

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Criminal Revision No. 1806 of 2022
Date of Decision: 26.09.2022

Rxxxxx Dxxxxx

... Petitioner

Versus

State of Haryana

... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. R. S. Rai, Sr. Advocate, with
Ms. Rubina, Advocate,
for the petitioner.

Mr. Ranvir Singh Arya, Addl. Advocate General, Haryana

Mr. Preetinder Singh Ahluwalia, Advocate,
as *Amicus Curiae*.

JASGURPREET SINGH PURI, J. (Oral)

1. The present Revision Petition has been filed for quashing of the impugned order dated 01.06.2022 passed by the learned Principal Magistrate, Juvenile Justice Board, Gurugram (hereinafter referred to as the JJB) by which the application of the petitioner/child-in-conflict with law (hereinafter mentioned as CCL) by which permission sought to travel abroad for higher education was declined and also order dated 27.06.2022 passed by the learned Addl. Sessions Judge, Gurugram by which the appeal filed by the petitioner/CCL was dismissed.

Facts of the case:

2. FIR No. 83 dated 23.08.2020 was lodged on the basis of the statement made by the complainant that in the morning at about 5:45 AM, he started on his motorcycle for going to Greater Noida (UP) alongwith his friend namely Alok Gupta and they were also to go to Mahamaya Greater Noida (UP) and he parked his motorcycle No. HR26CRT 2403 Mark Harley Davidson near the Petrol Pump of Sector 56. They both started from there for Noida and had worn all protective gears and they both started on their respective motorcycles following each other and reached ahead of Rapid Metro Station DLF Phase-II, Gurugram near Belvedere Park and his friend Alok Gupta was ahead of him. At that time, the driver of Ford Figo car No. HR51BN 8332 came from the side of Shankar Chowk at fast speed and driving negligently struck against the divider in the midst of road and after breaking the fence and coming up on wrong side, and after striking against Metro Pillar struck against the motorcycle of his friend Alok Gupta. Because of the striking, the motorcycle of his friend fell down and his friend received many injuries. At that time, he called the Ambulance on the spot and got admitted his friend to a hospital at Gurugram for treatment. However, due to injuries suffered in accident, his friend unfortunately died. As per the allegations, the accident has been caused by driving the car at fast speed and negligently and his friend had died due to injuries suffered by the accident. Initially the FIR was registered under Sections 279 and 304-A IPC but thereafter Sections 304-II IPC and Section 199A of the Motor Vehicle Act were added and it was alleged that the petitioner instigated the car driver to drive the car at fast speed. Thereafter, *challan* was presented under Sections 304-II read with Section 114 IPC.

3. The petitioner and the driver of the car being juveniles were proceeded under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the JJ Act) and consequently inquiry against them had commenced. The petitioner thereafter moved an application before the JJB seeking renewal of his passport on the ground that he has been selected to pursue graduation course in Columbia College at Chicago, US which is a course of four years commencing from 6th of September 2022 and he has to apply for visa which can be granted only when the passport is renewed. This application of the petitioner was allowed by the JJB on 02.04.2022 vide Annexure P-2 to the effect that the passport authority was at liberty to consider the renewal of the passport of the applicant-CCL for a period of five years in accordance with law and as per the prevailing rules and guidelines. It was however made clear that the renewal of passport, if any, in favour of the petitioner will not confer any right upon him and he shall seek requisite permission from the Board in case he intends to travel abroad or visit some foreign country. Thereafter, the petitioner moved an application for permission to travel abroad vide Annexure P-5 on the ground that the petitioner wishes to pursue a degree of Music at Columbia College at Chicago and the course is of four years. He also undertook to appear before the Court through his counsel or through his natural guardian. The aforesaid application seeking permission to travel abroad was dismissed by the Principal Judge, Juvenile Justice Board, Gurugram on 01.06.2022. The petitioner filed an appeal assailing the aforesaid order before the learned Addl. Sessions Judge, Gurugram and the appeal was also dismissed vide order dated 27.06.2022 and against the aforesaid two orders the present Revision Petition has been preferred by the

petitioner.

