MANU/UP/2578/2018

Equivalent Citation: 2018(2)ACR1941, 2018(6)ADJ60

IN THE HIGH COURT OF ALLAHABAD

Criminal Revision No. 4009 of 2017

Decided On: 09.04.2018

Appellants: **Mangesh Rajbhar**
Vs.
Respondent: **State of U.P. and Ors.**

Hon'ble Judges/Coram:
Jahangir Jamshed Munir, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Hari Bhawan Pandey and Ramesh Kumar Shukla

For Respondents/Defendant: G.A.

JUDGMENT

Jahangir Jamshed Munir, J.

1. Heard Sri Hari Bhawan, learned counsel for the revisionist and Sri Shyamdhar Yadav, learned AGA alongwith Sri Vivek Dubey, learned counsel appearing on behalf of the State. This revision is directed against an order of Sri Mohd. Aslam, learned Sessions Judge, Ballia dated 25.10.2017 passed in Criminal Appeal (Juvenile) No. 56 of 2017 whereby the learned Sessions Judge has dismissed the appeal affirming an order dated 6.10.2017 passed by the Juvenile Justice Board, Ballia refusing bail to the revisionist in Case Crime No. 570 of 2017 under Sections 376, 506, IPC and Section 3/4 POCSO Act, P.S. Ubhaon, District Ballia.

2. The facts giving rise to the revision in brief are that a first information report was lodged on 9.5.2017 at about 17:45 hours by the informant Ramraj Rajbhar, a resident of village Sonadih, P.S. Ubhaon, District Ballia being a scribed information to the police carrying allegations that on 8.5.2017 at about 3:00 p.m. while his minor daughter (Muniya Kumari) aged about 10 years had gone to attend the call of nature, the accused Manglesh Rajbhar enticed her away, carried her off into a Gumati and ravished her. He gave her Rs. 5/- as an allurement to keep her mouth shut. On returning home, his daughter informed the parents about the incident. It is also mentioned in the FIR that the prosecutrix is a mentally retarded child. The submission of learned counsel for the revisionist is that the revisionist was declared a juvenile by the Juvenile Justice Board on 15.9.2017, his age being found on the date of occurrence to be 15 years, 10 months and 23 days, a fact that is not in issue. The date of birth of the revisionist is 15.6.2001 as recorded in his school certificate which clearly places him below the age of 16 years. The submission is that the revisionist, looking to his age being below 16 the heinous nature or otherwise of the offence imputed to cannot be looked into for the purpose of judging his mental and physical capacity to commit such offences, and, it is not a case where considerations on the lines of those under Section 15 and 18 (3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 can be invoked to deal with the revisionist as an adult judging the worth of all allegations/charges on merits.

3. The moot point involved in this appeal, a child below 16 years has to be dealt with

for the consideration of his bail under Section 12 (1) of the Act without looking over the shoulder into those provisions of the law that now permit to find the mind of an adult in the body of a child.

4. Section 12 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 postulates bail to be the rule for every child in conflict with law whether the offence to be bailable or non bailable notwithstanding anything contained in the Code of Criminal Procedure, and, carves out three distinct exceptions under which bail to a child may be refused, to wit:

1. Where there are reasonable grounds for believing that the release is likely to bring the child into association with any known criminal

2 . The release is likely to expose the child to moral, physical or psychological danger

3. The release of the child would defeat the ends of justice.

5 . This proviso to Section 12 (1) of the Act is attended by a further legislative mandate that in case the Board decides to deny bail to a child the Board shall record reasons for the said decision and the circumstances that led to such a decision.

6 . A reading of the order passed by the Juvenile Justice Board leaves much to be desired. There is reference to a report in the order of the Board about the social standing of his family being average but their economic condition poor. The said observation in the impugned order of the Board is a recitation of the District Probation Officer's report with no finding on this issue.

7 . Turning to the requirements of recording reasons and spelling out those circumstances where bail is denied to a child as postulated in the proviso to Section 12 (1) of the Act, the impugned order passed by the Board does no more than paraphrase the provisions of the statute. It does not record with reference to evidence available findings on the parameters mentioned in the proviso to Section 12(1) of the Act where bail may be refused on facts and evidence emerging in the present case. An echoing and recitation of the statutory provisions of the proviso to Section 12 (1) of the Act is certainly not in the opinion of this Court the requirement of the law which the Board are charged to fulfill while dealing with a child's plea for bail.

