

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

**13.01.2023
Court No.1
(D/L 2)**

CRM (NDPS) 400 OF 2022

In Re: An application for bail under Section 439 of the Code of Criminal Procedure, 1973 in NDPS Case No.92 of 2021 arising out of Kotwali Police Station Case No.840 of 2021 dated 24.08.2021 under Section 20(b)(ii)(c) of the NDPS Act, 1985.

And

In the matter of: **Labu Islam**

... Petitioner.

Ms. Suman Sehanabis (Mandal)

... for the petitioner.

Mr. Biswarup Roy

... for the State.

The present application is for bail under the provisions of The Code of Criminal Procedure, 1973 involving “a child in conflict with law” (CCL) as defined under section 2(13) of the Juvenile Justice (Care and Protection of Children) Act, 2015 for an alleged offence under the Narcotic Drugs and Psychotropic Substances Act, 1985. The matter was considered by a Coordinate Bench on 8.12.2022 and thereafter by this Bench on 3.1.2023, 4.1.2023 and 6.1.2023.

Learned counsel appearing for the petitioner sought to rely on the infirmities in the search of the person and vehicle in relation to the recovery of the narcotic substance. The matter was fixed on 9.1.2023 for relying on relevant decisions.

On the returnable date, we were informed that the petitioner, Labu Islam, committed suicide on 15.12.2022 by hanging from a ceiling fan in the Korak Home in Jalpaiguri. Counsel submits that this fact was communicated to her by the petitioner's mother on 8.1.2023.

Although counsel prayed that the petition be dismissed as not pressed in view of the above facts, we were not inclined to do so and directed the Trial Court and the Korak Home, Jalpaiguri, where the deceased was kept during trial, to file Reports. We also called for the records of proceedings before the Trial Court.

The Reports were placed before us on 11.1.2023.

The fact of the petitioner/CCL taking his own life while the Court was considering his prayer for bail woke us up from our judicial stupor. The incident unsettled us to the core. The records produced, which shall be elaborated upon later, show an indifferent and impersonal justice system which is symbolic of a systemic failure in the way in which people without money, position or clout are treated. The petitioner represents a class of persons who are left to rot in the margins of society with self-serving priorities.

The distraught mother of the petitioner who is before us is a victim of an inert justice system where none of the stakeholders take responsibility of the reasons for the rot. We believe that Judges, Judicial Officers, prosecutors, defence counsel, law enforcement agencies and all those who set the wheels of justice in motion and keep it in momentum should be jolted out of their complacency and let their conscience and compassion take over. We cannot permit Labu

Islam to be reduced to a mere statistic. Even a drop in the ocean may lead to a difference by building a wave of corrective action which one day will turn the tide towards what needs and should be done with immediacy and best intentions. We also believe that we cannot continue to enjoy the power and privileges of our position without being sensitised to the loss of humanity and the anguish of the common man.

The records produced by counsel show several disturbing facts which are as follows:

i) The Juvenile Justice Board, Cooch Behar, passed an order on 20.9.2021 recording that the case is required to be transferred to the District and Sessions Judge, NDPS Court, Cooch Behar. The Superintendent, Korok Home, Jalpaiguri was directed to produce CCL (deceased) physically before the NDPS Court on 28.9.21. The reason given for the direction was that the CCL had the mental and physical ability to commit the alleged offence and the ability to understand the consequences of the alleged offences. The Board accordingly found that even though the CCL was aged 17 years on the date of the alleged offence, he should be tried as an adult in terms of section 18(3) of The Juvenile Justice (Care and Protection of Children) Act, 2015.

Section 18(3) of the Act requires the Board to pass an order that the child may be tried as an adult but only after a preliminary assessment under section 15 of the Act. Section 15 provides for a preliminary assessment by the Board in the case of a heinous offence if the child is above 16 years of age. The preliminary assessment must

be made with regard to the mental and physical capacity of the child to commit the alleged offence and his / her ability to understand the consequences of the offence. The Proviso to section 15 is for the assessment to be conducted taking the assistance of experienced psychologists or psycho-social workers or other experts.

We find that the order passed by the JJB simply reproduced the language and conditions of section 15 without any independent assessment of the deceased or the circumstances for which the deceased should be examined as an adult (and not as a child) despite the deceased being 17 years old on the date of the alleged offence. There is no reason given as to why the assistance of an experienced psychologist or other expert as under the Proviso to section 15 was not required in the present case. The deceased was simply sent to the NDPS Court in a mechanical manner without due application of mind contrary to the statutory duty cast upon the Board by the Juvenile Justice Act.

ii) The procession of orders placed before us show that from 1.10.2021 when the deceased was first produced as a CCL before the NDPS Court, countless adjournments were taken in the case. Of these, several were on account of the defence counsel representing the deceased while others were for similar reasons by the Public Prosecutor or the Investigating Officer. There is an order of 29.8.2022 adjourning the case for a resolution taken by the local Bar and surprisingly also by reason of the Presiding Officer being on leave on at least on 3 days in February and March, 2022.