Submissions made by learned counsels for parties and Amicus Curiae

4. Mr. R. S. Rai, learned Senior Counsel with Ms. Rubina appearing on behalf of the petitioner submitted that both the impugned orders are erroneous, illegal and have been passed without application of judicial mind. He submitted that the petitioner was not the driver of the car which had hit the divider but allegedly he was only sitting next to the driver. Allegedly the driver was driving the car at a high speed which caused the accident but this is all subject to the final outcome of the inquiry before the JJB. The learned senior counsel further submitted the petitioner especially being a juvenile has a Fundamental Right under Article 21 of the Constitution of India to seek higher education abroad and therefore the pendency of inquiry against the petitioner under the JJ Act cannot deprive the petitioner of his Fundamental Right for studying abroad especially in view of the fact that he has already received an approval letter from the Columbia College at Chicago, US in July 2022. He has further submitted that even in the application seeking permission to travel abroad vide Annexure P-5, he has already undertaken to appear before the JJB through his counsel or through his guardian and apart from the same, he has specific instructions to state before this Court that whenever the petitioner is required for the inquiry, he will present himself but he cannot be denied his right of higher education since he wants to pursue his four years' course at Columbia College at Chicago. He further referred to Annexure P-3 which is the approval letter by which he has been offered admission in the aforesaid college for the Fall 2022 semester which starts from September 06, 2022.

5. The learned senior counsel relied upon a judgment of Constitution

Bench of the Hon'ble Supreme Court in Maneka Gandhi versus Union of India and another (1978) 1 SCC 248 and submitted that the petitioner has a Fundamental Right to travel and to go abroad which emanates from Article 21 of the Constitution of India. He further referred to the judgments of co-ordinate Benches of this Court in Amit Sureshmal Lodha versus State of Haryana (CRM-M-3304 of 2021, decided on 09.11.2021), Gaurav Raheja versus State of Punjab and another (CRM-M-19373 of 2022, decided on 05.08.2022) and Ryan Augustine Pinto versus Central Bureau of Investigation (CRM-M-55170 of 2018, decided on 22.02.2019) to substantiate his arguments.

6. Since the petitioner was seeking protection under Article 21 of the Constitution of India, this Court on 08.09.2022 appointed Mr. Preetinder Singh Ahluwalia, Advocate as *Amicus Curiae* and the matter was heard. Thereafter, on 13.09.2022 again the matter was heard at length and arguments were also addressed on the aforesaid question of law as to whether an undertrial/convict/juvenile who is child in conflict with law has any Fundamental or Statutory right to higher education abroad or not. The learned *Amicus Curiae* had advanced various submissions including the submission that the learned Courts below have not considered the provisions of the JJ Act *in extenso*.

7. The learned senior counsel for petitioner specifically stated that he has sought fresh instructions from the petitioner and his father that since the provisions of the JJ Act have not been properly appreciated by the learned Courts below, he has no objection in case the matter is remanded back to the JJ Board for re-consideration of the matter afresh in the light of the provisions of JJ Act.

8. Mr. Ranvir Singh Arya, learned Additional Advocate General, while

appearing on behalf of the State of Haryana submitted that a perusal of the impugned order dated 27.06.2022 passed by the learned Addl. Sessions Judge, Gurugram would show that in fact delay in the proceedings before the JJB has been caused by the petitioner and the other CCL who was the driver of the car by filing numerous applications and now even the JJB has been directed to conclude the inquiry proceedings expeditiously and if possible by starting day to day hearing in the case and both the CCLs were also advised to refrain from moving such applications seeking exemption from personal appearance and causing the delay in concluding the inquiry proceedings. He submitted that in view of the aforesaid position, the present petition is liable to be dismissed.

