MANU/UP/5235/2018

Equivalent Citation: 2018(3)ACR3211

IN THE HIGH COURT OF ALLAHABAD

Crl. Revision No. 3283 of 2017

Decided On: 14.08.2018

Appellants: **Yash Anand**
Vs.
Respondent: **State of U.P. and Ors.**

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

Counsels:
For Appellant/Petitioner/Plaintiff: Sanjay Kr. Srivastava, Ajay Kr. Srivastava and Sandeep Shukla

For Respondents/Defendant: A.G.A. and Anurag Sharma

JUDGMENT

Jahangir Jamshed Munir, J.

1. This Criminal Revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "Act") is directed against an order of Sri Vinay Kumar Dwivedi, the then Additional Sessions Judge, Court No. 8/Special Judge (P.O.C.S.O. Act), Meerut dated 21.9.2017 made in Bail Application No. 4293 of 2017 relating to Case Crime No. 417 of 2017, under Sections 354, 376, 511, I.P.C. and Section 3/4 of the P.O.C.S.O. Act. Police Station Transport Nagar, District Meerut.

2. The facts giving rise to the present revision need not be elaborated in detail for this Court proposes to dispose of this revision on an issue of jurisdiction of the learned Special Judge (P.O.C.S.O. Act) to deal with the revisionist's bail application. Nevertheless, a brief resume of facts is necessary to place the issues involved in perspective.

3. A first information report came to be lodged by the complainant/opposite party No. 2 on 16.6.2017 at 20:05 hours reporting that earlier in the day at 15:30 hours his minor daughter and prosecutrix of the case, who was later on found to be 18 years of age, has been ravished by the revisionist when she had gone over to his shop to buy sugar.

4. The revisionist was arrested in connection with the aforesaid crime and produced before the learned Special Judge (P.O.C.S.O. Act), where he raised the plea of juvenility through an application made for the purpose that was registered as Misc. Criminal Case No. 713 of 2017. He supported that plea amongst others by the record of his age in the High School Examination evidenced by his Certificate-cum-Mark Sheet for the High School Examination-2016 dated 15th May, 2016 issued by the Board of High School and Intermediate Education, U.P. There the date of birth of the revisionist recorded is 17.3.2001. Going by the aforesaid date of birth, on the date of

occurrence the revisionist was aged 16 years, 2 months and 19 days. The said application of the revisionist claiming juvenility was heard by the learned Special Judge (P.O.C.S.O. Act), and, determined in accordance with the provisions of Section 9 (2) read with Section 94 (2) of the Act to find the revisionist a child in conflict with law aged 15 years, 11 months and 21 days on the date of occurrence vide an order dated 19.8.2017. It may be noticed here that on the date of occurrence, i.e., 16.6.2017, the age of the revisionist, reckoned with reference to his date of birth mentioned in his High School Certificate, would work out to be 16 years, 2 months and 19 days. Thus, it must be placed on record that while the learned Special Judge (P.O.C.S.O. Act) rightly held the revisionist a child in conflict with law aged below 18 years on the date of occurrence, to all seeming by an arithmetical error, recorded his age to be 15 years, 11 months and 21 days instead of 16 years, 2 months and 19 days. That in any case, however, would not make much difference to outcome for in either event the revisionist would still be a child in conflict with law, aged below 18 years. And, in any case, the revisionist's arithmetically reckoned age going by his date of birth recorded in his High School Mark Sheet on the date of occurrence is 16 years, 2 months and 19 days. The fallacious result in arithmetical calculation of age carried in the order dated 19.8.2017 has, therefore, to be ignored.

5. It is common ground between the parties that the order dated 19.8.2017 passed by the learned Special Judge (P.O.C.S.O. Act), Meerut declaring the revisionist a juvenile was never challenged by any party to the proceeding, including State, and attained finality. Thus, proceedings in the matter after that declaration had to take course as mandated by the Act. In some measure they did. A reading of the order dated 19.8.2017 declaring the revisionist a juvenile shows that the learned Special Judge (P.O.C.S.O. Act) directed, after holding the revisionist a child in conflict with law, in the following terms (translated from Hindi vernacular into English):

> "Accordingly, the accused Yash Anand is declared a child in conflict with law. All concerned be informed to proceed further accordingly. Let the Sessions Clerk ensure compliance. Let the papers of the child in conflict with law, the police papers and other papers be laid before the Juvenile Justice Board for further proceedings in the matter. This Misc. Criminal Case is disposed of accordingly."