8. This Court cannot but fail to notice that the Board in the order impugned have said which reads thus in the words of the Board (in Hindi Vernacular):

"उक्त अपराध भी जघन्य प्रवृत्तिका है"

9. The issue whether the heinous character of the offence would be relevant, and, if relevant, how far that would actually control the decision of the Board under that last part of the clause in the proviso to Section 12(1) of the Act that is a charter to refuse bail which says that bail may be refused to a juvenile also in those case where release would defeat the ends of justice. To this we would revert a little later.

10. In between has intervened the judgment of learned Session Judge who has approved the decision of the Juvenile Justice Board to deny the bail to the revisionist.

11. A perusal of the impugned order passed by the Judge in appeal shows that he has noticed what the Board had already taken into consideration, that is to say, the social and financial status of the guardian of the juvenile, the opinion of the Board

that in view of the nature of the offence it is desirable to detain the juvenile in a protection home instead of releasing him on bail, the further fact that a charge-sheet has been submitted against him, and, thereafter, the learned Judge has also recited in paraphrase the requirements of the three parameters where bail may be refused to a juvenile under the proviso to Section 12 (1) of the Act.

12. Learned Judge thereafter has reflected upon the District Probation Officer's report to hold that the social and financial status of the members of the juveniles' family is good and there is no criminal background in the family and has gone on to record that there is no other criminal case registered against the juvenile or one where the juvenile is involved. He has also perused the report of the District Probation Officer to record that the nature of the crime as such does not adversely affect the relationship of the guardian and the juvenile or the crime is such on the basis of which it can be said that the accused appellant, if released on bail, he will fall in the company of known criminals.

13. A perusal of the last part of the learned Judges' orders appears to be a mix-up of his own findings and the submission of learned counsel appearing for the revisionist. The learned Judge has also taken note of an authority of this Court cited before him in Nitin Pal (minor) v. State of U. P. and another, MANU/UP/0619/2015 : 2015 (2) JIC 229, where the principle expounded was that in considering the bail plea of a juvenile merits/gravity of the offence will not be the sole guiding factor for the decision. The learned Judge has virtually extracted as the impression would go, the head note from the report.

14. In the last limb of the impugned order, the learned Judge says that the accused has committed rape of a minor girl aged about 10 years and an idiot at that. He has referred to the action of the accused in enticing away a minor for committing rape and thereafter giving her Rs. 5/-. The learned Judge has taken note of the statement of the minor prosecutrix recorded under Section 161 Cr.P.C. Where she is said to have stated that the revisionist took her to his house and committed rape in the Gumti near his house. Thereafter, he gave her Rs. 5/- to buy herself some toffee. Learned Judge has noticed that the prosecutrix has been medically examined. At this stage, the appellate Judge in a quick jump conclusion held that from the above circumstances it is clear that the accused has committed a preplanned rape of an idiot girl and after committing rape, he has given Rs. 5/- to the victim which apparently has led the Judge to conclude sub silentio application of the provisions of Section 18 (1) of the Act to hold valid the detention of the juvenile in a Special Home as directed by the Juvenile Justice Board, though not for the specified period or required by Section 18(1) (g) of the Act.

15. It must be placed in bold letters that under the Act as it now stands there are classes within the class of juveniles for whom the Act has been made with a precarious balancing of welfare, reform, rehabilitation and like objects for the juvenile to be sub-served on one hand and the interest of the society as much to be preserved from violent invasion by this class of offenders called juveniles.

16. The Act now sees a number of provisions balancing the competing interest of reform, rehabilitation and welfare of the juvenile on one hand and protection of the society from the juvenile onslaught on the other hand. In this connection, particularly, the proviso to Section 12 (1) of the Act has authorized, refusal of bail to a juvenile in case where it would defeat the ends of justice. The provisions of Section 15 and 18 of the Act as they now stand are the embodiment of a mechanism now devised to do a fine tune of balance between the interest of the child in conflict with law and the society in conflict with juvenile.

17. To achieve the above end, the Act as already said has broadly created within class of juveniles, the two broad sub-classes (1) juvenile aged below 16 years; and (2) juveniles aged between 16 to 18 years.