9. The learned Additional Advocate General, Haryana also submitted after seeking instructions from SI Jitender that the petitioner/CCL as well as the driver of the car were under the influence of alcohol at the time of the accident and alcohol test was also detected as positive. He submitted that the petitioner cannot be permitted to go abroad for a period of four years as it will hamper the further inquiry by causing delay. He further submitted that there is neither any Fundamental nor any Statutory right vested in the petitioner for seeking permission for pursuing higher education abroad. He further submitted that now the charges have been framed on 26.08.2022 and in view of the directions issued by the learned Addl. Sessions Judge to the JJB for concluding the inquiry proceedings expeditiously and if possible by starting day to day hearing of the case, the inquiry is likely to be concluded. Therefore, the petitioner may not be permitted to go abroad for a continuous period of four years.

10. Mr. Preetinder Singh Ahluwalia, learned *Amicus Curiae* submitted

that as per the information derived from the internet, the Columbia College at Chicago, US is rated as 463 in America and is a private college which has 83% acceptance. The deceased was on Harley Davidson motorcycle and the petitioner alongwith his friend were in Ford Figo car, although the petitioner was not the driver. The accident took place when the victim was coming from the opposite side and the car had hit the divider which hit the pillar which in turn hit the bike which ultimately led to the death of the deceased. The submissions made by Mr. Ahluwalia are noted as below.

11. Under the scheme of the JJ Act 2015, Chapter II provides for General Principles of Care and Protection of Children. He referred to Section 3 wherein it has been provided that while implementing the provision of this Act, the Board shall be guided by various fundamental principles. Section 3 (i) provides the principle of presumption of innocence wherein it has been provided that any child shall be presumed to be an innocent of any malafide or criminal intent up to the age of 18 years. Section 3 (iv) provides the principle of best interest that all the decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential. Section 3 (viii) provides for the principle of non-stigmatising semantics and that adversarial or accusatory words are not to be used in the processes pertaining to a child. Section 3 (xi) provides for principle of right to privacy and confidentiality that every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process. Section 3 (xiv) provides for principle of fresh start that all past records of any child under the Juvenile Justice system should be erased except in special circumstances.

12. He further referred to Sections 90 and 91 of the Act and submitted that the aforesaid Sections provide attendance of parent or guardian of child and also dispensing with the attendance of the child. Section 90 provides that the Committee or the Board may require any parent or guardian having the actual charge of the child to be present at any proceedings in respect of that child. Section 91 provides that if at any stage during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee or the Board, as the case may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee or the Board.

13. He further submitted that the learned Courts below in both the impugned orders have not considered the aforesaid provisions whereby the attendance of the child is liable to be dispensed with if it is not found to be essential for the purpose of inquiry. Both the Courts below did not consider or appreciate the aforesaid provisions and therefore both the impugned orders are not sustainable in this regard. He further submitted that it was incumbent upon the JJB as well as the learned Addl. Sessions Judge, to have considered the aforesaid Statutory provisions before passing of the orders and in the absence of the same, the impugned orders are liable to be set aside and the matter may be sent back to the JJB for considering the prayer of the petitioner afresh in the light of the aforesaid provisions.

14. Mr. Ahluwalia while assisting the Court on the issue of plea taken by

the learned senior counsel for the petitioner that the petitioner has a Fundamental Right to travel abroad and to pursue higher education submitted that the right to education or higher education abroad is not a part of Fundamental Right guaranteed under Article 21 of the Constitution of India. He submitted that right to elementary/primary education is no doubt a Fundamental Right under Article 21-A of the Constitution of India but right to higher education abroad cannot be said to be a Fundamental Right and therefore, the plea taken by the learned senior counsel is not sustainable. He also referred to the judgment of the Hon'ble Supreme Court in **Farzana Batool versus Union of India and others** (Writ Petition (Civil) No. 364 of 2021) in this regard.

15. He further submitted that in view of Section 3 (viii), various remarks/observations made by the learned Addl. Sessions Judge in its order dated 27.06.2022 are required to be expunged and liable to be struck off being in violation of Section 3 (viii). He submitted that paragraphs 12 and 14 of the aforesaid order which contains observations of the Addl. Sessions Judge pertaining to CCL may be struck off and taken off the record being in violation of Section 3 (viii) being adversarial and accusatory.