6. Now, to the understanding of this Court with the revisionist being held a juvenile and Misc. Criminal Case No. 713 of 2017 being disposed of by the learned Special Judge (P.O.C.S.O. Act) vide order dated 19.8.2017, all further proceedings in the matter under the Act would be in the exclusive jurisdiction of the Juvenile Justice Board. No matter for the said reason, the learned Special Judge (P.O.C.S.O. Act) in the concluding part of his order dated 19.8.2017 has directed the papers to be transmitted to the Juvenile Justice Board for further proceedings, thus, removing the matter from his Board as required by law. This issue that is the cynosure of all that this revision is about would be answered a little later in this judgment.

7. The court has to go on a little way more about the proceedings that have led to this revision for the learned Special Judge (P.O.C.S.O. Act) did not lay his hands off the matter after declaring the revisionist a juvenile. The revisionist for his part too did not opt out of the jurisdiction of the learned Special Judge (P.O.C.S.O. Act), apparently under wrong legal advice. Despite being declared a juvenile by the learned Special Judge (P.O.C.S.O. Act), he filed an application for bail, again to all seeming under Section 439, Cr.P.C. The learned Special Judge (P.O.C.S.O. Act) assumed jurisdiction over the bail application made on behalf of the revisionist and

decided it on merits by his order dated 21.9.2017. The learned Judge did so even though by his earlier order dated 19.8.2017 he had directed all the judicial, police and other papers relating to the case to be transferred to the Juvenile Justice Board for further proceedings. It is, thus, a little surprising how the learned Judge, thereafter entertained an application for bail by the revisionist. Even if the revisionist did file an application for bail to the learned Special Judge (P.O.C.S.O. Act) by mistaken legal advice or for whatever reason, once the learned Judge did not have jurisdiction over the matter, the revisionist having been declared a juvenile under the Act, it is too well-settled for a legal proposition that consent of parties would not confer jurisdiction upon a court.

8. A reading of the impugned order discloses that while the learned Special Judge (P.O.C.S.O. Act) was aware of the fact, as he must surely have been, that the revisionist was a child in conflict with law, proceeded to determine the bail application on merits going by the same parameters as would apply to the case of an adult offender. He did not deal with the bail plea in accordance with Section 12 (1) of the Act. There is at the tail end of the impugned order a remark by the learned Special Judge (P.O.C.S.O. Act) which perhaps led him albeit erroneously to assume jurisdiction in the matter. He has said there as follows (translated into English from Hindi vernacular):

> "Therefore, in the light of the facts and circumstances, and, in view of the fact that on the date of the occurrence the child in conflict with law was above 16 years, there are no sufficient grounds to release him on bail."

9. It is perhaps inspiration taken by the learned Special Judge (P.O.C.S.O. Act) from the provisions of Section 15 (1) read with Section 18 (3) of the Act that say that a child above the age of 16 years involved in a heinous offence as defined under the Act, if found by the Board in a preliminary assessment with regard to the mental and physical capacity to commit such offence, the ability to understand the consequences of the offences, and, the circumstances in which he allegedly committed the same, may pass an order in accordance with the provisions of Section 18 (3) of the Act. These provisions authorise the Board, in consequence of the assessment made under Section 15, to come to a conclusion that there is a need for trial of the said child as an adult, and, in that case, the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences. The learned Special Judge (P.O.C.S.O. Act) was perhaps led into dealing with the bail application made by the revisionist on merits, even after declaring him a juvenile, thinking that the offence being heinous as defined under the Act, and, the child being above 16 years of age, he was authorised to deal with his bail application on merits like that of an adult, understanding the statutory provisions under Sections 15 and 18 (3) of the Act that way.

10. Sri Sandeep Shukla, learned counsel for the revisionist has submitted, however, that once the learned Special Judge (P.O.C.S.O. Act) declared the revisionist a juvenile vide order dated 19.8.2017 and ordered transfer of the case to the Juvenile Justice Board, he had absolutely no jurisdiction in the matter. Even if a bail application was mistakenly filed before the learned Special Judge, he would still have no jurisdiction to deal with it, as it is well known that jurisdiction cannot be conferred by consent.