18. In addition, a perusal of Section 18(1) of the Act shows a further sub-classification within the class of juveniles who are below 16 years, one class of juveniles irrespective of the age being below or above 16 years who are charged with commission of a petty offence or a serious offence and another class of juveniles who are below 16 years but have committed a heinous offence. The aforesaid classification last referred is thus seen: there is one classification between juveniles broadly made by Section 15 of the Act on the basis of age being 16 years or below and between 16 to 18 years; and, the other and more certain one based in one part on the gravity of the offence irrespective of age, and, in the second part based on age and the gravity of the offence taken together, to which allusion has been made hereinabove. In this context, it is apposite to quote the provisions of Section 15 and 18 of the Act that are extracted below:

> **15.** Preliminary assessment into heinous offences by Board.-(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) 18:
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> > Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
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> Explanation.-For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
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> (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):
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> > Provided that the order of the Board to dispose of the matter shall be [appealable] under sub-section (2) of Section 101.
>
> Provided further that the assessment under this section shall be completed within the period specified in Section 14.
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> **18.** Orders regarding child found to be in conflict with law.-(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,-
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> > (a) all the child to go home after advice or admonition by following appropriate inquiry and counseling to such child and to his parents or the guardian;

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

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

(d) Order the child or parents or the guardian of the child to pay fine:

> Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

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

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

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

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

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

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme

(3) Where the Board after preliminary assessment under Section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

19. A reference to the above provisions show a fine classification of juveniles and their differential treatment envisaged by the Act but that would be complete only by

reference to the definition of three terms of much consequence employed under Section 18(1) of the Act, that is to say, "petty offence, serious offence and heinous". The three terms in that order are defined under Section 2 (45), 2(54) and 2(33) of the Act. The same are quoted below.

> SECTION 2:
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> (45) "petty offences" includes the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years;
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> (54) "serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years
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> (33) "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more.

20. It appears, at this stage, that in the concluding part of impugned order passed by the learned Judge in appeal and that passed by the Authority of the first instance (the Juvenile Justice Board), both have converged on a reasoning that has fallen back at the surface on the last part of the proviso to Section 12 of the Act which authorizes refusal of bail, in case where it is felt that enlarging the juvenile/child in conflict with law would defeat the ends of justice. Here this Court does revert back to the scrutiny of the Board's order as well as the appellate order, with the two being analyzed together.

21. Before this Court also, as was the case before the learned Judge in the appellate Court, the decision of this Court in Nitin Pal (minor) v. State of U.P., MANU/UP/0619/2015 : 2015 (2) JIC 229, was cited with a firm foot for the proposition that bail to a minor is the rule and can only be refused on grounds where merits/gravity of the offence are not the sole guiding factor for determination. The emphasis is on the more specific categories in the proviso to Section 12(1) of the Act being the grounds on which bail may be refused, that is to say, cases where there appears to be reasonable grounds to believe that on release, the juvenile is likely to come into association with any known criminals or the release would expose him to moral, physical or psychological danger. In the submission of learned counsel for the appellant, the third category that his release would defeat the ends of justice is to be read ejusdem generis with the first two grounds and so read, in the submission of the learned counsel for the appellant, bail can be denied only in the event where the Court finds the interest of minor compromised but not on the strength of the prosecution case or the gravity of the offence. Learned counsel for the revisionist in support of the said proposition depended on the decision in Nitin Pal (supra) referring to paragraph Nos. 11 and 12 of the report which are extracted below.

> "11. In view of the mandate aforesaid, it is obvious that if the aforesaid conditions are existing and there is reasonable likelihood of minor coming into association with any known criminal or he is likely to be exposed to moral, physical or psychological danger or his release would defeat the ends of justice, then the bail to the delinquent juvenile in conflict with law will not be allowed.
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> "12. Even as per settled position of law, the merits/gravity of the offence will not be the sole guiding factor for disposal of the bail application of the delinquent juvenile in conflict with law. It is true that the first information

report has been lodged against the revisionist under Section 376(2) (g) and 364 I.P.C. but gravity of the offence loses significance in view of the report of the District Probation Officer dated 20.7.2013 annexed as Annexure 11 to the affidavit filed in support of this revision, wherein, it has been specifically stated that the parents of the minor are willing to reform their child. This positively indicates that parents are ready to take custody of their son with a will to improve upon his life."