16. He further submitted that so far as the presence of the petitioner at the time of inquiry is concerned, even when a criminal Court is conducting a trial in a case which is not a summons case then in view of the judgment of the Hon'ble Supreme Court in **Basavaraj R. Patil versus State of Karnataka** 2000 (8) SCC 740, the presence of the accused can be exempted and he may be allowed to answer the questions without making physical presence in the Court on account of justifying exigency for which the Court can pass appropriate orders and therefore

the same principle can be applied in the present inquiry as well.

Consideration of submissions

17. After hearing the learned senior counsel for the petitioner, the learned Additional Advocate General, Haryana and the learned *Amicus Curiae*, two issues arise for consideration before this Court which can be crystallised as follows:-

i) *Whether an undertrial or a juvenile who is a child in conflict with law has any Fundamental or Statutory right to higher education abroad or not?*

ii) *Whether the impugned orders passed by the learned JJB as well as the learned Addl. Sessions Judge are in consonance with the scheme of the JJ Act especially Sections 90 and 91 of the Act?*

Issue No. 1

18. Part III of the Constitution of India provides for Fundamental Rights including under Article 21 and 21-A of the Constitution of India. Article 21 confers Fundamental Right of protection of life and liberty and provides that no person shall be deprived of his life and personal liberty except according to procedure established by law. Article 21-A which was inserted by way of Constitution (86th Amendment Act 2002) w.e.f. 01.04.2010 confers a right to education and provides that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine.

19. Part IV of the Constitution of India provides for various Directives Principles of State policy. Article 41 provides that the State shall within the limit of its economic capacity and development make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want. Article

45 provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

20. The issue pertaining to right to education was considered and discussed in detail by a larger Bench of the Hon'ble Supreme Court in Unni Krishnan, J.P. versus State of Andhra Pradesh (1993) 1 SCC 645. It was observed and concluded that the right to free education up to the age of 14 years is a Fundamental Right. The aforesaid judgment is of the year of 1993 i.e. prior to the 86th Amendment of the Constitution whereby Article 21-A was inserted and it was observed by the Supreme Court that the right to education is not stated expressly as a Fundamental Right in Part III of the Constitution. A specific question was framed as to whether the Constitution of India guarantees a Fundamental Right to education to its citizens or not. It was observed that Part III and Part IV of the Constitution of India are supplementary and complementary to each other and that Fundamental Rights are but a means to achieve the goal indicated in Part IV and the Fundamental Rights must be construed in the light of the Directives Principles of State policy. It was therefore held that the citizens of this country have a Fundamental Right to education. The said right flows from Article 21, but this right is however not an absolute right and its content and parameters have to be determined in the light of Articles 45 and 41 and in other words every child/citizen of this country has a right to free education until he completes the age of 14 years. His right to education is subject to the limits of economic capacity and development of the State. The relevant portion is reproduced as under:-

“226(1) The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is,

however, not an absolute right. Its content and parameters have to be determined in the light of Articles of 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of 14 years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.”

21. Reliance was placed by the learned senior counsel for the petitioner on the judgment of the Supreme Court in **Maneka Gandhis'** case (supra) to contend that right to education abroad will also be included in Article 21 of the Constitution of India. However, the Supreme Court in its aforesaid case dealt with the issue with regard to right to travel abroad where the passport was impounded without following any just and fair procedure and it was observed that the procedure in Article 21 cannot be arbitrary, unfair or unreasonable. The principles of natural justice must be followed before impounding a passport. The doctrine of post-decisional hearing was also acknowledged. It was also observed that principles of natural justice may be applicable by implication if not especially provided. The expression “procedure established by law” is different from the “due process of law” in the American Constitution. However, the issue with regard to right to seek higher education abroad was not the subject matter in the aforesaid case. The Right of Children to Free and Compulsory Education Act, 2009 was enacted after the judgment of the Supreme Court in **Unni Krishnan's** case and it came into force w.e.f. 01.04.2010.

