

co-accused and from the vehicle in question, I do not find any reasonable ground in terms of Section 37 of NDPS Act to release the applicant on bail. Moreover, there are five other criminal cases registered against the applicant and the recovery made is above the commercial quantify.

29. Thus, taking into account the submission made by learned counsel for the parties and the evidence on record and the complicity of the applicant in offence in question, this Court do not find any ground to release the applicant on bail.

30. In the result, the bail application stands **rejected**.

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(2025) 1 ILRA 17  
**APPELLATE JURISDICTION**  
**CRIMINAL SIDE**  
**DATED: ALLAHABAD 20.01.2025**  
  
**BEFORE**  
  
**THE HON'BLE AJAY BHANOT, J.**

Criminal Misc. Bail Application No. 25993 of  
2024

**Smt. Rekha** **...Applicant**  
**Versus**  
**State of U.P.** **...Opposite Party**

**Counsel for the Applicant:**  
Rahul Upadhyay

**Counsel for the Opposite Party:**  
G.A., R.P.S. Chauhan

**Criminal Law - Indian Penal Code, 1860 - Sections 363, 302 & 201 - Code of Criminal Procedure, 1973 - Section 309 - Constitution of India, 1950 - Articles 15(3), 21, 21-A, 45, 47, 39(e) & 39(f) - Juvenile Justice (Care and Protection of Children) Act, 2015 - Sections 2(14) (v), 2**

(22), 2(21), 30, 31 & 37 - Right of Children to Free and Compulsory Education Act, 2009 - Sections 2(d), 3, 4, 13, 14 & 15 - UP Jail Manual, 2022 - Rule 335, 336, 337, 339 - Model Prison Manual, 2016 - Rules 26.36 to 26.44 - Legal Services Authorities Act, 1987 - Sections 2(c), 12 & 13 - Bail - Issue before Court was education, welfare, holistic environment for growth, development of strong moral fabric and ethical framework in children of jail inmates who reside in jails with them - Applicant was in jail since 16.10.2023 - Bail application was rejected by trial court on 14.05.2024 - Applicant's 5 year old son was residing with her in prison after her incarceration and entirely dependent on her. (Para 4)

**Held, applicant has been identified as principal offender who murdered her minor step child and threw his body in tank situated in house and dead body was recovered at pointing out of her - Applicant had motive to commit offence which was grave - Likelihood that applicant had committed offence - No case for bail was made out - Thus, directions to trial court to expedite trial and also to concern officers to prepare child care plan for son of applicant within two months after due consultation with various authorities and experts. (Para 93, 96, 114)**

**Bail application dismissed. (E-13)**

**List of Cases cited:**

1. Ramu Vs St. of U.P., 2024 SCC OnLine All 4618
2. Anil Gaur @ Sonu @ Sonu Tomar Vs St. of U.P., 2022 SCC OnLine All 623
3. Junaid Vs St. of U.P., 2021 (6) ADJ 511
4. Aman Vs St. of U.P., 2023 (8) ADJ 523
5. Bhanwar Singh @ Karamvir Vs St. of U.P., 2023 SCC OnLine All 734
6. Noor Alam Vs St. of U.P., 2024 (5) ADJ 766

7. Anurudh Vs St. Of U.P., 2024 (8) ADJ 469
8. Avinash Mehrotra Vs U.O.I.& ors., 2009 (6) SCC 398, (Para 28, 30, 32, 33)
9. R.D. Upadhyay Vs St. of A.P., (2007) 15 SCC 337, (Para 45)
10. Pratap Singh Vs St. of Jharkhand, 2005 (3) SCC 551, (Para 63.A)
11. Rajiv Kumar Vs St. of U.P., 2019 (4) ADJ 316, (Para 38, 39)
12. M.C. Mehta Vs St. of T.N., 1996 (6) SCC 756, (Para 17)
13. In Re: Right to Privacy of Adolescents, 2024 SCC OnLine SC 2055, (Para 28.2, 29.1)
14. Sheela Barse Vs Children's Aid Society, 1987 (3) SCC 50, (Para 5)
15. Lakshmi Kant Pandey Vs U.O.I., 1984 (2) SCC 244, (Para 6, 7)
16. Jan Adalat, Centre of Para-Legal Services and Legal Aid A Society Vs St. of Maharashtra, Through Secretary, Home Development Department, 2017 SCC OnLine Bom 239, (Para 38)
17. Babul Khan Vs St. of Karnataka, 2020 SCC OnLine Kar 3438, (Para 96)
18. Sumpurnanand Vs St. of U.P. reported at 2018 (11) ADJ 550, (Para 32 to 35)
19. Oil and Natural Gas Commission & anr.Vs Collector of Central Excise, 1995 Supp (4) SCC 541, (Para 3, 4)
20. Oil & Natural Gas Commission Vs Collector of Central Excise, 2004 (6) SCC 437, (Para 3)
21. Elizabeth Jacob Vs District Collector, Idukki & ors., 2008 (15) SCC 166, (Para 19)
22. Society for enlightenment and voluntary Action & anr. Vs U.O.I., 2024 SCC OnLine SC 2922, (Para 3)

23. Junaid Vs St. of U.P., 2021 (6) ADJ 511, (Para 58)
24. The New India Assurance Comp. Ltd. Vs Sri Yamin & ors., 2023 (10) ADJ 421, (Para 48 to 51)
25. Junaid Vs St. of U.P. & anr., 2021 SCC OnLine All 463 (Para 42)
26. Rajendra Prasad Vs St. of U.P., Criminal Misc. Bail Application No. 30292 of 2024, (Para 9, 10, 13)
27. Bhanwar Singh @ Karamvir Vs St. of U.P., 2023 SCC OnLine All 734
28. Jitendra Vs St. of U.P., Criminal Misc. Bail Application No. 9126 of 2023
29. Noor Alam Vs St. of U.P., 2024 (5) ADJ 766

(Delivered by Hon'ble Ajay Bhanot, J.)

1. The judgement is being structured in the following conceptual framework to facilitate the discussion:

|     |                                                                        |   |                                                            |
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| VIII | Implementation of Law and Role of Courts : Junaid Vs. State of U.P.3 and Rajendra Prasad Vs. State of U.P.4 |   |                                                                                              |
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| X    | Circulation of copies for compliance                                                                        |   |                                                                                              |

### **I. Introduction**

1. Rights of children who get confined to jail with their parents consequent to rejection of bail of the latter arise for

consideration in this case (apart from other grounds for bail).

### **II. Submissions of learned counsels for the parties**

2. Shri Rahul Upadhyay, learned counsel for the applicant made the following submissions:

i. The applicant's son who is 5 years of age is residing with her in prison after her incarceration. The rights of the applicant's child flowing from Article 21-A of the Constitution of India read with other beneficial legislations are being violated on account of his confinement in prison.

ii. The prison does not have requisite support systems to ensure the holistic growth of the minor child as contemplated in the aforesaid provisions of law.

iii. In view of the above the jail stay will cast a shadow on the child's life and mar his future.

iv. The applicant is entitled to bail on this ground alone.

### **Submissions on behalf of State**

3. Shri Ashok Mehta, learned Additional Advocate General assisted by Shri Paritosh Kumar Malviya, learned AGA-I made the following submissions:

I. The State Government have an unconditional commitment to provide a congenial environment and build adequate support systems as contemplated under the Constitution and in various beneficial legislations for children who reside in jail consequent to imprisonment of their parent.

II. The State Government shall make all endeavours to realize the

fundamental rights of the said class of children as enunciated in holdings of constitutional courts and the rights vested by applicable statutory enactments.

III. The State are conscious of the fact that all children including those who are residing in jail with their parents need to be nurtured into dutiful citizens of the country.

IV. Referencing the affidavit filed on behalf of the State it is contended that the State Government will create the proper infrastructure, activate statutory support systems and provide all facilities to children as directed earlier by this Court by order dated 01.10.2024. The State Government are taking steps to comply with the said directions; and are not an adversarial party to this litigation. Though it was fairly submitted that full coordination and cooperation between different departments is taking time.

### **III. Legal Issues arising in this case & Bail Jurisdiction**

4. The 5 year old son of the applicant is entirely dependant on her. Denial of bail to the applicant in the instant case will cause the five year old child to perforce reside in the jail premises with her. Family circumstances and social roots are among the criteria which are factored in while deciding the bail application of an accused.

5. The collateral damage inflicted upon a child as a result of denial of bail to their<sup>6</sup> parent becomes most significant when the child has to reside in prison with the accused parent. The Court cannot shut its eyes to the plight of such children consequent to their confinement in jail by default.

6. Every parent has a duty to ensure the well-being, education and well rounded development of their child. However, parents cannot fulfil these obligations if they are imprisoned. Each child has a fundamental right to education, and an environment conducive to their<sup>7</sup> development as a dutiful citizen of the country. Neglect of rights of children who suffer from such default confinement in jail will reflect the failure of the State and inadequacy of the judicial process. Deprivation of rights of these children will put a question mark on the ability of the State and the capacity of the judicial process to uphold the constitution and the laws. Avoiding such germane issues which squarely arise for consideration in bail jurisdiction will amount to abdication of judicial functions. Such course has been abjured by good and consistent authorities in point.

7. Fair administration of justice in bail jurisdiction commands this Court to ensure that adverse consequences accruing to the child as a result of rejection of the bail application of their parent (mother in this case) are mitigated and the rights of minor children of inmates residing in jails are protected.

8. Constitutional status of this Court is not denuded in bail jurisdiction. While exercising bail jurisdiction various legal issues may arise for consideration in the facts and circumstances of a case which directly impact fair administration of justice. The Court is possessed of jurisdiction to determine such issues as per law while deciding bail applications.