22. No doubt, generally speaking bail is the rule in the case of a juvenile, even after the enforcement of the present Act, in cases of juveniles below the age of 16 years, and, burden is on the prosecution to show that on the parameters specified in the proviso to Section 12 (1) of the Act bail should be denied to a juvenile. In this connection reference be made to an order passed by this Court in the case of Raja (minor) v. State of U.P. in Criminal Appeal No. 1113 of 2017 decided on 4.5.2017. In this case, the Court has endorsed the view that burden is on the prosecution to bring the case within one of the exceptions under the proviso to Section 12(1) relying on an authority of the Hon'ble Supreme Court in Jitendra Singh v. State of U.P., MANU/SC/0679/2013 : 2013(11) SCC 193, which makes a clear statement of the law on a reading of paragraph 5 of the judgment in Raja (minor) (supra).

"39. The provision dealing with bail (Section 12 of the Act) places the burden for denying bail on the prosecution. Ordinarily, a juvenile in conflict with law shall be released on bail, but he may not be so released if the reappear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

23. This Court from what appears on a further reading of the judgment in Raja (minor) (supra) did not construe the last of the three grounds for the refusal of bail to a juvenile in the proviso to Section 12(1) of the Act ejusdem generis; rather, this Court in that case referred to the merits of the case and related the ground for denying bail to the juvenile being released on bail "would defeat the ends of justice" with the merits of the prosecution case. In other words, this Court found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor. In this connection paragraph Nos. 11, 12 and 13 of the judgment in Raja (minor) (supra) may be gainfully quoted.

"11. The report of the medical examination of the victim clearly shows that the revisionist had forced himself upon the victim, who was seven years old child and in the statements under Sections 161 Cr.P.C. and 164 Cr.P.C, the child had clearly deposed about how she was taken away by the revisionist and later on caught on the spot by the public and he pretended to be taking a bath. In the orders impugned, there is specific mention about the fact that the revisionist was accused by name by the victim, who was studying in class II and the release on bail of the revisionist would defeat the ends of justice.

12. Having gone through the record of the case including statement under Section 161 Cr.P.C. and the statement under Section 164 Cr.P.C. given by the victim and also the report of the medical examination of the victim, which shows penetration by force and resultant injury, I am of the opinion that there is no legal infirmity in the orders impugned as the release on bail of the revisionist would indeed defeat the ends of justice.

13. No doubt, the Juvenile Justice Act is a beneficial legislation intended for reform of the juvenile/child in conflict with the law, but the law also demands that justice should be done not only to the accused, but also to the accuser."

24. It is not that this aspect of the gravity of the offence has been considered irrelevant to the issue of grant or refusal of bail to a minor in the past and before the present Act of 2015 came into force. In a decision of this Court under the Juvenile Justice Act, 2000 where the interest of the society were placed seemingly not on a level of playing field with the juvenile, this Court in construing the provisions of Section 12 in that Act that were pari materia to Section 12 of the Act in the matter of grant of bail to a minor held in the case of Monu @ Moni @ Rahul @ Rohit v. State of U.P., MANU/UP/1144/2011 : 2011 (74) ACC 353, in paragraph Nos. 14 and 15 of the report as under:

"14. Aforesaid section nowhere ordains that bail to a juvenile is a must in all cases as it can be denied for the reasons".....if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

15. In the light of above statutory provision bail prayer of the juvenile revisionist has to be considered on the surrounding facts and circumstances. Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. It has a reformative approach but does not completely shun retributive theory. Legislature has preserved larger interest of society even in cases of bail to a juvenile. The Act seeks to achieve moral physical and psychological betterment of juvenile offender and therefore if, it is found that the ends of justice will be defeated or that goal desired by the legislature can be achieved by detaining a juvenile offender in a juvenile home, bail can be denied to him. This is perceptible from phraseology of Section 12 itself. Legislature in its wisdom has therefore carved out exceptions to the rule of bail to a juvenile."