22. From the aforesaid, it is clear that Fundamental Right to education is available only for primary/elementary education in the light of Article 21-A of the Constitution of India which provides that State shall provide free and compulsory

education to all children of the age of 6 to 14 years.

23. The Hon'ble Supreme Court in Unni Krishnan's case (supra) had observed that although the citizens of this country have a Fundamental Right to education but this right however is not an absolute right and its contents and parameters have to be determined in the light of Articles 45 and 41 of the Constitution. It was further clarified that every child/citizen of this country has a right to free education until he completes the age of 14 years.

24. The Hon'ble Supreme Court in *Farzana Batool's* case (supra), which was a case pertaining to admission to the MBBS degree course, observed that right to pursue higher (professional education) has not been spelt out as a Fundamental Right in Part III of the Constitution of India. Paragraph 9 of the aforesaid judgment is reproduced as under:-

*“9. Given that the issue raised in this case concerns access to education, albeit at the professional level, we would like to take this opportunity to underscore the importance of creating an enabling environment to make it possible for students such as the petitioners to pursue professional education. **While the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution**, it bears emphasis that access to professional education is not a government largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels.”*

(Emphasis supplied)

25. So far as the arguments raised by the learned senior counsel that the petitioner has a Fundamental Right to travel abroad is concerned, the same cannot be sustained in view of the fact that here is a case where the petitioner is not seeking permission to travel abroad for any short period but he is seeking

permission to travel abroad for a continuous period of 4 years since he has got admission in Columbia College at Chicago, in the United States of America for a course of 4 years.

26. The judgments, referred by the learned senior counsel for the petitioner in *Amit Sureshmal Lodha, Gaurav Raheja and Ryan Augustine Pinto's* cases (supra) are distinguishable and would not apply to the facts and circumstances of the present case particularly since petitioner is seeking permission for 4 years. In *Lodha's* case, the prayer was to visit abroad for a period of 30 days to meet his wife and son. In *Gaurav Raheja's* case, the petitioner was granted permission to travel Australia for a period of 6 months since he had an offer of employment from an Australian Company and wanted to avail the offer. In *Ryan Augustine Pinto's* case, permission was sought to travel abroad for a period of one month for professional assignment. The petitioner of that case was earlier on anticipatory bail subject to a condition that he shall not leave India without permission of Court but thereafter the High Court on 22.02.2019 modified the aforesaid condition to the extent that instead of seeking permission, the petitioner shall furnish an undertaking in writing before the investigating agency that he will make himself available during course of investigation or trial as and when required. This order dated 22.02.2019 was assailed before Supreme Court in **Barun Chandra Thakur versus Ryan Augustine Pinto and Another 2019 SCC OnLine SC 1899**, wherein the appeal was allowed by observing that there was no material alteration in the facts justifying the High Court to modify the condition governing grant of anticipatory bail. Importantly, the Supreme Court observed that there can be no gainsaying to that the right to travel abroad is a valuable one and

an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for grant of anticipatory bail. Para 9 is reproduced as under:-

*“9. On an overall conspectus of the circumstances, this court is of the opinion that since the charge-sheet had been filed, there was no material alteration in the facts, justifying the High Court to modify the conditions governing the grant of anticipatory bail. Significantly, an identical application for modification of the conditions of bail was made earlier by the respondent, which did not meet with success; he withdrew that application. **There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. Mere inconvenience in the matter of approaching the court, therefore-absent of any significant change of circumstances (i.e. framing of charges or no significant or serious material emerging during the trial, in the course of deposition of key witnesses, as to the role of the respondent), ought not to have led to dilution of the terms of the High Court's previous consistent orders. At best, the condition for seeking permission before travelling abroad could have been regulated, not deleted altogether.**”*

(Emphasis supplied).