9. Determining such issues in accordance with law for dispensing fair justice in bail jurisdiction is enjoined by

various authorities of this Court. [Ref: **Ramu Vs. State of U.P.8, Anil Gaur @ Sonu @ Sonu Tomar v. State of U.P.9, Junaid Vs State of U.P.10, Aman Vs. State of U.P.11, Bhanwar Singh @ Karamvir Vs. State of U.P.12, Noor Alam Vs. State of U.P.13 and Anurudh vs State Of UP14 ]**

**Rights of Children : Constitutional provisions & Statutory and Legal Frameworks**

**IV(A). General**

10. Children hold Nature's promise of unquenchable optimism in a world riven by constant strife. Children are the most precious asset of humankind but also the most vulnerable segment of human species. The children have always been regarded a separate class in law.

**IV (B). Constitution and Children**

11. The constitution makers acknowledged that children are the most precious assets of the nation, and understood the special needs of children. A distinct space for children was created in the Constitution. Various provisions devoted to children in the Constitution attest the paramount place accorded to the welfare of children in our Constitutional scheme.

12. The relevant provisions of the Constitution of the India in this regard are extracted hereunder:

I. Article 15 (3) of the Constitution of India enables the State Government to make special provisions for children:

"15(3) Nothing in this article shall prevent the State from making any special provision for women and children."

II. Free and compulsory education for children is mentioned as a directive principle for formation of State Policy. Article 45 of the Constitution of India states thus:

"45. Provision for free and compulsory education for children: The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

III. Article 21-A of the Constitution of India elevates the rights of education of children between 6-14 of age to a fundamental right.

"21(A) The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

IV. Article 47 of the Constitution of India reads:

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

V. Article 39(e) and Article 39(f) of the Constitution of India contemplate a role of the State to protect children against the scourge of exploitation and to create opportunities and facilities for children to develop into worthy citizens.

"39(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

39 (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

#### IV(C). Children : Education and Holistic Development

"If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be"

*~Thomas Jefferson*

13. Education is the bulwark of a nation's freedom and the engine of economic prosperity. Education has assured the preservation of the human species, and guarantees the advancement of human civilization.

14. Education is not only book learning imparted in a classroom to secure employment. The concept of education is wide enough to embrace various aspects of human existence and touches every facet of human life. The ability of the homo sapiens to understand and evolve themselves by knowing their place and relation to the universe around them is also comprised in education.

15. Education contemplates a holistic environment which is congenial to the growth of human faculties along the lines of excellence. Inculcation of healthy lifestyle habits, development of robust ethical values and character, and imbibing of vocational and academic knowledge

form part of a vision of education of any nation ruled by law.

16. Education is the primary instrument to achieve our constitutional vision. Sarvepalli Radhakrishnan's view that "The aim of government is not so much efficiency as education is true for all times" is a guiding factor in the nation's governance. Right of education was incorporated as a fundamental right under Article 21A of the Constitution of India to realize our constitutional goals succinctly depicted in the Preamble. The legislature also created comprehensive frameworks and detailed mechanisms for realizing the fundamental right to education by enacting the Right to Education Act, 2009.

17. Children of jail inmates who reside with the latter in prisons live in conditions of confinement. The prison does not provide an environment for holistic development and impedes the growth of a well rounded personality. The children are cut off from the real world and are unable to mix freely with their age group. They are also susceptible to negative influences in jail. Jail environment is not congenial for the education of this class of children. Infact the right to education guaranteed to children by Article 21A of the Constitution of India, and vested in them by Right to Education Act, 2009 can be effectively negated by the limiting conditions of jails.

18. The sacred place of education in constitutional scheme and the pressing necessity of providing the same to the children of prisoners was elaborated thus by the Supreme Court in **Avinash Mehrotra Vs. Union of India and others**<sup>15</sup>:

"28. Education occupies a sacred place within our Constitution and culture...

30. In the years since the inclusion of Article 21-A, we have clarified that the right to education attaches to the individual as an inalienable human right. We have traced the broad scope of this right in *R.D. Upadhyay v. State of A.P.* [(2007) 15 SCC 337 : AIR 2006 SC 1946] holding that the State must provide education to all children in all places, even in prisons, to the children of prisoners. We have also affirmed the inviolability of the right to education.

(emphasis supplied)

32. Education remains essential to the life of the individual, as much as health and dignity, and the State must provide it, comprehensively and completely, in order to satisfy its highest duty to citizens.

33. Unlike other fundamental rights, the right to education places a burden not only on the State, but also on the parent or guardian of every child, and on the child herself. Article 21-A, which reads as follows, places one obligation primarily on the State:

“21-A. *Right to education.*—The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”

(emphasis supplied)

#### **IV(D). International Instruments**

19. The consensus of comity of nations to improve the lives of children is depicted in international instruments of law relating to the rights of the children.

20. While acknowledging the applicability of international law to the Juvenile Justice legislation, the Supreme Court in **Pratap Singh Vs. State of Jharkhand**<sup>16</sup> held as under:

“63.Â The legislation relating to juvenile justice should be construed as a step for resolution of the problem of juvenile justice which was one of tragic human interest which cuts across national boundaries. The said Act has not only to be read in terms of the Rules but also the Universal Declaration of Human Rights and the United Nations Standard Minimum Rules for the Protection of Juveniles.”

21. This Court in **Rajiv Kumar Vs. State of U.P.**<sup>17</sup> had noted the development of international law and the convergence of international legal values in various international instruments:

“38. The condition of children in conflict with law engaged the concerns of the world community. The concerns were put in the consciousness of the international community by the adoption of the Beijing Rules in 1985 and the UN Standard Minimum Rules for Administration of Juvenile Justice.

39. The United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a document which reflects the consensus of international opinion and convergence of values amongst civilized nations. Infact, the United Nations Standard Minimum Rules For The Administration of Juvenile Justice is a statement of universal values. The Juvenile Justice Acts in India trace their origin to the aforesaid international standards and other UN Conventions on the subject. As will be seen the courts have readily incorporated the international treaties and conventions into the corpus of our case law jurisprudence.”

22. Reference can also be profitably be made to the judgment rendered by Supreme Court in **M.C. Mehta Vs. State of T.N.**<sup>18</sup> :

“17. It would be apposite to apprise ourselves also about our commitment to world community. For the case at hand it would be enough to note that India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20-11-1989. This Convention affirms that children's rights require special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights.”

#### **V. Children in Jail : Invisible Trial and caged childhood— A Study**

23. Various expert bodies have investigated the condition of children of inmates residing in jails. A leading study in this regard was conducted by **Tata Institute of Social Sciences, Mumbai**<sup>19</sup>. The relevant part of the said study revealing how jail environment wreaks havoc in the psyche of children, and blights their lives is extracted hereinunder:

#### **Caged childhood: Children inside the prison with mothers**

*Just living is not enough... one must have sunshine, freedom, and a little flower.*

*Hans Christian Andersen*

Contact with the adult criminal justice system can be detrimental to children and families. Living in custody amongst women accused or convicted for committing various crimes can never be normal for any child of the tender age of six years or below. The prison environment

is just not conducive for the holistic development of children. Many children who are born in prison never experience a normal family life, sometimes till the permitted age of six years. The confinement of children along with their mothers leads to the confinement of their psyche. Due to prolonged stay in a negative and custodial environment, the socialisation patterns of these children get severely affected. The only image of male figures is that of authoritative police and prison officials. They are unaware of the concept of a home, as normal children understand it. The effect of their environment on their psyche is so strong that boys may be found impersonating and talking like the female gender, having grown up only among women confined in the female ward. Unusual sights, like that of stray animals on the road (seen on the way to court with the mother) are frightening to them. There are common instances of children getting frequently transferred (due to overcrowding) with their mothers from one prison to another, which leads to their uprooting and unsettling. Such children become violent and aggressive, or alternatively, show withdrawn behaviour in prison. They also become victims of physical beatings by their mothers who sometimes take out their frustrations on their loved ones.

#### **VI. Statutory Framework**

24. Statutory frameworks which regulate and govern the rights of vulnerable children and applicable to this case include Juvenile Justice (Care and Protection of Children) Act 2015<sup>20</sup>, Legal Services Authorities Act 1987, Right of Children to Free and Compulsory Education Act 2009<sup>21</sup>, UP Jail Manual 2022, and Model Prison Manual, 2016.

**VI (A). Juvenile Justice (Care and Protection of Children) Act, 2015**

25. The JJ Act is a comprehensive enactment provides for identification of children who belong to marginalized classes or are otherwise in need of care and protection. The enactment also creates authorities and mechanisms for bringing the rights of children to fruition.

