

ITEM NO.5 + 46

COURT NO.16

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Writ Petition(s)(Criminal) No(s). 102/2007

RE EXPLOITATION OF CHILDREN IN ORPHANAGES IN  
THE STATE OF TAMIL NADU

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(ONLY I.A. No. NOS. 24401/2018 , 24403/2018, 151555/2018  
IA No. 151569/2018 - CLARIFICATION/DIRECTION  
IA No. 24403/2018 - CLARIFICATION/DIRECTION  
IA No. 24401/2018 - INTERVENTION/IMPLEADMENT  
IA No. 151555/2018 - INTERVENTION/IMPLEADMENT)

WITH

SLP(C) No. 4905/2018 (XI-A)

SLP(C) No. 5087/2018 (XI-A)

SLP(C) No. 8777/2018 (XI-A)

SLP(C) No. 9565/2018 (XI-A)

Date : 10-02-2020 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE ANIRUDDHA BOSE

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UPON hearing the counsel the Court made the following  
O R D E R

I.A. NO. 24585 OF 2020

This is an I.A. moved by the amicus curiae seeking some directions. On 5/12/2018 while disposing of WP(C) No. 102/2007, we had given liberty to the amicus curiae to revive the matter(s) after the report prepared by the Union of India through the National Commission for Protection of Child Rights (NCPCR for short), is made available to her.

This obviously envisages that reports were to be furnished to the amicus curiae so that she can decide whether to revive the matter(s). We direct NCPCR and the Union of India to furnish reports, if any, within three weeks from today so that amicus curiae has all the requisite information.

The amicus curiae has also drawn our attention to two instances and certain allegations which have appeared in the newspapers related to children being detained in police custody and being tortured in Delhi and Uttar Pradesh. We direct notice to be issued to the Uttar Pradesh State Commission for Protection of Child Rights and Delhi Commission for Protection of Child Rights, who may submit their responses within three weeks from today.

The NCPCR may also look into the matter(s) and submit a report within three weeks from today. Union of India to also look into the matter(s) and file response within three from today.

The Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter referred to as the Act) is a special enactment meant for protection of children. Section 10 of the Act, lays down that when any child alleged to be in conflict with law is apprehended by the police, such child should be placed under the charge of the special juvenile police unit or the designated child welfare officer. The Section further provides that such authority should produce the child before the Juvenile Justice Board (JJB for short) Board without any loss of time but not more than 24 hours after the child is apprehended. The proviso to the Section clearly lays down that a child alleged to be in conflict with law shall not be placed in a police lockup or lodged in a jail.

Once a child is produced before a JJB, bail is the rule. Section 12 of the Act reads as follows :-

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.

- (2) When such person having been apprehended is not released on bail under sub-section (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..

Sub-section (1) makes it absolutely clear that a child alleged to be in conflict with law should be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person. The only embargo created is that in case the release of the child is likely bring him into association with known criminals or expose the child to moral, physical or psychological danger or where the release of the child would defeat the ends of justice, then bail can be denied for reasons to be recorded in writing. Even if bail is not granted, the child cannot be kept in jail or police lockup and has to be kept in an observation home or place of safety.

All JJBs in the country must follow the letter and spirit of the provisions of the Act. We make it clear that the JJBs are not meant to be silent spectators and pass orders only when a matter comes before them. They can take note of the factual situation if it comes to the knowledge of the JJBs that a child has been

detailed in prison or police lock up. It is the duty of the JJBs to ensure that the child is immediately granted bail or sent to an observation home or a place of safety. The Act cannot be flouted by anybody, least of all the police.

The Registry is directed to send a copy of this order to the Registrar Generals of all High Courts so that the order is placed before the Juvenile Justice Committee of each High Court who shall in turn ensure that the copy of this order is sent to the JJBs to ensure strict compliance of this order.

List this I.A. on 6<sup>th</sup> March, 2020.

W.P.(Crl.) No. 102/2007 etc.

List these matters together for final hearing on 24<sup>th</sup> March, 2020.

(SONIA BHASIN)  
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(PRADEEP KUMAR)  
BRANCH OFFICER