

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 4044 OF 2018

1. Saurabh Jalinder Nangre,
age: 18 years, Occ.- Student
2. Vijay Mansingh Nangre,
age: 18 years, Occ.- Student
3. Kunal Namdeo Nangre,
age: 18 years, Occ.- Student,
residing at Hubalwadi, Talu. Walva,
Dist. Sangli. ...Petitioners

Versus

State of Maharashtra,
through the Islampur Police Station,
Sangli ...Respondent

.....
Mr.Satyavrat Joshi for the Petitioners.
Mr.Yogesh Y. Dabke, APP for the Respondent -State.

.....
CORAM: MRS.MRIDULA BHATKAR, J.
DATED: DECEMBER 10, 2018

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission.
2. In this Petition, the order dated 19th January, 2018 passed by Juvenile Justice Board, Sangli District below exhibit 1 in J.C. No. 145 of 2017 and also the order dated 13th July, 2018 passed by Juvenile Justice Board, Sangli below exhibit 1 in J.C. No. 145 of 2017 are challenged.

3. The legal issue is raised as follows :

Whether a child, who has not committed heinous offence can be transferred to Children's Court?

4. The present petitioners were not adult when an offence of attempt to commit murder punishable under section 307 of Indian Penal Code, 1860 (of "IPC") was committed. They all were about 17 years old, but below 18 years of their age. Therefore, admittedly, they fall within the definition of section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the said Act").

5. Under section 2 (12) of the said Act, "child" means a person who has not completed eighteen years of age.

6. As all the petitioners were about 17 years old, but below 18 years old, Juvenile Justice Board referred them to a psychologist for assessment by an order dated 19th January, 2018. Pursuant to the said order, assessment report as per section 15 of the said Act was placed before Juvenile Justice Board, Sangli. The Board has considered the facts of the case and also interacted with Child in Conflict with Law (CCL) and made their assessment that the mental as well as physical capacity of CCL was sufficient to commit crime. All the three petitioners were aware about the consequences and they have voluntarily participated in the offence and, therefore, Juvenile Justice Board

transferred the matter to Children's Court as per section 18 (3) of the said Act.

7. The learned counsel for the petitioners has submitted that the petitioners being "child" if not have committed heinous crime, then they are to be tried by Juvenile Justice Board and not to the Children's Court. He has further submitted that if they are tried by Children's Court, then prejudice will be caused to them in view of rigor section 19 of the said Act.

8 The learned APP has submitted to the orders passed by this Court.

9. Under section 15 of the said Act, preliminary assessment in respect of offence whether is heinous, is to be made by Juvenile Justice Board. The word "heinous offences" is defined under section 2 (33) of the said Act, which states as follows :

"2 (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".

10. Section 2 (54) of the said Act defines "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.

11. Under section 307 of IPC, minimum punishment is not prescribed, but punishment may extend to ten years and fine, and if hurt is caused to any person, then punishment can be extended upto life imprisonment.

12. Thus, due to the benchmark of minimum punishment of 7 years or more, section 307 of IPC cannot fall within the ambit of heinous offences.

13. Section 15 of the said Act states as under :

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

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

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

2. Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

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

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

Therefore, section 15 of the said Act cannot be attracted. There was no need to refer to the matter or conducting any preliminary assessment with regard to the mental or physical capacity to commit such offences or ability to understand consequences of the offences. So the case of these petitioners should not have been considered under section 15 of the said Act, but it straight way falls under section 18 of the said Act, which states that, when a child is found to be in conflict with law and Juvenile Justice Board is satisfied on inquiry that a child has committed either a petty offence or a serious offence and if the child is below 16 years old, then considering the nature of the offence, Juvenile Justice Board may require to take certain decisions and pass an order according to section 18 (1) (a) to (g) of the said Act.

14. Section 18 (3) of the said Act states that, on preliminary assessment under section 15 if heinous offence is committed by a child between the age group of 16 to 18 years, then Juvenile Justice Board may transfer the trial of the case of that child to Children's Court .

15. The powers of Children's Court are stated in section 18 of the said Act. Section 18 (3) of the said Act will definitely cause prejudice to a child in conflict with law if he is sent to the Children's Court for trial.

16. Under section 19 (3) of the said Act, as pointed out by the learned counsel for the petitioners, Children's Court may send a child to a place of safety till he attains the age of 21 years and thereafter, the person shall be transferred to a jail.

17. Thus, if a child is between 16 to 18 years, is required to send for inquiry under section 15 of the said Act only when he commits heinous offence. Juvenile Justice Board has to take the following steps :-

(a) **To ascertain the age of the child**

Whether he is above 16 years old, but below 18 years old?

(b) **Nature of the offence**

(i) Whether the offence is heinous under section 2 (33) of the said Act, which is to be decided on the basis of minimum punishment of 7 years for the offence;

(ii) Whether it is a heinous offence or a serious offence or a petty offence;

(iii) In the offence, if minimum punishment is given for 7 years, then only it is to be considered as heinous offence under section 2 (33) of the said Act.

(c) Juvenile Justice Board has to take into account section 18 of the said Act. If the child has committed (a) serious offence (b) petty offence or (c) child below 16 years if has committed heinous offence, then Juvenile Justice Board is required to pass an order after taking into account the circumstances as mentioned in section 18 (a) to (g) and 18 (2) of the said Act.

(d) Juvenile Justice Board to consider section 15 of the said Act only if the offence is of heinous nature and it is committed by a child, who is between 16 to 18 years, then Juvenile Justice Board shall go for preliminary assessment.

(e) Under section 15 of the said Act, Juvenile Justice Board may take the assistance of expert physiologists or psycho-social workers.

(f) Thereafter, Juvenile Justice Board shall pass an order under section 18 (3) of the said Act if child as an adult by transferring the trial of the case to Children's Court.

(g) The Children's Court to try the child as per section 19 of the said Act.

18. In the present case, all the petitioners though are between the age group of 16 to 18 years, they have not committed heinous offences and, therefore, their case is not covered under section 15 of the said Act and no order can be passed under section 18 (3) of the said Act of transferring the case to Children's Court. Hence, the order dated 19th January, 2018 passed by Juvenile Justice Board of Sangli District and also the order dated 13th July, 2018 passed by Juvenile Justice Board, Sangli are quashed and set aside and the inquiry is to be conducted by Juvenile Justice Board, Sangli under section 18 (3) of the said Act.

19. Writ Petition is allowed. Rule is made absolute in terms of prayer clauses (a) and (b).

(MRIDULA BHATKAR, J.)