26. Parents who are in jail are unable to take measures for well being of their children. The said class of children are within the ambit of Section 2(14) (v) of JJ Act:

**“Section 2 (14) "child in need of care and protection" means a child—**

(v) who has a parent or guardian and such parent or guardian is found to be unfit or incapacitated, by the Committee or the Board, to care for and protect the safety and well-being of the child; or

**Section 2 (22) "Committee"** means Child Welfare Committee constituted under section 27

**Section 2(21) "child care institution"** means Children Home, open shelter, observation home, special home, place of safety, Specialised Adoption Agency and a fit facility recognised under this Act for providing care and protection to children, who are in need of such services;”

27. Section 30 of the JJ Act prescribes the functions and responsibilities of Child Welfare Committee. The legislative intent of the provision is also to bring the aforesaid category of children within the scope of the duties of CWC:

**“Section 30- The functions and responsibilities of the Committee shall include—**

(i) taking cognizance of and receiving the children produced before it;

(ii) conducting inquiry on all issues relating to and affecting the safety and well-being of the children under this Act;

(iii) directing the Child Welfare Officers or probation officers or District Child Protection Unit or non-governmental organisations to conduct social investigation and submit a report before the Committee;

(iv) conducting inquiry for declaring fit persons for care of children in need of care and protection;

(v) directing placement of a child in foster care;

(vi) ensuring care, protection, appropriate rehabilitation or restoration of children in need of care and protection, based on the child's individual care plan and passing necessary directions to parents or guardians or fit persons or children's homes or fit facility in this regard;

(vii) selecting registered institution for placement of each child requiring institutional support, based on the child's age, gender, disability and needs and keeping in mind the available capacity of the institution;

(viii) conducting at least two inspection visits per month of residential facilities for children in need of care and protection and recommending action for improvement in quality of services to the District Child Protection Unit and the State Government;

(ix) certifying the execution of the surrender deed by the parents and ensuring that they are given time to reconsider their decision as well as making all efforts to keep the family together;

(x) ensuring that all efforts are made for restoration of abandoned or lost children to their families following due process, as may be prescribed;

(xi) declaration of orphan, abandoned and surrendered child as legally free for adoption after due inquiry;

(xii) taking suo motu cognizance of cases and reaching out to children in need of care and protection, who are not produced before the Committee, provided that such decision is taken by at least three members;

(xiii) taking action for rehabilitation of sexually abused children who are reported as children in need of care and protection to the Committee by Special Juvenile Police Unit or local police, as the case may be, under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012);

(xiv) dealing with cases referred by the Board under sub-section (2) of section 17;

(xv) co-ordinate with the police, labour department and other agencies involved in the care and protection of children with support of the District Child Protection Unit or the State Government;

(xvi) in case of a complaint of abuse of a child in any child care institution, the Committee shall conduct an inquiry and give directions to the police or the District Child Protection Unit or labour department or childline services, as the case may be;

(xvii) accessing appropriate legal services for children;

(xviii) such other functions and responsibilities, as may be prescribed.”

28. Section 31 of the JJ Act contemplates production of children in need of care before the CWC. Children of prisoners who live in jails with the latter

are also liable to be produced before the CWC. Jail authorities and the police authorities fall within the description of “any public servant” under the provision.

### **“31. Production before Committee.—**

(1) Any child in need of care and protection may be produced before the Committee by any of the following persons, namely:—

(i) any police officer or special juvenile police unit or a designated Child Welfare Police Officer or any officer of District Child Protection Unit or inspector appointed under any labour law for the time being in force;

(ii) any public servant;

(iii) Childline Services or any voluntary or non-governmental organisation or any agency as may be recognised by the State Government;

(iv) Child Welfare Officer or probation officer;

(v) any social worker or a public spirited citizen;

(vi) by the child himself; or

(vii) any nurse, doctor or management of a nursing home, hospital or maternity home: Provided that the child shall be produced before the Committee without any loss of time but within a period of twenty-four hours excluding the time necessary for the journey.

(2) The State Government may make rules consistent with this Act, to provide for the manner of submitting the report to the Committee and the manner of sending and entrusting the child to children’s home or fit facility or fit person, as the case may be, during the period of the inquiry.”

29. The nature orders to be passed by the CWC are enumerated in Section 37 of the JJ Act:

**“37. Orders passed regarding a child in need of care and protection.—**

(1) The Committee on being satisfied through the inquiry that the child before the Committee is a child in need of care and protection, may, on consideration of Social Investigation Report 1 [\*\*\*] and taking into account the child's wishes in case the child is sufficiently mature to take a view, pass one or more of the following orders, namely:—

(a) declaration that a child is in need of care and protection;

(b) restoration of the child to parents or guardian or family with or without supervision of Child Welfare Officer or designated social worker;

(c) placement of the child in Children's Home or fit facility or Specialised Adoption Agency for the purpose of adoption for long term or temporary care, keeping in mind the capacity of the institution for housing such children, either after reaching the conclusion that the family of the child cannot be traced or even if traced, restoration of the child to the family is not in the best interest of the child;

(d) placement of the child with fit person for long term or temporary care;

(e) foster care orders under section 44;

(f) sponsorship orders under section 45;

(g) directions to persons or institutions or facilities in whose care the child is placed, regarding care, protection and rehabilitation of the child, including directions relating to immediate shelter and services such as medical attention, psychiatric and psychological support including need-based counselling, occupational therapy or behaviour modification therapy, skill training, legal aid, educational services, and other

developmental activities, as required, as well as follow-up and coordination with the District Child Protection Unit or State Government and other agencies;

(h) declaration that the child is legally free for adoption under section 38.

(2) The Committee may also pass orders for—

(i) declaration of fit persons for foster care;

(ii) getting after care support under section 46 of the Act; or

(iii) any other order related to any other function as may be prescribed”

30. The functions of CWC were set forth by the Supreme Court in **In Re: Right to Privacy of Adolescents**<sup>23</sup> as under:

“28.2 If a child is residing with a person who has injured, exploited or abused the child or has violated any other law for the time being in force meant for the protection of the child, the said child becomes a child in need of care and protection. Thus, if a child who is a victim of an offence under the POCSO Act is residing with the accused, the child becomes a child in need of care and protection. Even a child who has a parent or guardian and if such parent or guardian is found to be unfit to take care of the child, in such a case, the child is covered by the definition under sub-section (14) of Section 2 of the JJ Act. Therefore, the CWC has to exercise the power to provide basic needs and protection to such children in need of care and protection.

29.1 Under clause (vi) of Section 30, it is the duty of the CWC to ensure care, protection, appropriate rehabilitation or restoration of children in need of care and protection based on the child's

individual care plan. The CWC cannot wait till the children in need of care and protection are produced before it. Under clause (xii) of Section 30, the CWC must take suo motu cognizance of the cases and reach out to the children in need of care and protection. What is important here is clause (xiii) of Section 30, which mandates that it is the duty of the CWC to take action for the rehabilitation of sexually abused children who are children in need of care and protection.”

### **VI (B). Right of Children to Free and Compulsory Education Act, 2009**

31. The Right to Education Act, 2009 which was enacted in the aftermath of Article 21A of the Constitution of India is the legal instrument to carry out the constitutional intent of providing for free and compulsory education to all children in the country.

32. Some of the provisions of the Right to Education Act, 2009 relevant to this case shall now be discussed.

33. The children who reside with their parents in jail also suffer from various disadvantages owing to their special and adverse circumstances. The said children come within the category of Section 2(d) of Right to Education Act, 2009:

“2 (d) "child belonging to disadvantaged group" means [a child with disability or] a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification;

34. Section 3 vests the right of free and compulsory education in children:

### **Section 3. Right of child to free and compulsory education.**

[(1) Every child of the age of six to fourteen years, including a child referred to in clause (d) or clause (e) of section 2, shall have the right to free and compulsory education in a neighbourhood school till the completion of his or her elementary education.]

(2) For the purpose of sub-section (1), no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing the elementary education.

(3) A child with disability referred to in sub-clause (A) of clause (ee) of section 2 shall, without prejudice to the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996), and a child referred to in sub-clauses (B) and (C) of clause (ee) of section 2, have the same rights to pursue free and compulsory elementary education which children with disabilities have under the provisions of Chapter V of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995:

Provided that a child with "multiple disabilities" referred to in clause (h) and a child with "severe disability" referred to in clause (o) of section 2 of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 (44 of 1999) may also have the right to opt for home-based education.]”

35. Section 4 of Right to Education Act, 2009 contains special provisions for children who are not admitted to or have not completed elementary education:

**“Section 4. Special provisions for children not admitted to, or who have not completed, elementary education-**

Where a child above six years of age has not been admitted in any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age:

Provided that where a child is directly admitted in a class appropriate to his or her age, then, he or she shall, in order to be at par with others, have a right to receive special training, in such manner, and within such time-limits, as may be prescribed:

Provided further that a child so admitted to elementary education shall be entitled to free education till completion of elementary education even after fourteen years.”

36. Section 13 of Right to Education Act, 2009 directs no capitation fee and provide for screening procedure for admission:

“Section 13 No capitation fee and screening procedure for admission.

(1) No school or person shall, while admitting a child, collect any capitation fee and subject the child or his or her parents or guardian to any screening procedure.

(2) Any school or person, if in contravention of the provisions of sub-section (1),--

(a) receives capitation fee, shall be punishable with fine which may extend to ten times the capitation fee charged;

(b) subjects a child to screening procedure, shall be punishable with fine which may extend to twenty-five thousand rupees for the first contravention and fifty

thousand rupees for each subsequent contraventions.”

37. Section 14 of Right to Education Act, 2009 mandates that no child shall be denied admission in school for lack of age proof:

**“Section 14. Proof of age for admission.**

(1) For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886) or on the basis of such other document, as may be prescribed.

(2) No child shall be denied admission in a school for lack of age proof.”

38. Section 15 of Right to Education Act, 2009 visualizes admission of the child even after the commencement of the academic year.

**“Section 15. No denial of admission.**

A child shall be admitted in a school at the commencement of the academic year or within such extended period as may be prescribed:

Provided that no child shall be denied admission if such admission is sought subsequent to the extended period:

Provided further that any child admitted after the extended period shall complete his studies in such manner as may be prescribed by the appropriate Government.”

