trials have to be held separately in any case, whether at Gurugram or at Panchkula. If any witness is common to both the cases, he has to be examined in each case separately. Documents can be produced through certified copies. The difficulty regarding the movement of the record and the travel of the prosecution team is administrative in nature. It is, at the most, a matter of the relative convenience of the prosecution, which is not a ground for transfer, as held in *Maneka Sanjay Gandhi's case (supra)*. It does not fall within any of the grounds contained in Section 407(1) Cr.P.C. The CBI has, in fact, been conducting the trial at Gurugram since the year 2018. Wherever permissible, the evidence of official and outstation witnesses can also be recorded through video conferencing.

55. CBI has also relied upon *Central Bureau of Investigation v. State of Haryana and others, CRM-M-5650-2022, decided on 24.01.2025*, wherein

this Court dealt with the refusal of sanction for prosecution of certain police officials, who were members of the Special Investigation Team constituted by the Gurugram Police. It was observed that the evidence regarding the involvement of respondent No. 2 and the false implication of Ashok Kumar is intertwined and cannot be segregated. On that basis, it was further observed that the said officials can be tried, by virtue of Section 223(d) Cr.P.C., in the same trial as that of the offence under Section 302 IPC.

56. The above judgment also does not advance the case of the CBI. That judgment was rendered in a different context. The question before this Court was regarding the sanction for prosecution and the power of the CBI to investigate the role of the police officials. The question presently arising, namely, the forum for trial of a child in conflict with law who has been directed to be tried as an adult, was not under consideration. Section 23 opens with the words 'notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973', and expressly bars joint proceedings of a child alleged to be in conflict with law with a person who is not a child. Even otherwise, the trial of the offence under Section 302 IPC is pending before the Children's Court, Gurugram. The observations made in that judgment, at the most, contemplate the officials being tried along with that case, and not the trial of respondent No. 2 being shifted to Panchkula. In ***State of Kerala v. Ayyappan and others, (2006) 13 SCC 320***, relied upon in that judgment, the connected accused were also directed to be tried by the Court trying the main offence. Thus, the pendency of proceedings against the adult accused at Panchkula furnishes no ground for transfer of the trial of respondent No. 2.

57. The observations made in the order dated 06.10.2021 (Annexure P-9) regarding the conduct of respondent No. 2 and his family members were made

while deciding his prayer for bail. They were not findings on the merits of the case. Respondent No. 2 has also pointed out the order dated 20.10.2022 (Annexure P-11) passed by the Hon'ble Supreme Court granting him interim bail. In any case, those observations do not show that a fair and impartial trial cannot be held at Gurugram. They have no bearing on the question as to which Court should try the case. If any apprehension regarding the witnesses arises in future, the trial Court is competent to take appropriate measures in accordance with law. The alternative prayer is, therefore, also without merit.

58. In view of the discussion as made above, it can be summarised that the Court of Special Judge, CBI, Panchkula has not been vested with any exclusive jurisdiction to try an offence under Section 302 IPC merely because it has been investigated by the CBI. The notification dated 08.02.2012 (part of Annexure P-4 Colly) is confined to the offences under the PC Act. The notifications Annexures P-1 and P-2 deal only with the investigation of the case. The trial of respondent No. 2, who has been directed to be tried as an adult, is to be held by the Children's Court having jurisdiction under Section 18(3) read with Section 1(4) of the JJ Act. This requirement is a sine qua non, and the power of transfer under Section 407 Cr.P.C. cannot be used to take the trial to a Court of a different character. No ground is made out under Section 407 Cr.P.C. for transfer of the trial to a Children's Court at Panchkula either.

59. In view thereof, the present petition is dismissed. The learned Additional Sessions Judge-cum-Children's Court, Gurugram shall proceed with the trial of respondent No. 2 and make every endeavour to conclude it as expeditiously as possible, preferably within a period of six months from the date of receipt of a certified copy of this order, subject to cooperation by the parties.

The CBI shall ensure the presence of its witnesses on the dates fixed by the trial

Court. The trial Court may record the evidence of official and outstation witnesses through video conferencing in accordance with the applicable rules.

60. It is made clear that nothing observed herein shall be construed as an expression of opinion on the merits of the case.

61. Before parting, this Court places on record its deep appreciation for the diligent assistance rendered by my Secretary Mr. Waseem Ansari and Law Researcher Ms. Shruti Dang in going through the voluminous record and compiling the relevant statutory provisions and judgments on the point, which greatly facilitated the consideration of the issues involved.

30.10.2026
Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No