11. Sri Anurag Sharma, learned counsel appearing for opposite party No. 2 and Sri J.B. Singh, learned A.G.A. alongwith Sri Mayank Awasthi, learned counsel appearing

for the State, on the other hand have contended that for one the revisionist having invoked the jurisdiction of the learned Special Judge (P.O.C.S.O. Act), cannot be permitted to turn around and say now, that the learned Judge has no jurisdiction to decide his bail application, once the event has gone against him. It is further submitted that indeed the provisions of Sections 15 and 18 (3) of the Act authorise a court, in case of a heinous offence committed by a child in conflict with law above the age of 16 years to try him as an adult; a fortiori such a child who can be tried as an adult before the court, can certainly have his bail plea determined by the court in the same manner as an adult. They submit, therefore, that the learned Special Judge (P.O.C.S.O. Act) had all jurisdiction to deal with the revisionist's bail application as an adult, without reference to the provisions of Section 12 (1) of the Act. In their submission, it is also not necessary for the same reason that the revisionist's application should be dealt with by the Board.

12. The issue is whether the learned Special Judge (P.O.C.S.O. Act) who is a court, may be a special court, sitting to try adult offenders, as distinguished from a child in conflict with law entitled to be treated differently under the Act, on an application to declare him a juvenile, having held the revisionist to be a child in conflict with law and directed transfer of the case with all its papers to the Juvenile Justice Board, did he have jurisdiction to deal with his application for bail at all? The further issue is that even if he had jurisdiction to deal with the revisionist's bail application, after declaring him a juvenile could he decide the said application on parameters other than those mandated by Section 12 (1) of the Act? The Act which replaced the Juvenile Justice (Care and Protection of Children) Act, 2015 received Presidential Assent on 31.12.2015 and was enforced w.e.f. 1.1.2016 when it was published in the Gazette of India, extraordinary, Part II, Section 1. It has for its statement of objects and reasons that are extracted below:

> *"Statement of Objects and Reasons*.-Article 15 of the Constitution, *inter alia*, confers upon the State powers to make special provision for children. Articles 39 *(e) and (f)*, 45 and 47 further makes the State responsible for ensuring that all needs of children are met and their basic human rights are protected.
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> **2.** The United Nations Convention on the Rights of Children, ratified by India on 11th December, 1992, requires the State Parties to undertake all appropriate measures in case of a child alleged as, or accused of, violating any penal law, including (a) treatment of the child in a manner consistent with the promotion of the child's sense of dignity and worth (b) reinforcing the child's respect for the human rights and fundamental freedoms of others, (c) taking into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
>
> (3) The Juvenile Justice (Care and Protection of Children) Act was enacted in 2000 to provide for the protection of children. The Act was amended twice in 2006 and 2011 to address gaps in its implementation and make the law more child-friendly. During the course of the implementation of the Act, several issues arose such as increasing incidents of abuse of children in institutions, inadequate facilities, quality of care and rehabilitation measures in Homes, high pendency of cases, delays in adoption due to faulty and incomplete processing, lack of clarity regarding roles, responsibilities and accountability of institutions and, inadequate provisions to counter offences against children such as corporal punishment, sale of children for adoption purposes, etc. have highlighted the need to review the existing law.

(4) Further, increasing cases of crimes committed by children in the age group of 16-18 years in recent years makes it evident that the current provisions and system under the Juvenile Justice (Care and Protection of Children) Act, 2000, are ill equipped to tackle child offences in this age group. The data collected by the National Crime Records Bureau establishes that crimes by children in the age group of 16-18 years have increased especially in certain categories of heinous offences.

(5) Numerous changes are required in the existing Juvenile Justice (Care and Protection of Children) Act, 2000 to address the above mentioned issues and, therefore, it is proposed to repeal existing Juvenile Justice (Care and Protection of Children) Act, 2000 and re-enact a comprehensive legislation inter alia to provide for general principles of care and protection of children, procedures in case of children in need of care and protection and children in conflict with law, rehabilitation and social re-integration measures for such children, adoption of orphan, abandoned and surrendered children, and offences committed against children. *This legislation would thus ensure proper care, protection, development, treatment and approach keeping in view the best interest of the child in mind.*

(6) The notes on clauses explain in detail the various provisions contained in the Bill.

(7) This Bill seeks to achieve the above objectives."

(Emphasis by court)

13. A perusal of the statement of objects and reasons of the Act spare no doubt that it is a widely modified version of its predecessor legislation, the Juvenile Justice (Care and Protection of Children) Act, 2000, the enactment of which was necessitated to deal with a relatively difficult and challenging class of children in conflict with law who were grouped together for a class going by their age being in the age group of 16-18 years. There was an increase in the incident of delinquency and heinous nature of crimes committed by this age group of children. It was certainly one of the chief considerations that catalysed a rather early rethinking and an equally early enactment of the Act within five years of its predecessor statute. Nevertheless, the concluding part of paragraph 5 of the statement of objects and reasons of the Act in particular, besides the same read as a whole, clearly shows that the purpose of the Act is to redeem the child in conflict with law, and not to jettison him from the mainstream of society into that arcade of delinquent adults, about whom the society and the State are not as optimistic. If that had not been the case, there was no difficulty about the legislature lowering the protective ceiling in age defining a child in conflict from 18 to 16 years.