39. The constitutional right guaranteed under Article 21-A of the Constitution of India and the right to education vested in

children by virtue of the Right to Education Act, 2009 apply with full force to children who are residing in jail with their inmate parents. The said children of jail inmates are fully entitled to quality education as their more fortunately circumstanced counterparts. The State Government as well as local authorities are bound by law to realize the right to education of the aforesaid children.

40. The State have to discharge the imperative constitutional obligations and mandatory statutory functions to create support systems for children in jails to facilitate the realization of their constitutional and statutory rights to education. The Courts have to observe their sacrosanct duty to uphold the rights of the children including the right to education.

41. Activities in kindergartens and play schools are critical to the growth of children in those formative years. Professionally designed pedagogy and activities in such play schools and kindergartens influence toddlers in a big way. Activity based learning created by experts for little learners can contribute to their physical development, mental growth and emotional stability. Learning and activities of this nature enhances the meaning of life for children in that age group. Children shall also be admitted to preschool/kindergarten/play schools/primary schools as per their eligibility by the State authorities/local administration. The schools shall be located outside of the jail premises.

#### **VI (C). Uttar Pradesh Jail Manual, 2022**

42. The welfare of the children who remain in jail with their mothers' is

protected in UP Jail Manual, 2022. The Jail Manual enshrines their rights and casts a duty upon the jail authorities to uphold the aforesaid rights:

#### **“335. Children born in jail**

(a) As far as possible and provided that the female prisoner has a suitable option, the Superintendent shall apprise the concerned court, and shall send the report of the fact accompanied with the medical statement, in order to enable the court to consider the possibility of releasing the pregnant prisoner on bail.

(b) Births in prison, shall be registered in the local birth registration office but the fact that the child has been born in the prison shall not be recorded in the certificate. Only the address of the locality shall be mentioned.

(c) As far as circumstances permit, all facilities for the naming rites (Namkaran Sanskar) of children born in prison shall be extended.

(d) Religious rites may be allowed to be performed for the child so born, on the expenses borne by the parent.

(e) A child shall not be treated as an undertrial or a convict while in jail.”

#### **336. Children to be allowed to remain with their mothers**

In special circumstance the Superintendent shall allow mother in prison to keep her children with her in jail without court orders till they attain the age of six years.

#### **337. Cases in which a child cannot be kept in a jail**

(a) When a child has achieved the age of 6 years or a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned who shall arrange for the proper care of the child. If the concerned relative (s) are unwilling to support the child, the

District Magistrate shall either place the child in an approved institution or a home run by the State Social Welfare Department.

(b) Children kept under the protective custody in an institution or a home run by department of social welfare shall be allowed to meet the mother at least once a week. The Director, social welfare department, shall ensure that such children are brought to the prison for this purpose on the dates fixed by the Superintendent.

### **339. Care of children**

(a) There shall be a crèche and a nursery attached to the prison where the children of women prisoners shall be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery in the prison premises.

(b) The children of female prisoners living in the jail shall be given proper education and recreational opportunities. While their mothers are at work in jail, the children shall be kept in a creche or a nursery under the charge of a female head warder or a female warder. The facility of the crèche or a nursery may be extended to children of warders and other female prison staff.

(c) Children of prisoners shall have the right to visitation.

(d) Children shall be regularly examined by the Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts of each child shall be kept in the records. Extra clothing, diet and medical treatment, if required, shall be provided for.

(e) In the event of a woman prisoner falling ill, alternate arrangements to look after her children shall be made.

(f) Children between the age group of 4 to 6 years shall be admitted to an educational institution outside prison after obtaining the consent of the mother and proper arrangement and conveyance shall be made on the Government expenses charged on appropriate budget head.”

43. Rule 339 (f) of UP Jail Manual, 2022 has to be read in consonance with the Right of Children to Free and Compulsory Education Act, 2009 and Article 21-A. Even parents cannot deny education to their children who are staying in jail. Refusal of consent of the parents to admit the said children in school will be violative of Article 21-A of the Constitution and the RTE Act. Denial of consent by inmate parents to admit their child to school will be void. Every child who is residing in jail with their<sup>24</sup> parents will be compulsorily admitted to school in light of Article 21-A of the Constitution of India and RTE Act and the directions in this judgement. The parents of the child will be informed that the right to education vested by Article 21-A and RTE Act and the directions in this judgement are inviolable.

### **VI (D). The Model Prison Manual, 2016**

44. The Model Prison Manual, 2016 also contains various provisions for the protection and holistic growth of children even in trying circumstances of jail life:

“26.36 Children kept under protective custody in a home of the Department of Social Welfare shall be allowed to meet their mothers at least once a week. The Director, Social Welfare

Department will ensure that such children are brought to the prison on the dates fixed for this purpose by the Superintendent of Prison.

**Guidelines issued by the Supreme Court for children of women prisoners (R.D. Upadhyay v. State of A.P., AIR 2006 SC 1946)**

>A jail must have adequate facilities for prenatal and post-natal care for female prisoners as well as their children.

>Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper prenatal and post-natal care shall be provided to the prisoner as per medical advice

> As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility,

>Pregnant women in jails should be able to give birth outside the prison facility (except in some extreme cases), so as to ensure that the new-born is given proper care.

>The fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned

> Within the prisons, children should be able to have access to food, shelter medical assistance when required, education and a recreational space.

>Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child

shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

> Women can keep their children with them until the children reach the age of six. Then they should be handed over to welfare institutions maintained by the Social Welfare Department, preferably within the same city or town.

>The child can remain in such an institution until the mother is released or the child is capable of earning a livelihood.

>Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons

>The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mothers are complied with in letter and spirit.

**Welfare of the children of the Women Prisoners**

26.37 Prison administration should ensure holistic development of children of inmates confined in the prisons. To the extent possible, prison administration shall strive to create a suitable environment for children's upbringing which is as close as possible to that of a child outside prison. The Board of visitors shall inspect these facilities at regular intervals."

45. The other provisions of Model Prison Manual, 2016 of relevance pertain to education of children and diet:

**Education**

**“26.38** The children of women prisoners living in the prison shall be given proper education and recreational opportunities. There shall be a well-equipped creche and a nursery school attached to a prison for women where the children of women prisoners shall be looked after while the mothers work in prison. Children below three years of age shall be allowed in the creche and those between three and six years shall be looked after in the nursery school. These facilities may also be extended to the children of warders and other female prison staff.

**26.39** The creche and nursery school shall be run by the prison administration preferably outside the prison with the assistance of NGOs or state welfare services. In the event the prison administration considers it difficult to run a crèche, arrangements should be made to send the children to a privately run crèche under proper security. The transportation charges involved in the process and crèche fee shall be borne by the prison administration.

**26.40** Children in prison shall be provided with adequate clothing suiting the local climatic requirements. For this the State/UT Government shall lay down appropriate scales. Articles, like diapers and others as required, should be provided to women prisoners who are caring for their infant children.

**26.41** In addition to regular requirement, two cakes of 150 grams each of soaps/detergent shall be provided to women prisoners with children.

**Diet/Food:**

**26.42** Scales of diet for children shall be decided keeping in view the calorific requirements of growing children as per medical norms and climatic conditions. Separate utensils of suitable

size and material should also be provided to each mother prisoner for feeding her child.

**26.43** In the event a woman prisoner with children falls ill, alternative arrangements should be made by the prison staff for looking after any children falling under her care.

**Health care**

**26.44** Adequate health facilities shall be provided to children of women prisoners (in collaboration with community health services), Children shall be regularly examined by a Lady Medical Officer to monitor their physical growth who shall also be vaccinated for various diseases including polio and small-pox at the appropriate time. Extra clothing and diet may also be provided to such children on the written recommendations of the Medical Officer.”

**VI (E). Legal Services Authorities Act 1987**

46. Legal Services Authorities Act, 1987 vests the right of legal services and legal aid in various eligible classes of citizens. The relevant provisions for the purposes of this instant controversy are extracted hereinunder:

“2 (c) “legal service” includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter;

12-Criteria for giving legal services:-

(c) a woman or a child;

13. Entitlement of legal services.

(1) Persons who satisfy all or any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is

satisfied that such person has a prima facie case to prosecute or to defend.

(2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.”

47. Secretary, District Legal Services Authority (DLSA hereinafter) of the respective districts have to provide necessary legal aid whether by way of legal advice or counsel to the parents of the said category of children to apprise them of rights and entitlements of children. Secretary, DLSA of respective districts shall also alert the statutory authorities about their obligations to realize the rights of the said children as discussed in this judgement.

#### VI (F). Constitutional law discourse : Case Laws

48. The rights of children were embedded in constitutional law discourse in **Sheela Barse v. Children's Aid Society**<sup>25</sup>, wherein the Supreme Court observed as under:

“5. Children are the citizens of the future era. On the proper bringing up of children and giving them the proper training to turn out to be good citizens depends the future of the country. In recent years, this position has been well realised. In 1959, the Declaration of all the rights of the child was adopted by the General Assembly of the United Nations and in Article 24 of the International Covenant on Civil and Political Rights, 1966. The importance of the child has been appropriately recognised. India as a party to these international Charters having ratified

the Declarations, it is an obligation of the Government of India as also the State machinery to implement the same in the proper way.”

