informant, through Registrar Compliance of this Court.

(2025) 5 ILRA 770
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 16.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Criminal Misc. Bail Application No. 12043 of 2024

Arjun @ Golu ...Applicant
Versus
State of U.P. & Ors. ...Opposite Parties

Counsel for the Applicant:
Gyan Singh, Awadhesh Kumar Pal

Counsel for the Opposite Party:
G.A., Durgesh Mishra, Saumya Singh

A. Criminal Law - Indian Penal Code,1860-Sections 363, 366, 376(3)-Criminal Procedure Code,1973-Section 439 -The Protection of Children from Sexual Offences Act-2012 - Sections 5J(2), 5-L & 6 -Juvenile Justice(Care and Protection of children) Act,2015-Section 3(iv)-The applicant had eloped with a 13 year old girl-The victim stated in her statements u/s 161,164 and during her medical examination that she had gone with the applicant voluntarily, had married him, and had consensual physical relations resulting in pregnancy-No signs of force or injury were found-The applicant had sought declaration of juvenility supported by school records but the application was not decided by the trial court, and the applicant continued to remain in regular jail-The court expressed serious concern over this lapse, failure of the trial court to recognize and act on the applicant's juvenile status-The court granted bail, directed the trial court to expeditiously decide the juvenile status application-(Para 1 to 25)

The application is allowed. (E-6)

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Sri Durgesh Mishra, the learned counsel for the informant has sent a slip seeking adjournment of the case on the ground of his illness.

2. The cause list shows the name of Ms. Saumya Singh as learned counsel for the informant and neither she is present to assist the Court nor any request has been made on her behalf for adjournment of the case. Complainant or victim of the case have a right to oppose the bail application but they do not have a right to stall hearing of the bail application more particularly, when the State counsel is present to oppose the bail application and more particularly when the applicant is a juvenile, therefore, request for adjournment of the bail application is turned down.

3. Heard Dr. Gyan Singh, the learned counsel for the applicant, Sri Satyendra Srivastava, the learned AGA for the State and perused the records.

4. The instant application has been filed seeking release of the applicant on bail in Case Crime No. 52 of2024, under Sections 363, 366, 376(3) of IPC and 5J(2), 5-L, 6 of the POCSO Act, 2012, Police Station Aasupur Deosara, District Pratapgarh.

5. The aforesaid case has been registered on the basis of an F.I.R. lodged on 06.03.2024 against the applicant, his Phupha and Bua, stating that the applicant had enticed away the informant's daughter aged 13 years in the night of 04/05 March, 2024.

6. In the statement of the victim recorded under Section 161 Cr.P.C., she

stated that she loves the applicant and wants to marry him. There are relations like husband and wife between them and she became pregnant.

7. During the medico legal examination, the victim stated before the doctor that she has married the applicant. The medico legal examination report reveals no mark of injury or sign of use of force. Urine pregnancy test was found to be positive and the ultrasonography showed a single gravid uterus.

8. In the statement of the victim recorded under Section 164 Cr.P.C., she stated that she had gone away from her home on her own, she went to Mumbai where she called the applicant, she married him in a temple and stayed with him. She further stated that she has made physical relations with mutual consent and she was having two months' pregnancy.

9. In the affidavit filed in support of the bail application, it has been stated that the applicant is aged 16 years' boy having no criminal history and he has been falsely implicated in the present case. It has further been stated that an application was filed on 08.04.2024 before the trial court for declaring the applicant a juvenile, stating that as per educational documents, date of birth of the applicant is 18.04.2008 and he is a juvenile but this application has not been decided till date.

10. Having considered the aforesaid facts and circumstances of the case and keeping in view the consistent statements of the victim wherein she has not levelled any allegation against the applicant, coupled with the fact that the applicant is a young boy aged 16 years, I am of the view that the applicant is entitled to be released on bail in the aforesaid crime on furnishing a single surety by his father.

11. Accordingly, this bail application stands **allowed**.

12. Let the applicant-***Arjun @ Golu*** be released on bail in the aforementioned case on furnishing a personal bond his father Sri. Vimlesh anias Babloo that he will ensure proper care of the applicant and will ensure that the applicant does not evade the process of law in the aforesaid case in which he is involved.