Although, charges were framed on 21.3.2022, there was no progress in the trial despite the case being fixed on 13.1.2022, 27.1.2022, 10.2.2022, 20.4.2022, 20.5.2022, 21.6.2022, 20.7.2022, 29.8.2022, 29.9.2022, 21.12.2022. These orders follow the first order of 7.12.2021 when the NDPS Court remanded the deceased to Korok Home, Jalpaiguri, upon finding that the case could not get around the statutory restriction under section 37 of the NDPS Act, 1985.

iii) We note that the last record of proceedings produced before us is of 29.9.2022 when the matter was made returnable on 30.11.2022 for production and evidence of PW1. We do not know what happened in the case after 29.9.2022 save and except that the application for bail was filed before the Circuit Bench on 28.11.2022. The petitioner/CCL committed suicide on 15.12.2022.

The Supreme Court in *Zahira Habibullah H Seikh v. State of Gujrat; (2004)4 SCC 158* frowned upon the laxity in the conduct of trial particularly in the effort of the prosecution to produce witnesses for tendering evidence. The Supreme Court noted that the Trial Court and the High Court did not take serious note of the conduct of the prosecutors and also stressed on the role of the Investigating Officer (IO) during trial. The Court called the persons out who had not taken any interest in the discharge of their duties including the Sessions Judge in issuing summons to the IO and the IO for being absent at the time of trial. A similar view was expressed by the Supreme Court in *Sailendra Kumar v. State of Bihar; (2001) 8 SCC 13*.

The record of proceedings reveals the utter lack of accountability on the part of persons who were parties to the case and had a duty to ensure its progress. They are :

- 1) The learned Special Court, NDPS, Cooch Behar which failed to take corrective measures against those responsible for adjournments and failing to produce witnesses.
- 2) The Public Prosecutor who had a duty and was under a statutory obligation to initiate the trial by producing witnesses and ensuring their presence on the designated days.
- 3) The defence counsel appearing for the deceased / CCL who remained inert despite the deceased being produced in Court on at least 4 occasions. The orders record “no bail prayer is made” and then mechanically proceed to adjourn the case and remand the CCL to the Home.
- 4) The Investigating Officer who failed to set the wheels of justice in motion by ensuring the presence of witnesses for the prosecution. The orders show that the IO failed to discharge his duty to apprise the Court with regard to the status of the investigation.
- 5) The Inspector In-charge, Kotwali Police Station, Jalpaiguri was unable to show any inquiry or Investigation pursuant to the death of the deceased. There is no record to show that the jurisdictional Police Station took immediate steps to enquire into the matter on being informed of the incident on 15.12.2022.

6) The Superintendent, Korok Children Home for Boys, Jalpaiguri who failed to put in adequate safeguards to check incidents of this nature namely, suicides and other acts of violence to self and others. The letter written by the Superintendent to the Additional Public Prosecutor, Circuit Bench at Jalpaiguri dated 10.1.2023 records that the petitioner hanged himself in his room at about 3.45 – 4 pm on 15.12.2022. The narration records that the deceased shut the door of the room from inside and thereafter committed suicide by hanging himself from the hook of the ceiling fan of the room. The letter further records that the deceased became depressed after being informed of the rejection of bail by his brother and shared his disappointment with some of his co-residents. The letter also records that the residents of the Home understood that the deceased was depressed.

The incidents show that the home not only lacked sufficient safeguards for preventing suicides and acts of self-harm as well as absence of mental and psychological assistive measures for children in need of such intervention. The letter indicates that there was no system of the Superintendent or the person in-charge of the Home receiving information of children who are in a depressed state of mind and need psychological guidance.

We cannot overlook the fact that the life of Labu Islam could have been saved if the Home had these safeguards in place.

We are therefore constrained to direct each of the parties mentioned in points 1-6 to file individual Reports explaining his / her conduct and specify his / her accountability in the matter. The reports

should be filed within 2 weeks from today. We request the District Magistrate, Jalpaiguri, to also file a report on the incident before the Next Circuit Bench taking into account the observations made in this order. We also request the District Magistrate to make appropriate intervention in respect of the family members of the deceased Labu Islam particularly his mother, Sahida Bibi, who was representing her deceased son before this Court.

List this matter before the next Circuit Bench at Jalpaiguri.

(SIDDHARTHA ROY CHOWDHURY, J.) (MOUSHUMI BHATTACHARYA, J.)