49. Similarly the Supreme Court in **Lakshmi Kant Pandey Vs. Union of India**<sup>26</sup> while interpreting the rights of children in the backdrop of constitutional provisions underscored the importance of children as national assets of supreme value, and underlined the need for the State to create conditions to protect children from abuse and provide an environment for growth with dignity:

“6. It is obvious that in a civilized society the importance of child welfare cannot be over-emphasized, because the welfare of the entire community, its growth and development, depend on the health and well-being of its children. Children are a “supremely important national asset” and the future well-being of the nation depends on how its children grow and develop. The great poet Milton put it admirably when he said: “Child shows the man as morning shows the day” and the Study Team on Social Welfare said much to the same effect when it observed that “the physical and mental health of the nation is determined largely by the manner in which it is shaped in the early stages”. The child is a soul with a being, a nature and capacities of its own, who must be helped to find them, to grow into their maturity, into fullness of physical and vital energy and the utmost breath, depth and height of its emotional, intellectual and spiritual being; otherwise there cannot be a healthy growth of the nation. Now obviously children need special protection because of their tender age and physique, mental immaturity and incapacity to look after themselves. That is why there is a growing

realisation in every part of the globe that children must be brought up in an atmosphere of love and affection and under the tender care and attention of parents so that they may be able to attain full emotional, intellectual and spiritual stability and maturity and acquire self-confidence and self-respect and a balanced view of life with full appreciation and realisation of the role which they have to play in the nation building process without which the nation cannot develop and attain real prosperity because a large segment of the society would then be left out of the developmental process. In India this consciousness is reflected in the provisions enacted in the Constitution. clause (3) of Article 15 enables the State to make special provisions inter alia for children and Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing inter alia that the tender age of children is not abused, that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength and that children are given facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. These constitutional provisions reflect the great anxiety of the constitution makers to protect and safeguard the interest and welfare of children in the country. The Government of India has also in pursuance of these constitutional provisions evolved a National Policy for the Welfare of Children. This Policy starts with a goal-oriented preambulatory introduction  
(emphasis supplied)

“The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.”

The National Policy sets out the measures which the Government of India proposes to adopt towards attainment of the objectives set out in the preambulatory introduction and they include measures designed to protect children against neglect, cruelty and exploitation and to strengthen family ties “so that full potentialities of growth of children are realised within the normal family neighbourhood and community environment”. The National Policy also lays down priority in programme formation and it gives fairly high priority to maintenance, education and training of orphan and destitute children. There is also provision made in the National Policy for constitution of a National Children's Board and pursuant to this provision, the Government of India has constituted the National Children's Board with the Prime Minister as the chair-person. It is the function of the National Children's Board to provide a focus for planning and review and proper co-ordination of the multiplicity of services striving to meet the needs of children and to ensure at different levels continuous planning, review and co-ordination of all the essential services. The National Policy also stresses the vital role

which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavour of State to encourage and strengthen such voluntary organisations.

7. There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child adopted by the General Assembly of the United Nations on November 20, 1959. The Declaration in its Preamble points out that "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to formulate several Principles of which the following are material for our present purpose:

*"Principle 2.*—The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.

*Principle 6.*—The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate

means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

*Principle 9.*—The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

*Principle 10.*—The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men."

50. The Supreme Court in **R. D. Upadhyay v. State of A.P.**<sup>27</sup>, while considering the plight of children living with their inmate parents issued following directions:

"45. In light of various reports referred to above, affidavits of various State Governments, Union Territories, the Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

3. Childbirth in prison:

(a) As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security

risk or cases of equivalent grave descriptions can be denied this facility.

(b) Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

(c) As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

(a) Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

(b) No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimise undue hardships on both mother and child due to physical distance.

(c) Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

(d) Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet their mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

(e) When a female prisoner dies and leaves behind a child, the

Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the relative(s) concerned be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

(a) Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/UT Government shall lay down the scales.

(b) State/UT Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

(c) A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

(d) Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

(e) Clean drinking water must be provided to the children. This water must be periodically checked.

(f) Children shall be regularly examined by the lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

(g) In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

(h) Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

(i) Children of prisoners shall have the right of visitation.

(j) The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

(a) The children of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crèches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

(b) There shall be a crèche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crèche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crèche and nursery outside the prison premises.

7. In many States, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

(emphasis supplied)

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes

including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

(emphasis supplied)

51. The Bombay High Court in **Jan Adalat, Centre of Para-Legal Services and Legal Aid A Society Vs. State of Maharashtra, Through Secretary, Home Development Department**<sup>28</sup> invoked **R.D. Upadhyay (supra)** and issued the following directions in regard to prisoners in Maharashtra:

“38..(h) As regards the children staying with their respective mothers in Jail, necessary arrangement for their benefit shall be made in terms of the directions of the Apex Court and as observed in Paragraph No. 23 of the Judgment within a period of six months from today;

(i) The State Government shall evolve a Scheme for ensuring that the women prisoners are able to meet their minor children (who are not staying with them) at frequent intervals. Formulation of such Scheme will be necessary as the persons or the institutions having the custody of the children may not encourage them to meet their respective mothers. If necessary amendment may be proposed to the Maharashtra Prisons (Facilities to the Prisoners) Rules, 1962”.

52. The Karnataka High Court in **Babul Khan Vs. State of Karnataka**<sup>29</sup> made the following observations as regards rights of children. Though the observations were made in regard to children of foreign nationals, they are applicable to this case as well:

“96. If the child belonged to a foreign national and where both the parents

or one of the parent particularly mother is in jail, then necessary steps should be taken in lieu of the law that, the child must always enjoy all the rights as set forth in the United Nations declaration of the rights of the Child whether it is outside or inside the jail without distinction or discrimination on account of race, colour, language, origin of political or other national or social by birth or other status. Further, the child shall enjoy the special protection and shall be given opportunities and facilities by law and other means to enable it to develop physically, mentally and socially in a healthy and normal manner with dignity. The child is also entitled to receive education which shall be free and compulsory at least in the elementary stages even if the child happens to be in the jail or detention center along with its mother. The concerned states while framing the laws particularly in Detention Centers, shall respect the right of the child, who is actually separated from one or both the parents and the State should make arrangement to safeguard the interest of such child.”

### **Article 21 and Children**

53. This Court while examining the scope and constitutional law holdings of the meaning of “life” under Article 21 of the Constitution of India in **Sumpurnanand Vs. State of U.P. reported at 2018 (11) ADJ 550** held as under:

“32. The probe into the purpose of life has traditionally been the province of the philosophers. The framers of the constitution, brought the word "life" in the ambit of the constitution. Constitutional law put the meaning of life in the domain of the courts. "Life" is very much the

concern of the courts. The search for the meaning of life is the business of the courts. Indeed, the discovery of the meaning of life is central to realizing the fundamental rights guaranteed under the Constitution.

33. The enquiry of the courts into the meaning of life was guided by law and logic and controlled by reason and precedent, but bent to no authority save the mandate of the constitution and the conscience of the court. Ultimately, the meaning of life was given by life itself. All facets of life and its realities touched the courts. It was for the courts to touch life in all its facets and to feel its reality. Life reveals its true meaning to those whose thoughts are noble and deeds are righteous and to those who live selflessly.

34. The courts in India, knew early on that understanding the significance of life was the key to providing the security of justice. While interpreting Article 21 of the Constitution of India, the Hon'ble Supreme Court, embraced life in all its breadth and profundity and eschewed a narrow interpretation. The law laid down by the Hon'ble Supreme Court while construing Article 21 of the Constitution of India brought a citizen's reputation within its sweep.

35. A defining moment came when the Hon'ble Supreme Court, liberated life from the fetters of mere physical existence. While examining the meaning of life under Article 21 of the Constitution of India, the Hon'ble Supreme Court added meaning to life in the case of *Olga Tellis v. Bombay Municipal Corpn.* Reported at (1985) 3 SCC 545 held thus:

"As we have stated while summing up the petitioners' case, the main plank of their argument is that the right to life which is guaranteed by Article 21 includes the right to livelihood and since,

they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings, their eviction is tantamount to deprivation of their life and is hence unconstitutional. For purposes of argument, we will assume the factual correctness of the premise that if the petitioners are evicted from their dwellings, they will be deprived of their livelihood. Upon that assumption, the question which we have to consider is whether the right to life includes the right to livelihood. We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article 21 is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate

because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the village is the struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live: only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas, J. in *Baksey* [347 US 442, 472 : 98 L Ed 829 (1954)] that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in *Munn v. Illinois* [(1877) 94 US 113] means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in *Kharak Singh v. State of U.P.* [AIR 1963 SC 1295 : (1964) 1 SCR 332 : (1963) 2 Cri LJ 329]. "

54. Article 21 was set on a course of constantly expanding boundaries and the ambit of life was progressively enlarged.

55. The meaning of life for children as contemplated in Article 21 of the Constitution of India has to be understood in a nuanced manner. Regard has to be paid to various constitutional provisions relating to children, the holdings of constitutional courts and international instruments to which India is a party.

56. Article 39 of the Constitution of India as seen earlier in *Lakshmi Kant Pandey (supra)* has become the basis of

various policies of the government in respect of children. In fact Article 39 (e) & (f) of Constitution of India is now irretrievably entrenched in Article 21 of the Constitution of India and plays a critical role in determining the meaning of life for children. Article 39 (e) & (f) of the Constitution of India contain not merely Directive Principles of State Policy but enshrine mandatory tenets of State action for the benefit of children.

57. Article 21 of the Constitution of India contemplates a congenial environment and support systems for children which foster the growth of a well rounded personality, are conducive to development of exemplary character traits, apart from good health and wellness. Educational needs and intellectual advancement of children clearly come within the ambit of Article 21 of the Constitution. Prison walls cannot obstruct the onrush of the fruits of Article 21 for children. At the cost of repetition it is stated that the State has to create an environment and build support systems which facilitate access of children to their rights under Article 21 and 21-A of the Constitution of India.