13. Before parting with the case, this Court is constrained to observe that in the description of the applicant, his age is stated to be 16 years, as per which he is a child as per the definition of the term contained in the Juvenile Justice (Care and Protection of Children) Act, 2015 (which will hereinafter be referred to as 'the Juvenile Justice Act'). However, the learned Counsel for the applicant did not point out this fact to the Court. This bail application was filed on 16.11.2024 and on 19.11.2024, the following order was passed in the case: -

"1. Heard Sri Gyan Singh, learned counsel for the applicant and Sri Anand Pratap Singh, learned AGA for the State.

2. Learned AGA has informed that the notice has already been served on opposite party no. 2 on 11.11.2024, however, none has appeared.

3. Let the counter affidavit / objection be filed in two weeks.

4. List in the week commencing 9.12.2024 within top ten cases."

14. Apparently the learned Counsel for the applicant did not submit that the

applicant claims to be a juvenile and the Court called for a counter affidavit. The State has filed a counter affidavit on 30.11.2024 and even in the counter affidavit, this aspect of the matter has not been referred to. Today also, none of the learned Counsel appearing for the respective parties pointed out to the Court that the applicant's age as mentioned in the application, is 16 years and he is a child as per law. It was only while dictating the order that the Court itself found out the age of the applicant mentioned in the application.

15. In case a child aged 16 years was taken into custody and he has been languishing in regular Jail with other under-trial accused persons and convicts, it is indeed a very disturbing fact.

16. The Juvenile Act was enacted about a decade ago, inter alia, with the object of adopting a child friendly approach in adjudication and disposal of matters in the best interest of children. Section 2(12) of the Juvenile Justice Act provides that "child" means a person who has not completed eighteen years of age. Section 2(13) provides that "child in conflict with law" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. Section 2(15) of the Act provides that "child friendly" means any behaviour, conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interest of the child.

17. Section 9 of the Juvenile Justice Act needs to be looked into, which is being reproduced below: -

*"**9. Procedure to be followed by a Magistrate who has not been empowered under this Act**.—(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.*

*(2) **In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:***

Provided that such a claim may be raised before any court and it shall be ecognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being

a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

(Emphasis added)

18. Chapter IV of the Juvenile Justice Act lays down the procedure in relation to children in conflict with law and Section 10, 11 & 12 of the Act falling in this chapter are being quoted below:-

***10. Apprehension of child alleged to be in conflict with law**.—(1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated Child Welfare Police Officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:*

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lock-up or lodged in a jail.

(2) The State Government shall make rules consistent with this Act,—

(i) to provide for persons through whom (including registered voluntary or non-governmental organisations) any child alleged to be in conflict with law may be produced before the Board;

(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.

11. Role of person in whose charge child in conflict with law is placed.—Any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance:

Provided that the child shall continue in such person's charge for the period stated by the Board, notwithstanding that the said child is claimed by the parents or any other person except when the Board is of the opinion that the parent or any other person are fit to exercise charge over such child.

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 22[or a place of safety, as the case may be,] 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."

(Emphasis added)

19. A bare perusal of the statutory provision contained in the Juvenile Justice Act indicates that intention of the legislature is that a child who is in conflict with law, shall not be treated as an ordinary adult accused person and he shall be treated with a lot more sensitivity with an object of ensuring his better future and welfare.

20. Section 9(2) of the Act mandates that if the court is of the opinion that the person was a child on the date of the commission of the offence, the court shall make an enquiry to determine the age of the person. When the accused himself made an application dated 08.04.2024 stating that his date of birth is 18.04.2008 and he was aged 15 years 10 months and 16 days on the date of commission of offence i.e. 05.03.2024, and he is still a child, the trial court should have proceeded to decide this application first with all expedition and the applicant ought not have been made to languish in jail with adult under-trial accused persons and convicts. The approach of the trial court in not deciding the application dated 08.04.2024 given by the applicant for declaring him as juvenile in conflict with law has compelled the applicant child to remain in jail with adult under-trial accused persons and convicts for more than one year. In case the trial court ultimately comes to a conclusion that the applicant is a juvenile in conflict with law, the loss which has been caused to the applicant by making him spend a period of more than one year in regular jail with under-trial accused persons and convicts, cannot be made good by any means.

