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**THE HIGH COURT OF MADHYA PRADESH**  
**MCRC-3085-2021**  
**Prahlad Singh Parmar Vs. State of MP and others**

**Gwalior, Dated: 24.03.2022**

Shri R.K. Sharma, Senior Advocate with Shri V.K. Agrawal,  
Shri V.D. Sharma, Shri Rajeev Budholiya, Counsel for the applicant.

Shri Rohit Mishra, Additional Advocate General for the  
respondent No. 1/State.

Shri Ritvik Singh, Counsel for the respondents No. 2 and 3.

This criminal revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short “Act, 2015”) has been filed against the order dated 24.08.2021 passed by the Principal Magistrate, Juvenile Justice Board, Morena, District Morena, by which the respondents No. 2 and 3 have been released on bail under Section 12 of the Act, 2015.

2. A solitary ground has been raised by the counsel for the applicant that since the order under challenge was passed by the Juvenile Justice Board without making preliminary assessment as required under Section 15 of the Act, 2015, therefore, the bail order is bad in law. Accordingly, by order dated 11.3.2022 the following question was framed:

“Whether Juvenile Justice Board can decide an application under Section 12 of the Act, 2015, even prior to making preliminary assessment under Section 15 of the Act, 2015 or the Board should take up the application filed under Section 12 of the Act, 2015 only after making a preliminary assessment under Section 15 of the Act, 2015.”

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3. It is submitted by Shri R.K. Sharma, Senior Advocate and Shri V.D. Sharma that the power under Section 12 of the Act, 2015 is independent to that of the statutory duty of the Juvenile Justice Board under Section 15 of the Act, 2015 and, therefore, there is no bar on deciding the application under Section 12 of the Act, 2015 prior to making an assessment under Section 15 of the Act, 2015.
4. The counsel for the State as well as counsel for the respondents No.2 and 3 also supported the contention raised by Shri R.K. Sharma, Senior Advocate.
5. Heard the learned counsel for the parties.
6. Sections 12, 15 and 18 of the Act, 2015 read as under:-

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

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

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

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

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

**15. Preliminary assessment into heinous offences by Board.-** (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

*Explanation.*—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be

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disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be [appealable] under sub-section (2) of section 101:

Provided further that the assessment under this section shall be completed within the period specified in section 14.

**18. Orders regarding child found to be in conflict with law.** (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on

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probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

- (i) attend school; or
- (ii) attend a vocational training centre; or
- (iii) attend a therapeutic centre; or
- (iv) prohibit the child from visiting, frequenting or appearing at a specified place; or
- (v) undergo a de-addiction programme.

(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.

7. Thus, it is clear that Section 12 of the Act, 2015 deals with bail to a person who is apparently a child alleged to be in conflict with

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law. There is no provision in the section to the effect that the said application cannot be entertained prior to holding any preliminary assessment under Section 15 of the Act, 2015. Furthermore, it is clear from Section 15(2) of the Act, 2015 that whether Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for **trial** in summons case under the Code of Criminal Procedure.

8. Section 18(3) of the Act, 2015 provides that where the Board after preliminary assessment under Section 15 of the Act, 2015 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. Undisputedly, the trial of a child in conflict would commence from the date of framing of charge whereas the application for bail can always be considered and decided even prior to framing of charge.

9. The Supreme Court in the case of **Hardeep Singh Vs. State of Punjab and others** reported in (2014) 3 SCC 92, has held as under:-

“38. In view of the above, the law can be summarised to the effect that as “trial” means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the “trial” commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on

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cognizance being taken.”

10. Thus, it is clear that preliminary assessment is to be made for the purpose of trial, therefore, it would necessarily mean that the trial would commence only after framing of charges and the bail application can always be decided much prior to that.

11. It is true that if the Juvenile Justice Board decides to try the child in conflict with law by the Board itself, then the consequences would be different and if the child in conflict with law is to be tried as an adult, then not only the said child would be required to be tried by a Children's Court, but he can be sentenced to any punishment except the sentence of death or life imprisonment without the possibility of release. Further, after attaining the age of 21 years, child in conflict with law can also be sent to regular bail for completing the remainder of his term. However, there is no provision in law which requires reconsideration of question of bail by the Children's Court.

12. Rule 13 of the Rules, 2016 reads as under:-

**“13. Procedure in relation to Children's Court and Monitoring Authorities.** (1) Upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(2) Where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the

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Children's Court shall first decide the said appeal.

(3) Where an appeal has been filed under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal.

(4) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and these rules.

(5) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult the Children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these rules.

(6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

(7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).

(v) While examining a child in conflict



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with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct

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the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:

(a) interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) After making the evaluation, the Children's Court may decide to:

(ca) release the child forthwith;

(cb) release the child on execution of a personal bond with or without sureties for good behaviour;

(cc) release the child and issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;

(cd) release the child and appoint a monitoring authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.

(vii) For the purpose of sub-rule (vi) (c) (cd) of this rule:

(a) A Probation Officer or Case Worker or Child Welfare Officer fit person may be appointed as a monitoring authority.

(b) The District Child Protection Unit shall maintain a list of such persons who can be

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engaged as monitoring authorities which shall be sent to the Children's Court along with bi-annual updates.

(c) The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court.

(d) At the end of the first quarter the monitoring authority shall make recommendations regarding the further follow up procedure required for the child.

(e) Where the child, after release is found to be indulging in criminal activities or associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.

(f) If it is found that the child no longer requires to be monitored, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.

(g) After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter.”

13. Furthermore, there is no other provision in the Rules, 2016 thereby providing the consideration of bail application by the Children's Court dehors the provision of Section 12 of the Act, 2015. Under these circumstances, this Court is of the considered opinion

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that even if bail is granted by the Juvenile Justice Board, then it shall remain in force till the conclusion of trial.

14. Accordingly, it is held that since the preliminary assessment of the child in conflict with law is for the purposes of trial i.e., as to whether he should be tried by the Juvenile Justice Board or by the Children's Court, therefore, it will not curtail the power of Juvenile Justice Board to consider the application filed under Section 12 of the Act, 2015. However, it is made clear that even after deciding the application under Section 12 of the Act, 2015, the Juvenile Justice Board is under obligation to pass necessary orders under Sections 14, 15 and 18 of the Act, 2015. Thus, the solitary contention raised by the counsel for applicant that Juvenile Justice Board should have passed an assessment order prior to passing an order under Section 12 of the Act, 2015 is rejected.

15. No other argument has been raised by the counsel for the applicant.

16. Accordingly, the revision fails and is hereby **dismissed**.

**(G.S. Ahluwalia)**  
**Judge**

Abhi