58. Learning environment and support systems flowing from Article 21 of the Constitution of India have to be age appropriate and sensitive to circumstances in their development and nuanced in their application to children. The aforesaid environment and support systems are irrevocable entitlements of children of inmates residing with the latter in jails. The protective armour of Article 21 of the Constitution of India entails insulation of said category of children from negative influences in the jails, and also envisages

their holistic development and balanced growth of children.

59. Life of a child under Article 21 will not be defined by the adverse circumstances presented by fortuitous events, but their<sup>30</sup> right to life will be determined by the luminous mandate of Article 21 and Article 21-A of the Constitution of India propounded in constitutional law.

### **VII (A). Child Protection System: Duties of Stakeholders : Directions**

60. Relevant statutory provisions become activated and the respective statutory and State authorities are immediately triggered into action, the moment a child is confined to prison by default after the arrest of their<sup>31</sup> parents.

61. Each child is unique. Children are not units in a crowd. Every child in distress is a victim of peculiar adversities. The baleful influence of jail environment on the said category of children are externalities (circumstances which are not caused by them and over which they have no control). Nature endows children with special gifts and potentialities which are peculiar to each child. Influences which negatively impact a child's psychology have to be addressed in facts of each case. Potentialities which a child possesses have to be nurtured to their full stature on a child to child basis. Individual care of this nature is the essence of the child rights jurisprudence as evolved by the legislatures and the courts alike. The aforesaid object can be achieved by preparing an individual care plan for every child who is lodged in prison after the incarceration of their<sup>32</sup> parent.

62. Various authorities have been created under the JJ Act and other legal instruments to uphold the rights of children who reside in prisons consequent to incarceration of their parents. The police, Child Welfare Committee, District Legal Services Authorities, medical authorities, education authorities, district administration are enjoined to provide the entitlements and support systems to children by virtue of constitutional law holdings and statutory enactments. Duties are also imposed on jail authorities under the Jail Manual and pronouncements of constitutional courts. The said authorities are liable to cooperate with each other in attaining the constitutional and statutory goals for the benefit of children.

63. Duties of the authorities in regard to the aforesaid class of children and corresponding directions to be executed by them are set out in the succeeding paragraphs:

#### **VII A (I). The State Government**

64. Principal Secretary, Women and Child Development, Government of U.P. has to ensure that the State executes following directions:

I. To create a structured programme/scheme with supporting infrastructure for education, health, wellness and holistic development of children of inmates who reside with latter in jails and to protect them for negative influences resulting from the stay in jail.

II. The aforesaid programme shall be created in consultation and coordination with different departments of the State Government like Education Department, Health Department, other relevant departments and expert institutions.

III. The aforesaid programme shall cater to all aspects related to the lives of the said class of children. Few exemplars of activities and support systems to be included in the said programme are:

a. Health and Nutrition of children;

b. Exposure of children to sunlight and fresh air;

c. Educational needs including admission to preschool/kindergarten schools and primary schools in the facts and circumstances of each case. The schools shall not be located in the prison premises;

d. Creative pursuits, outdoor activities and access to playgrounds. Existence of separate spaces in prisons for children;

e. Programme for emotional and psychological development of children;

f. Maximizing interaction and activities of the said children in schools with their schoolmates;

g. Exclude negative influences and prevent contact with other prisoners. Areas where children reside should not be accessed by other prisoners;

h. Development of appropriate pedagogy of children of this category;

i. Attachment with CCIs for evening activities;

j. Appointment of mentor teachers.

The aforesaid activities are illustrative in nature, and not the exhaustive list of elements of the said programme. The programme shall also be compliant with constitutional law holdings discussed in this judgement and relevant statutory provisions.

IV. It is open to the State Government to enlarge the list of activities and support systems as and when required. Other ministries and authorities including

the ministries/departments of Law, Jails, Education, Medical and Health and any other department of the state as may be required shall fully cooperate with the Department of Women and Child Development, Government of U.P.

V. The State Government may also consult with NIMHANS, Bangalore and other expert institutions and universities for development of the aforesaid programme for children.

VI. To implement relevant provisions of the Jail Manual.

VII. To support development of individual child care plans and facilitate their implementation.

VIII. Regular oversight of implementation of the directions at State and district level and creation of a system of accountability at various levels.

#### **VII A (II). District Administration**

65. District Administration of respective districts shall execute the following directions:

I. Respective authorities of the local administration shall implement the programme framed by the State Government in compliance of the directions in this judgement.

II. To ensure admission of children in preschool/kindergarten/primary school in the facts of each case.

III. To aid the development and execution of individual child care plans by the DPO.

#### **VIIA (III) Jail Department**

66. Principal Secretary, Department of Jail, Director General (Prisons), as well as Jail Authorities of district jails shall execute the following directions:

I. The concerned jail authorities shall inform the CWC about the child confined to jail consequent to the imprisonment of their<sup>33</sup> parent. The jail authorities shall also provide access to CWC to the child who is residing in jail. The child shall be produced before the CWC.

II. The children shall reside with their respective parents in separate barracks which should be effectively separated/barricaded from other prisoners. It shall be ensured that the children have no contact with other prisoners.

III. The jail authorities in coordination with the local administration shall ensure admission of the children to preschool/kindergarten/playschool/primary school in the facts of each case. The said schools shall not be located in the jail premises.

IV. The jail authorities shall provide access to playgrounds and other support systems to the said class of children to participate in outdoor activities and creative pursuits with other children of their age group outside the jail premises.

V. Creches shall be maintained in the jail premises where children of the aforesaid classes are residing.

VI. Jail Authorities shall ensure to provide quality medical care and proper nutrition to children who are lodged in jail after the imprisonment of the latter.

VII. Jail Authorities to implement the policy of the State Government which will be developed in pursuance to the directions given earlier.

VIII. To support the implementation of individual child care programmes.

IX. To implement the provisions relating to children in the Jail Manual/Model Jail Manual.

**VII A (IV) Police Authorities**

67. The police authorities of respective districts to execute the following directions:

I. Local police authorities to promptly inform the CWC and DPO about the child who is lodged in jail after the arrest of the parent.

II. Inform the court hearing the bail application about production of the child before the CWC.

**VII A (V) Child Welfare Committee**

68. The CWC of respective districts to execute the following directions:

(1) To visit jails and investigate the conditions of children residing in jails with their parents.

(2) CWC shall promptly frame a report regarding the status of the child and shall also make findings in regard to various relevant aspects including the following parameters:

- A. Health,
- B. Education facilities
- C. Overall development,
- D. Insulation from other prisoners
- E. Compliance of the directions in this judgement
- F. Execution of the scheme of government made in pursuance of this judgement.

G. Implementation of the individual child care plan to be created by District Probationary Officer.

(3) CWC shall submit the aforesaid report to the court at the hearing of bail application of the parent of the child.

(4) CWC shall also submit the said report to respective State authorities and authorities of district administration.

(5) Submit reports before competent authorities to ensure that children above 6 years who are residing with their parents (under trials/convicts) in jails are sent to Observation Homes.

(6) CWC shall examine each case of children below 6 years.

**VII A (VI) District Probationary Officers**

69. The DPOs of respective districts to execute the following directions:

(i) To create individual care plan for holistic development of each child in prison residing with their parent in jail, after consultation with experts.

(ii) The individual care plan shall include various parameters including the following:

- A. Health
- B. Nutrition Plan
- C. Exposure to sunlight and fresh air
- D. Education
- E. Sports, extra-curricular and creative activities
- F. Overall well rounded development
- G. Maximum interface of the children with their school mates and other children of their age outside the jail premises.

H. Appointment of mentor teacher at school

These activities are only exemplars and not exhaustive.

(iii) The individual care plan shall provide or shielding the child from negative influences in jails, and prevent contact of the child with other prisoners.

(iv) Implement the plan in coordination with government authorities at the local level.

**VII.B Training of Stakeholders/respective department of the State Government for framing individual care plans for each child:**

70. Constant supervision and regular training of stakeholders is the key to prevent the violation of rights of children who are lodged in prisons with their parents, and are indispensable for realizing the rights of the said class of children as discussed in this judgement.

71. Respective departments of the State Government shall organize regular training programmes for following stakeholders to sensitize the latter of their duties and to build their capacities to execute the directions in this judgement:

1. Police
2. CWC
3. Jail Authorities
4. District Probationary Officers – DPOs in particular will need special training for drawing up Child Care Plans
5. Medical authorities

**VII (C) Response of the State Government and achieving concert between different departments**

72. The affidavit filed on behalf of Principal Secretary (Women and Child Development) Government of UP, Lucknow discloses that proper cooperation and coordination between various departments of the State has not been achieved. Lack of coordination and cooperation between various State departments is obstructing the implementation of law and delaying the realization of rights of children in jails. This situation cannot go on and has to be addressed squarely and promptly.

73. Experience of governance shows that at times departments act in silos which causes impediments in achieving policy objectives. Consequences of lack of coordination between departments has also engaged the attention of the Supreme Court.

74. While dealing with issues of inter departmental cohesion and the need for inter departmental concert the Supreme Court in **Oil and Natural Gas Commission and Another Vs. Collector of Central Excise**<sup>35</sup>, directed the setting of an interdepartmental committee:

“3. We direct that the Government of India shall set up a Committee consisting of representatives from the Ministry of Industry, the Bureau of Public Enterprises and the Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings in between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation. Government may include a representative of the Ministry concerned in a specific case and one from the Ministry of Finance in the Committee. Senior officers only should be nominated so that the Committee would function with status, control and discipline.