25. The Hon'ble Supreme Court in the case of Om Prakash v. State of Rajasthan and another, MANU/SC/0308/2012 : (2012) 5 SCC 201 : 2012 (2) ACR 1825 (SC), has brought in due concern in matters relating to" juveniles where the offences are heinous like rape, murder, gang-rape and the like etc., and, has indicated that in such matters, the nature and gravity of the offence would be relevant; the minor cannot get away by shielding himself behind veil of minority. It has been held in Om Prakash (supra) by their Lordships thus:

"3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special Court for holding trial of children/juvenile by the juvenile Court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile Court or should he be referred to a

competent Court of criminal jurisdiction where the trial of other adult persons are held.

23. .....Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him."

26. It seems thus that the suggestion of the learned counsel for the revisionist that bail to a juvenile or more properly called a child in conflict with law can be denied under the last ground of the proviso to Section 12 ejusdem generis with the first two and not with reference to the gravity of the offence, does not appear to be tenable. The gravity of the offence is certainly relevant though not decisive. It is this relevance amongst other factors where gravity of the offence committed works and serves as a guide to grant or refuse bail in conjunction with other relevant factors to refuse bail on the last ground mentioned in the proviso to Section 12 (1) of the Act, that is to say, on ground that release would "defeat the ends of justice".

27. Under the Act, as it now stands there is further guidance much more than what was available under the Act, 2000 carried in the provisions of Section 15 and 18 above extracted and the definition of certain terms used in those sections. A reading of Section 18 of the Act shows that the case of a child below the age of 16 years, who has committed a heinous crime as defined in the Act is made a class apart from cases of petty offence or the serious offence committed by a child in conflict with the law/juvenile of any age, and, it is further provided that various orders that may be made by the Board as spelt out under clause (g) of Section 15depending on nature of the offences, specifically the need for supervision or intervention based on circumstances as brought out in the social investigation report and past conduct of the child. Though orders under Section 18 are concerned with final orders to be made while dealing with the case of a juvenile, the same certainly can serve as a guide to the exercise of power to grant bail to a juvenile under Section 12(1) of the Act which is to be exercised by the Board in the first instance.

28. Read in the context of the fine classification of juveniles based on age vis-Ã -vis the nature of the offence committed by them and reference to a specifically needed supervision or intervention, the circumstances brought out in the social investigation report and past conduct of the child which the Board may take into consideration, while passing final orders under Section 18 of the Act it is, in the opinion of this Court, a good guide for the Board while exercising powers to grant bail to go by the same principles though embodied in Section 18 of the Act, when dealing with a case under the last part of the proviso to Section 12(1) that authorizes the Board to deny bail on ground that release of the juvenile would "defeat the ends of justice."

29. Thus, it is no ultimate rule that a juvenile below the age of 16 years has to be granted bail and can be denied the privilege only on the first two of the grounds mentioned in the proviso, that is to say, likelihood of the juvenile on release being likely to be brought in association with any known criminal or in consequence of

being released exposure of the juvenile to moral, physical or psychological danger. It can be equally refused on the ground that releasing a juvenile, that includes a juvenile below 16 years would "defeat the ends of justice." In the opinion of this Court the words "defeat the ends of justice" employed in the proviso to Section 12 of the Act postulate as one of the relevant consideration, the nature and gravity of the offence though not the only consideration in applying the aforesaid part of the disentitling legislative edict. Other factors such as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child would also be relevant that are spoken of under Section 18 of the Act.

30. In this context Section 12 and 18 and also Section 15 (Section 15 not relevant in the case of a child below 16 years) and other relevant provisions all of which find place in Chapter IV of the Act are part of an integrated scheme. The power to grant bail to a juvenile under Section 12(1) cannot be exercised divorced from the other provisions or as the learned counsel for the revisionist argues on the other specific disentitling provisions in the grounds mentioned in the proviso to Section 12(1) of the Act. The submission made based on the rule of ejusdem generis urged by the learned counsel for the revisionist is misplaced, in the opinion of this Court.

31. Turning to the facts of the present case, no doubt the case of the applicant falls in the category of a heinous offence as defined under Section 2(33) of the Act and by its nature being one that is against the safety and security of women in society is certainly to be approached with caution when liberty is sought for a juvenile charged with an offence of this kind. Also, as said by the appellate Court, in particular, the offence would become more serious, looking to the fact that the victim is a child who is said to be a mental retard and an idiot. The learned Judge of the appellate Court has gone by that consideration and stopped there. In the opinion of this Court, there are other relevant facts which the learned Judge of appellate Court and also the Board should have bestowed their consideration upon; the first of these factors is the prima facie complicity of the revisionist in the offence that would also be seen for an adult offender before a regular Court, if he applied for bail.