27. The Hon'ble Supreme Court in Satish Chandra Verma vs. Union of India and others (2019 SCC OnLine SC 2048) while referring to judgment in Maneka Gandhi's case (supra) observed that right to travel abroad is an important basic human right for it nourishes independent and self-determining creative

character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. Para 5 of the aforesaid judgment is reproduced as under:-

“5. The right to travel abroad is an important basic human right for it nourishes independent and self-determining creative character of the individual, not only by extending his freedoms of action, but also by extending the scope of his experience. The right also extends to private life; marriage, family and friendship are humanities which can be rarely affected through refusal of freedom to go abroad and clearly show that this freedom is a genuine human right. (See : Mrs. Maneka Gandhi v. Union of India (1978) 1 SCC 248). In the said judgment, there is a reference to the words of Justice Douglas in Kent v. Dulles 357 US 116 (1958) which are as follows:

“Freedom to go abroad has much social value and represents the basic human right of great significance.”

28. From the aforesaid, it is therefore clear that a right to free and compulsory education to all the children of the age of 6 to 14 years is a Fundamental Right guaranteed under Article 21-A of the Constitution of India. However, the issue involved in the present case pertains as to whether an undertrial or a juvenile who is in conflict with law has any Fundamental or Statutory right to 'higher education abroad' or not. From the aforesaid discussion, it is crystal clear that right to higher education abroad is neither a Fundamental Right nor a Statutory right.

29. So far as right to travel abroad is concerned, undoubtedly, in view of judgments of Hon'ble Supreme Court, it is a valuable as well as basic human right apart from being an integral part of right to personal liberty. However, such a right is not an absolute right.

30. In view of the above legal as well as factual position, this Court is of the view that the petitioner does not have any Fundamental Right or Statutory Right to study abroad for higher education. He can be deprived of right to travel abroad only in accordance with procedure established by law. It is incumbent upon JJ Board to exercise power in a reasonable, just and fair manner by considering the scheme, object and spirit of JJ Act especially Sections 90 and 91.

Issue No. 2

31. The learned JJB while dealing with the application filed by the petitioner, dismissed the application on the ground that under Section 14 of the JJ Act, an inquiry is required to be completed within a period of four months from the date of first production of the child before the Board unless the period is extended for a maximum period of two more months by the Board having regard to the circumstance of the case and since the inquiry has to be concluded in a time bound manner, it would not be feasible to permit the petitioner to go abroad for a long duration for pursuing a music course of four years as it would result in the delay in the proceedings of the case.

32. The learned Addl. Sessions Judge, Gurugram dismissed the appeal by referring to Sections 8(3)(a) and Sections 14(5)(c) of the JJ Act and also on the ground that there is already delay in processing the inquiry due to repeated applications filed by the petitioner and the other child who is in conflict with law. |

33. Sections 8(3)(a) provides that the functions and responsibilities of the Board shall include ensuring the informed participation of the child and the parent or guardian, in every step of the process. Sections 14(5)(c) provides that every child brought before the Board shall be given the opportunity of being heard and

participate in the inquiry.

34. The learned Addl. Sessions Judge however did not consider the effect of Sections 90 and 91 of the Act. The provisions of Sections 90 and 91 are reproduced as under:-

“90. Attendance of parent or guardian of child.-- *The Committee or the Board, as the case may be, before which a child is brought under any of the provisions of this Act, may, whenever it so thinks fit, require any parent or guardian having the actual charge of the child to be present at any proceeding in respect of that child.*

91. Dispensing with attendance of child.-- *(1) If, at any stage during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee or the Board, as the case may be, shall dispense with the attendance of a child and limit the same for the purpose of recording the statement and subsequently, the inquiry shall continue even in the absence of the child concerned, unless ordered otherwise by the Committee or the Board.*

(2) Where the attendance of a child is required before the Board or the Committee, such child shall be entitled to travel reimbursement for self and one escort accompanying the child as per actual expenditure incurred, by the Board, or the Committee or the District Child Protection Unit, as the case may be.”