4. It shall be the obligation of every Court and every Tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.”

75. Subsequently **Oil & Natural Gas Commission Vs. Collector of Central Excise**<sup>36</sup> held as under:

“3. The purpose of setting up this High-Powered Committee was to ensure that, as far as possible, the controversies between a Ministry and a Ministry of the Government of India, a Ministry and a public sector undertaking of the Government of India and between public sector undertakings themselves are resolved by recourse to the High-Powered Committee and that time-consuming and expensive litigation is avoided.”

76. The need for for inter-departmental cooperation and coordination for efficient functioning of government was also emphasized in **Elizabeth Jacob Vs. District Collector, Idukki and others**<sup>37</sup>:

“19. This case demonstrates, though in a very limited manner, the lack of cooperation and coordination between government departments. All departments should function in the interest of the public and for public good. Merely because a particular department or an authority functions under a particular statute, it does not follow that they should or could ignore the provisions of other statutes. Interdepartmental cooperation and coordination is vital for the smooth and successful functioning of the Government. But unfortunately there is thriving interdepartmental rivalries and a mutual non-caring attitude towards the functioning of other departments and enforcement of other statutes. Non-cooperation between the Revenue Department and the Forest Department, the Revenue Department and the Mines and Minerals Department, the Forest Department and the Mines and Minerals Department, are too well known.

Unless immediate and serious steps are taken for improving the coordination, cooperation and understanding among various departments, offenders will escape, violators will walk away, national resources will be swindled, and public interest will suffer. Be that as it may.”

77. The Supreme Court in **Society for enlightenment and voluntary Action and Anr vs Union of India**<sup>38</sup> held as under:

“3. Convergence and Continuity of Services

3.1. The Chief Secretaries of all States/UTs shall designate an appropriate authority who shall ensure the convergence of services across various government departments and agencies to create a cohesive support system for vulnerable and at-risk communities. This includes:

3.1.1. Regular inter-departmental meetings to coordinate efforts and resources among education, health, social welfare, and law enforcement sectors to address the multifaceted nature of child marriage; and

3.1.2. Establishing community-based resource centres that provide information and support related to education, legal rights, and social services to families at risk of child marriage.”

78. Synergy in policy and concert in action between various government departments is an imperative necessity to realize the rights of children. Having perused the affidavit filed by Principal Secretary (Women and Child Development) Government of UP, Lucknow, and the judgments in **Society for enlightenment and voluntary Action (Supra)**, **Oil & Natural Gas Commission (Supra)**, **Elizabeth Jacob (Supra)** this Court is of the definite opinion that

coordination among various departments of the State Government namely Child and Women Welfare, Health, Police, Jails, Basic Education can only be attained by directing the Chief Secretary, to convene a meeting of the heads of the said departments and any other relevant departments and frame a policy for implementation of child rights as discussed in this judgement.

79. Accordingly the Chief Secretary, Government of U.P. is directed to execute the following directions:

A. To call for a meeting of various Principal Secretaries and other responsible officials of different ministries including Women and Child Development, Law, Jails, Education, Health, DGP. Other ministries and authorities may also be called if deemed appropriate. The Committee of the different departments shall have proper coordination to ensure timely preparation of the scheme and infrastructure for welfare, education, holistic development and realization of rights of children of the aforesaid class as discussed in this judgement. The Department of Women and Child Development shall be the nodal ministry to execute this task.

B. The process shall be concluded within a period of two months from the date of receipt of a certified copy of this order.

80. Shri Ashok Mehta, learned Additional Advocate General shall cause the copies of this judgement to be served upon respective heads of departments (as mentioned above) and advise them on the compliance of the above directions.

**VIII. Implementation of Law and Role of Courts : Junaid Vs. State of UP. and Rajendra Prasad Vs. State of U.P.**

81. Constitutional oversight on the rights of children is perpetual, and the courts are permanent guardians of children. A old writer made the following observations as regards the role of law and duties of instruments of law towards children:

“The law protects their persons, preserves their rights and estates, excuseth their laches and assists them in their pleadings, the judges are their counsellors, the jury are their servants and law is their guardian.”

82. The child rights jurisprudence as embedded in the Constitution of India, international instruments, statutes and judicial precedents as applicable to the current controversy converge on these first principles:

(1) Recognition of the vulnerability of children to abuse and exploitation, the inability of children to resist or rise over their circumstances, and incapacity of children to defend themselves against abuse or unhealthy influences.

(2) Duty of the State to provide a protective environment and support systems for shielding children from unhealthy influences and exploitation and to foster their well rounded growth and holistic education.

(3) Affirmation of the obligations of the courts to realize childrens' rights.

83. Rights of children of prisoners who are residing with them in jails are traceable to multiple statutes and legal instruments. Diverse statutes and multiple agencies do not manifest disparate legislative aims. This Court faced a with similar situation blended the statutes to

realize a common legislative intent in **Junaid Vs. State of UP**<sup>39</sup> held as under:

“58. What then is the task of the Court? The task of the Court is to achieve the overarching and underlying legislative intent by integrating the various statutes into an unified legal framework. This requires corraling up the assortment of statutory bodies under a single legal umbrella, establishing synergy in aims, and ensuring concert in action of said authorities.”

84. This Court in **The New India Assurance Company Limited Vs. Sri Yamin and others**<sup>40</sup> realized the overreaching legislative aim permeating several enactments by blending the statutes:

“48. M.V. Act and E.C. Act are separate statutes which cover distinct fields and envisage proceedings in different tribunals. However, diversity of statutes does not necessarily depict disparate legislative intendments and multiplicity of forums cannot cause denial of legal entitlements. Comparative examination of the statutes made in the preceding paragraphs also manifests the overlapping areas of operation of the two enactments. The overarching congruency of purpose and the underlying similarity of objects of the two statutes evidenced in the common fields of operation can be achieved by an integrated interpretation of the enactments. Provisions of one statute and authorities thereunder can be applied by analogy to the other enactment to realise the legislative intent of the latter.

49. Integrated approach of statutory construction will ensure that the claimants are not denied their legal entitlements under the enactments merely because one forum is chosen in preference

to proceedings under the other Act. Integrated interpretation will entail a composite reading of the statutes and conflated application of analogous judicial authorities. The statutes will be read as part of an extended legislative scheme to the extent of their overlapping and consistent fields of operation.

50. Now the caution. Before invoking the integrated method of statutory interpretation certain prerequisites have to be established and while applying it various limitations have to be observed. Firstly, it has to be established for a fact that the claimants had a right to equally approach either of the two tribunals under the respective statutes. Secondly, the legal entitlements of the claimants have to be affirmed in the facts of a case. Thirdly this line of enquiry shall be applied only in common and overlapping areas of the statutes. Lastly this method of construction shall not extend to provisions which disclose a contrary intent or fields which are covered by specific provisions under the respective enactments.

51. The endeavour of the Court should be to realise the statutory intent of both enactments by benefiting the claimants without prejudice to other party. The Court cannot depart from any express provisions or Act in a manner contrary to the statutory scheme of either enactment.”

85. Responsibility is cast on the courts/magistrates considering the bail applications of prisoners to uphold the rights of their children who reside in jails with the latter.

86. The rights and entitlements of said class of children as discussed earlier can be realized at the stage of bails and during the trials only by bringing the concerned statutory authorities like Child Welfare

Committee (CWC), medical authorities, police authorities, and relevant district authorities, jail authorities within the scope of the jurisdiction of the learned courts (including magistrates and trial courts) hearing bail applications. The Courts have to alert the said authorities of their duties towards the said class of children. The said authorities shall remain accountable to the courts (including magistrates and trial courts) for the purposes of implementing the rights of the aforesaid children as propounded in the preceding discussion during the course of bail proceedings of their parents. The courts have to ensure that the authorities discharge their statutory duties and that beneficent provisions of law for children are enforced.

87. During the bail hearing, the said authorities namely the police and CWC have to respectively apprise the court about the manner in which the rights of children of the accused as determined in this judgment have been implemented. The courts are under an obligation of law to examine the said reports, make relevant enquiries from the said competent authorities, and record their satisfaction as regards implementation of the rights of the children of prisoners who are staying in jail. The court can issue appropriate directions to the authorities to implement the rights of the said class of children as expounded in this judgement.

88. The narrative can be fortified by authorities in point. In **Junaid v. State of U.P. and another**<sup>41</sup>, wherein it was held:

"42. However, the said judgments are not entirely bereft of precedential value for Allahabad High Court. The application has to be nuanced. It has to be stated that the said judgments of Delhi High Court and

Bombay High Court enrich legal debate, and elevate the concerns of child rights to the conscience of the court. The judgments have sensitized the process of law and ameliorated the plight of child victims by acknowledging the responsibilities of the courts and making the CWC, Legal Services Authorities and police officials accountable to courts in bail applications. These recognizable principles of law can be clearly distilled from Reena Jha (supra), Miss G (supra), Arjun Kishanrao Malge (supra)."

89. Similarly this Court in **Rajendra Prasad Vs. State of U.P.**<sup>42</sup> while dealing with child victims made the following observations to remove all impediments which come in the way of realization of child rights during legal proceedings:

"9. Various authorities have been created under the POCSO Act to uphold the rights of victims. The said authorities like police, Child Welfare Committee, District Legal Services Authorities, medical authorities, district administration are enjoined by the statute to provide the entitlements under the POCSO Act to victims like support persons, medical specialists, legal aid, beneficial schemes of the government and so on. Responsibility is cast on the courts/magistrates considering the bail applications in POCSO offences to ensure that entitlements of the victims are provided and the rights conferred by the said enactment are enforced. Faithful execution of the said responsibilities will ameliorate the disadvantages faced by child victims in legal proceedings.