21. Section 11 of the Juvenile Justice Act provides that any person in whose charge a child in conflict with law is placed, shall while the order is in force, have responsibility of the said child, as if the said person was the child's parent and responsible for the child's maintenance. When the applicant was lodged in Jail, it was the duty of the Jail authorities to have taken care of his interests as his parents and they should have taken appropriate steps to ensure that the benefits of the provisions of the Juvenile Justice Act were provided to the applicant.

22. In any case, when this matter was placed before a coordinate Bench of this Court for the first time on 19.11.2024, it was the duty of the learned Counsel for the applicant as well as the learned A.G.A. to have pointed out this fact to this Court that the applicant is a child as per his educational certificate annexed with the bail application, but they failed to perform this duty. None of the learned Counsel pointed out this fact even today. Had this Court missed this point for want of proper assistance from the learned Counsel for the parties, the applicant would have continued to be denied the protections available to him under the laws.

23. Although it is correct that the Court is under oath to deliver justice, it is

equally true that the learned Counsel, who are responsible officers of the Court, are also under duty to assist the Court properly in dispensation of Justice. Although lack of proper assistance would be no excuse to an unjust order but it is equally true that had this Court missed the aforesaid material available on record which was not pointed out by any of the learned Counsel appearing in the case, the injustice being meted out to a child would have continued.

24. It is directed that the Special Judge, POCSO Court, Pratapgarh shall decide the application dated 08.04.2024 filed in Case No. 2083 of 2024 arising out of Case Crime No. 52/2024, under Sections 363, 366, 376(3) IPC & 5J(2) 5L(6) of POCSO Act, Police Station Aaspur, Desara, District Pratapgarh for declaring the applicant as a juvenile, expeditiously without granting unnecessary adjournment to any of the parties and in case the applicant is found to be a juvenile, he should be dealt with in accordance with the provisions of Juvenile Justice Care and Protection Act.

25. The Registrar General is directed to circulate a copy of this order to all the Judicial Officers in the State through the District Judges of all the districts with the object of sensitizing the judicial officers to be more careful while dealing with criminal matters where the accused appears to be a juvenile or he claims to be a juvenile.

(2025) 5 ILRA 775
APPELLATE JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 09.05.2025

BEFORE

THE HON'BLE SAUMITRA DAYAL SINGH, J.
THE HON'BLE SANDEEP JAIN, J.

Criminal Appeal No. 12 of 2003

Sanjay Singh ...Appellant
Versus
State of U.P. ...Opposite Party

Counsel for the Appellant:
Sri B.N. Rai, Sri Adarsh Kumar, Sri Dharmendra Kumar Singh, Ms. Vijay Laxmi

Counsel for the Opposite Party:
G.A.

Indian Penal Code, 1860 - Section 376 - Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(2)(v) - Rape and Caste-Based Offence - Appellant challenged conviction under Section 376 IPC and Section 3(2)(v) SC/ST Act for raping a minor Scheduled Caste girl, sentenced to 10 years rigorous imprisonment with Rs. 5,000 fine and life imprisonment with Rs. 5,000 fine, respectively. Prosecution relied on victim's testimony, corroborated by informant (father), alleging forcible rape in an Arhar field. Appellant argued the victim was major, consented, and no caste-based motive existed, citing absence of injuries and medical findings of habitual intercourse. The court held the victim's testimony, supported by prompt FIR and informant's account, was reliable, and absence of injuries or spermatozoa did not negate rape, per *St. of Rajasthan vs. Noore Khan* and *Prithichand vs. St. of H.P.*. Victim's age was confirmed as 14 years 6 months via school records, negating consent, per *St. of U.P. vs. Manoj Kumar Pandey*. However, no evidence showed the rape was committed due to the victim's Scheduled Caste status, making Section 3(2)(v) inapplicable, per *Dinesh @ Buddha vs. St. of Rajasthan*. Conviction under Section 376 IPC upheld, sentence reduced to 7 years with fine enhanced to Rs. 1,00,000 considering appellant's age and time elapsed. Conviction under Section 3(2)(v) SC/ST Act set aside. Appeal partly allowed. (Paras 24-40)

Appeal partly allowed.

List of Cases cited:

1. St. of Rajasthan vs. Noore Khan, (2000) 3 SLT 389