35. Mr. Ahluwalia had submitted that the learned Addl. Sessions Judge has ignored the provisions of Sections 90 and 91 and while considering and deciding the application of petitioner for grant of permission to go abroad for pursuing higher education, the provisions of Sections 90 and 91 were also required to have been considered which specifically provide that the Board may whenever it so thinks fit require any parent or guardian having the actual charge of the child

to be present at any proceedings in respect of that child and if at any stage during the course of inquiry, the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, the Committee or the Board as the case may be, shall dispense with the attendance of the child and limit the same for the purpose of recording the statement and subsequently the inquiry shall continue even in the absence of the child concerned unless ordered otherwise by the Committee or the Board. He had further submitted that when an application for permission to go abroad for a period of four years was filed then it was incumbent upon the Board to have considered so as to arrive at a satisfaction as to whether the attendance of the child was essential for the purpose of inquiry or not and in case the Board was satisfied that the attendance was not essential for the purpose of inquiry then it was obligatory upon the Board to have dispensed with the attendance of the petitioner and have limited the same for the purpose of recording the statement in consonance with the provision of Section 91 of the JJ Act.

36. This Court is of the view that the aforesaid submission made argument raised by Mr. Ahluwalia is in consonance with the scheme of the JJ Act. Section 91(1) consists of two stages. Firstly, if during the course of an inquiry, the Committee or the Board is satisfied that the attendance of the child is not essential for the purpose of inquiry, then Secondly, the Board or the Committee shall dispense with the attendance of the child. The expression “shall” has been used in the second part of Section 91(1) and therefore it is mandatory in nature. In other words, when at any stage the Committee or a Board records its satisfaction that the attendance of the child is not essential then the second mandatory part comes into operation. All the provisions of the JJ Act are to be construed in a harmonious

manner. Apart from the same, the learned senior counsel appearing for the petitioner had also stated during the course of arguments that he has no objection in case the matter is remanded back to the JJ Board for fresh decision by considering the spirit of the Juvenile Justice (Care and Protection of Children) Act, 2015 and specifically Sections 90 and 91 of the Act. Therefore, this Court is of the view that in view of the aforesaid facts and circumstances, the aforesaid orders dated 01.06.2022 and 27.06.2022 are liable to be set aside.

37. So far as another submission made by Mr. Ahluwalia that contents of paras 12 and 14 of the orders passed by learned Addl. Sessions Judge are adversial and accusatory is concerned, the same seems to be fair and just. A perusal of aforesaid paras would show that the observations made therein are contrary to the fundamental principles prescribed under Section 3(viii) of the JJ Act. Therefore it is directed that the observations/remarks made by the learned Addl. Sessions Judge in paras 12 and 14 in its order dated 27.06.2022 are hereby struck off from the record.

38. This Court records its appreciation towards Mr. Preetinder Singh Ahluwalia, Advocate who was appointed as *Amicus Curiae* in the present case for his valuable assistance.

Conclusion

- (i) It is held that an undertrial or a juvenile who is a child in conflict with law does not have any Fundamental Right or Statutory Right to higher education abroad.
- (ii) However, right of the petitioner to travel abroad although is a valuable and basic human right apart from being an integral part of right to personal liberty

can be curtailed according to procedure established by law in a reasonable, just and fair manner by considering the scheme, object and spirit of the Juvenile Justice (Care and Protection of Children) Act, 2015 especially Sections 90 and 91.

(iii) The present petition is partly allowed. Impugned orders are not in consonance with the scheme of the JJ Act especially Sections 90 and 91 of the Act. Therefore the order dated 01.06.2022 passed by JJ Board and 27.06.2022 passed by learned Addl. Sessions Judge, Gurugram are hereby set aside. The JJ Board, Gurugram is directed to pass a fresh order within a period of one month on receipt of copy of this order and in accordance with law.

(JASGURPREET SINGH PURI)
JUDGE

September 26, 2022
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Whether speaking : Yes/No
Whether reportable : Yes/No

सत्यमेव जयते