32. Moreover, in the context of the Act the Courts below were also required to see the specific need for supervision or intervention, circumstances as brought out in the social investigation report and the past conduct of the child. It appears from a reading of the judgment of learned appellate Judge that though he has looked into the social investigation report submitted by the District Probation Officer, his approach has been a halfway house. A little careful perusal of the social investigation report would have enlightened the Judge on the prima facie complicity of the revisionist in the case and also provided him an insight into other relevant factors in the exercise of his power to grant and refuse bail under the clause that he has depended upon to deny bail to the revisionist, the one involving "defeat the ends of justice." In this connection, the report of the District Probation Officer annexed as Annexure 5 to the affidavit needs to be perused that carries an eloquent summary of the prima facie truthfulness of the allegations. The possibility that the victim did not herself understand what has happened, not being consistent with her allegation, and, in particular, "the past conduct of the child which is also a very relevant factor. The relevant part of the report of the District Probation Officer as follows:

"जांच के दौरान स्थानीय लोगों से बातचीत करने पर पता चला की अपचारी के परिवार/सदस्य का कोई अपराध पंजीकृत नहीं है व किशोर का भी इससे पहले कोई अपराध पंजीकृत नहीं है। कुछ लोगों से घटना के बारे में पुछने पर मिली जुली प्रतिकिया सामने आयी। कुछ लोगों ने बताया की लडके को फंसाया गया है। व कुछ लोगों व गांव के प्रधान ने बताया कि लडकी/पिड़ीता मंद बुद्धि बालिका है कभी हॉ कहती है तो कभी ना कहती है। लड़की के दिमाग का संतुलन सही नहीं रहता है। व ग्राम के प्रधान ने बताया की लड़के का व्यवहार सबके प्रति ठीक है। लड़का पढ़ने में भी ठीक ठाक है।

रिपोर्ट सेवा में सादर प्रेषित।

जिला संरक्षण अधिकारीध्परिवीक्षा अधिकारी

बलिया।

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जिला प्रोबेशन कार्यालय, बलिया"

33. The learned Judge has himself recorded in the bail order that the financial and social status of the family is good and there is nothing in the report that the father would not be able to keep the boy/revisionist under his guidance and control. There is also a mention that the family have no criminal background and no criminal case is registered against the revisionist, has been noticed by the appellate Court.

34. The aforesaid facts and circumstances, in the opinion of this Court render the boy/revisionist, who was decidedly below of 16 years on the date of occurrence, entitled to be released on bail and the judgments of the Courts below, not sustainable.

35. In the result, this revision succeeds and is allowed. Impugned orders dated 25.10.2017 passed by he learned Sessions Judge, Ballia in Criminal Appeal No. 56 of 2017 and the order of the Juvenile Justice Board passed in Misc. Case No. 65 of 2017 are hereby set aside and reversed. The bail application made on behalf of the revisionist through his father stands allowed. Let the revisionist through his natural guardian/father Raj Bahadur Rajbhar be released on bail in Case Crime No. 520/2017 under Section 376, 506 IPC and Section 3/4 POCSO Act that his father furnishing a personal bond with two solvent sureties of his relatives each in the like amount to the satisfaction of the Juvenile Justice Board, Ballia subject to the following conditions:

(i) that the natural guardian/father Raj Bahadur Rajbhar will furnish an undertaking that upon release on bail the juvenile will not be permitted to go into contact or association with any known criminal or expose to any morale, physical, danger and further that the father will ensure that the juvenile will not repeat the offence.

(ii) that the father will further furnish an undertaking to the effect that the juvenile be placed in a school and encouraged to his studies and not allowed to waste his time in unproductive and mere recreational persuades.

(iii) The revisionist and his father Raj Bahadur Rajbhar will report to the District Probation Officer once every Monday from the first Monday

commencing with the first Monday of May, 2018 and if during any calendar month first Monday falls to a holiday then on the following working day.

(iv) The District Probation Officer will keep strict visit to the activities of the revisionist and regularly draw his social investigation report that would be submitted to the Juvenile Justice Board, Ballia on such periodical basis as the Juvenile Justice Board chooses.