10. The rights and entitlements of the victims under the POCSO Act can be realized at the stage of bails and during the trials only by bringing the concerned statutory authorities like Child Welfare

Committee (C.W.C.), medical authorities and the police authorities within the scope of the jurisdiction of the learned magistrates/learned trial courts. The said authorities shall remain accountable to the learned magistrates/trial courts for the purposes of implementing the rights of the aforesaid victims during the course of various legal proceedings including bails. The said authorities have to apprise the trial court about the manner in which the rights of victims under the POCSO Act have been implemented. The learned trial courts are under an obligation of law to consider the said reports, make relevant enquiries from the said competent authorities and record their satisfaction as regards access of victims to their entitlements and support systems under the POCSO Act.

13. The reports depicting compliance of the above parameters and details of the facilities and support systems provided to the child victims as per law shall be submitted by the Child Welfare Committee (CWC) and the police respectively before the court at the hearing of the bail applications. The learned trial courts shall examine the aforesaid reports at the time of hearing of the bail applications and if required shall issue appropriate directions.”

### **IX. Order in bail application**

#### **A. Merits of bail & directions to expedite trial**

90. This is the first bail application.

91. By means of this bail application the applicant has prayed to be enlarged on bail in Case Crime No. 0590 of 2023 at Police Station - Modi Nagar, District Ghaziabad, under Sections 363, 302, 201

IPC. The applicant is in jail since 16.10.2023.

92. The bail application of the applicant was rejected by the trial court on 14.05.2024.

93. The applicant has been identified as the principal offender who murdered her minor step child and threw his body in a tank situated in the house. The dead body was recovered at the pointing out of the applicant. The applicant had the motive to commit the offence. The offence is grave. There is likelihood that the applicant had committed the offence. At this stage, no case for bail is made out.

94. Without going into the merits of the case, the bail application is dismissed.

95. Learned counsel for the applicant contends that the trial is moving at a snail's pace and shows no sign of early conclusion. The prosecution is deliberately delaying the conduct of the trial to prolong the incarceration of the applicant. Various other aspects delaying the trial have also been highlighted including the failure of the trial court to faithfully implement the mandate of Section 309 Cr.P.C. Other bottlenecks which cause delay in trials in the State of U.P. like failure of the police to promptly serve the summons and execute coercive measures issued by the trial court to compel the appearance of the witnesses have also been brought to the notice of the Court. Learned counsel's submissions are well founded and are liable to be addressed.

96. Considering the gravity of the offence, interest of justice will be served by

directing the learned trial court to expedite the trial.

97. Though no specific time frame to conclude the trial has been set out in the Cr.P.C., yet the legislative intent of Section 309 Cr.P.C. is explicit. The scheme of the provision clearly shows that the legislative intent is to conclude the trial in an expeditious time frame. In the facts of this case, the learned trial court shall make all endeavours to conclude the trial expeditiously. Preferably the trial court shall set for itself a reasonable time frame to conclude the trial say one year from the date of receipt of a certified copy of this order.

98. The trial court has also to be conscious of the rights of the accused persons and is under obligation of law to ensure that all expeditious, necessary and coercive measures as per law are adopted to ensure the presence of witnesses. Counsels or parties who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

99. All witnesses and counsels are directed to cooperate with the trial proceedings.

100. The learned trial court shall issue summons by regular process as per Section 62 Cr.P.C. and also by registered post as provided under Section 69 Cr.P.C. to expedite the trial.

101. The learned trial court shall promptly take out all strict coercive measures against all the witnesses in accordance with law who fail to appear in the trial proceeding. Counsels or parties

who delay or impede the proceedings should not only be discouraged from doing so but in appropriate cases exemplary costs should also be imposed on such parties/ counsel.

102. The police authorities shall ensure that warrants or any coercive measures as per law taken out by the learned trial court to ensure that the attendance of the witnesses are promptly executed.

103. Deputy Commissioner of Police, Ghaziabad shall file an affidavit before the trial court on the date fixed regarding status of execution of the warrants/service of summons taken out by the learned trial court.

104. The delay in the trials caused by the failure of the police authorities to serve summons or execute coercive measures to compel the appearance of witnesses at the trial despite a statutory mandate, is an issue of grave concern. The said issue had arisen for consideration before this Court in **Bhanwar Singh @ Karamvir Vs. State of U.P.**<sup>43</sup> & **Jitendra v. State of U.P.**<sup>44</sup> This Court in **Bhanwar Singh @ Karamvir (supra)** & **Jitendra (supra)** had issued certain directions to the police authorities regarding their statutory duty to promptly serve summons and execute coercive processes to compel the appearance of witnesses.

105. The Director General of Police, Government of U.P. as well as Principal Secretary (Home), Government of U.P. had taken out relevant orders in compliance of judgements in **Bhanwar Singh @ Karamvir (supra)** & **Jitendra (supra)** and nominated the Senior Superintendent of Police of the concerned districts as the

nodal officials for implementing the said judgments.

106. The counsels as well as the learned trial court are directed to comply with the directions issued by this Court in **Noor Alam Vs. State of U.P.**<sup>45</sup> In case any strike happens during the course of the trial, the learned trial court is directed to ensure full compliance of the directions issued in **Noor Alam (supra)** to prevent delay in the trial.

107. In case the police authorities are failing to comply with the directions issued by this Court in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** and do not implement the said directions of the Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. in regard to service of summons and execution of coercive measures to compel the appearance of witnesses, the learned trial court shall direct the concerned Senior Superintendent of Police to file an affidavit in this regard.

108. The learned trial court shall be under an obligation to examine whether the judgements of this Court in **Bhanwar Singh @ Karamvir (supra) & Jitendra (supra)** as well as directions of Director General of Police, Government of U.P. & the Home Secretary, Government of U.P. issued in compliance thereof have been implemented or not and to take appropriate action as per law.

109. The learned trial court shall also take appropriate measures in law after receipt of such affidavit which may include summoning the concerned officials in person.

110. It is further directed that in case any accused person who has been enlarged

on bail does not cooperate in the trial or adopts dilatory tactics, the learned trial court shall record a finding to this effect and cancel the bail without recourse to this Court.

111. The trial judge shall submit a fortnightly report on the progress of trial and the steps taken to comply with this order to the learned District Judge.

112. A copy of this order shall also be communicated to the learned trial judge through the learned District Judge, Ghaziabad as well as Deputy Commissioner of Police, Ghaziabad by the Registrar (Compliance) by E-mail.

**IX (B). Directions to create a child care plan and realize the rights of the applicant's minor child**

113. Directions are issued to the District Magistrate, Jail Superintendents, CWC of district Jhansi to ensure that the rights and entitlements of the minor child of the applicant are realized by taking appropriate steps as directed in this judgement. In particular it shall be ensured that child is admitted to a school which is situated outside the jail premises. The child shall not have any contact with other prisoners (except his mother) and parents of similarly situated children who are residing in jail.

114. Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar shall in coordination with District Probationary Officer, Jhansi prepare an individual child care plan for the son of the applicant in light of this judgement. The child care plan shall be prepared within two months from the date of receipt of a copy of this order after due

consultation with various authorities and experts.

115. The State Government to provide necessary support to Ms. Richa Upadhyay, HJS/Secretary, DLSA, Gautam Budh Nagar and the District Probationary Officer, Jhansi to accomplish this task. Copy of the said individual child care plan shall be provided to the jail authorities, CWC and BSA. The District Magistrate, Jhansi shall also ensure that the aforesaid child care plan is duly implemented by the concerned authorities of the local administration.

116. The CWC, Jhansi shall prepare a regular report regarding implementation of the aforesaid plan and submit a report to the concerned authorities.

**X. Circulation of copies for compliance**

117. Learned Additional Advocate General to ensure service of copy of this judgement for necessary compliance upon the following authorities:

- i. Principal Secretary, Women and Child Development, Government of U.P.
- ii. Principal Secretary, Law/Legal Remembrancer, Government of U.P.
- iii. Director General of Police, Government of UP
- iv. Principal Secretary, (Prisons), Government of UP
- v. Principal Secretary (Basic Education), Government of UP
- vi. Principal Secretary, Health and Medical Education, Government of UP
- vii. CWC members in all districts
- viii. District Jail Superintendents of all district jails
- ix. Police Chiefs of all districts

- x. District Probationary Officers of all districts
- xi. Director, JTRI, Lucknow
- xii. District Magistrate, Jhansi

118. Registrar General to ensure that a copy of this order is provided to Ms. Richa Upadhyay, Additional District Judge/Secretary, DLSA, Gautam Budh Nagar.

119. A copy of this order translated in Hindi to be served to the applicant.

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(2025) 1 ILRA 53

**APPELLATE JURISDICTION**

**CRIMINAL SIDE**

**DATED: ALLAHABAD 21.01.2025**

**BEFORE**

**THE HON'BLE ASHUTOSH SRIVASTAVA, J.**

Criminal Misc. Bail Application No. 29850 of 2020

**Sreedhar Prasad**

**...Applicant**

**Versus**

**State of U.P.**

**...Opposite Party**

**Counsel for the Applicant:**

**Counsel for the Opposite Party:**

**Criminal Law - Indian Penal Code, 1860 - Sections 420, 467, 468 & 120-B - Information Technology Act, 2000 - Section 66 - Code of Criminal Procedure, 1973 - Section 362 (Now Section 403, BNSS 2023) - Bail - Application for modification of order - Maintainability - High Court vide order dated 12.10.2020 enlarged applicant on bail on his furnishing a personal bond of Rs. 1 Lac with two sureties (one should be of his family members) each in like amount to satisfaction of Court concerned. (Para 2)**