14. Bearing in mind the statement of objects and reasons of the Act, a look at the provisions of Section 9 is of cardinal importance, so far as the issue of jurisdiction of a court to deal with any matter relating to a child in conflict with the law is concerned, be it trial or bail or any incidental matter. The provisions of Section 9 are quoted in extenso:

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall,

without any delay, record such opinion and forward the child immediately alongwith the record of such proceedings to the Board having jurisdiction.

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

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

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

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

(Emphasis by court)

15. A reading of the provisions of Section 9, in particular, Sections 9 (1), 9 (2) and 9 (3) spare little room for doubt that once an accused is held to be a child in conflict with law, at any stage of proceeding, even after final disposal of the case before any court. the child alongwith the record of the proceeding have to be transmitted to the Board having jurisdiction, and, in case of a court that has found that the accused has committed an offence, and, thereafter adjudges him/her to be a child in conflict with law, shall forward such child to the Board for appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

16. In the present case, after holding the revisionist to be a child in conflict with law, the learned Special Judge (P.O.C.S.O. Act) vide his order dated 19.8.2017 directed all proceedings of the case, including police papers and other papers, to be transmitted to the Board as already noticed hereinbefore. Now, thereafter when the revisionist made an application for bail to the learned Special Judge (P.O.C.S.O. Act), for one the entire record had already been transmitted or ordered to be transmitted to the Board leaving the case no longer in seisin of the learned Special Judge (P.O.C.S.O. Act). At this stage, therefore, the learned Special Judge (P.O.C.S.O. Act) did not have jurisdiction to deal with the revisionist's bail application at all. In fact, he had no case relating to the revisionist before him that he had already ordered to be transmitted to the Board. The learned Special Judge (P.O.C.S.O. Act) ought not to have entertained and dealt with the revisionist's bail application. He could have dismissed the bail application as not maintainable with liberty to the revisionist to file the same before the Board. The order impugned passed by the learned Special Judge (P.O.C.S.O. Act) after holding the revisionist to be a juvenile/child in conflict with law vide his order dated 19.8.2017 and ordering all records of the case to be

transmitted to the Juvenile Justice Board is, therefore, a nullity.

17. Even if it be assumed that the learned Judge once approached with a bail application by the child in conflict had jurisdiction, though he had adjudged the revisionist a juvenile and transmitted all records to the Board to deal with the bail application on merits, the impugned order is patently fallacious and manifestly illegal. In that contingency too, the learned Special Judge (P.O.C.S.O. Act) having held the revisionist a juvenile, he could not have dealt with the revisionist's bail application de hors the provisions of Section 12 (1) of the Act, including the attendant proviso. The learned Judge, as a perusal of the impugned order would show, has not at all dealt with the bail plea of the revisionist on the parameters adumbrated in the proviso to Section 12 (1) of the Act. He has dealt with the bail plea as if it were a bail application on behalf of an adult and decided it on the parameters of a plea under Section 439, Cr.P.C. This the learned Judge has done, is evident throughout the length and breadth of the order impugned, though he has expressly referred to the revisionist as a child in conflict with law/juvenile. A juvenile's bail plea cannot be dealt with except in accordance with the provisions of Section 12 (1) of the Act. On this count assuming jurisdiction to be there with the learned Special Judge (P.O.C.S.O. Act), the impugned order is manifestly illegal. However, this is not to say that the learned Special Judge (P.O.C.S.O. Act) had jurisdiction to decide the revisionist's bail plea, which in the opinion of the court, can alone be dealt with in the first instance, by the Juvenile Justice Board.

18. In this context it would be apposite to refer to a decision of Madras High Court in Ajith v. State, Crl. O.P. (MD) No. 24023 of 2015, decided on 19.12.2015. This was a case where the court was dealing with an application, apparently under Section 482, Cr.P.C. by a juvenile apprehending arrest, in relation to offences punishable under Sections 147, 341, 294 (b), 323 of I.P.C. read with Section 3 (1) (x) of the S.C./S.T. Act, 1989. The applicant had sought a direction to the Juvenile Justice Board, Sivagangai, to accept the surrender of the applicant and consider his bail application on the same day on merits. In that context the court further dealt with the issue of exclusive jurisdiction of the Juvenile Justice Board to deal with bail applications made on behalf of a juvenile to the exclusion of the jurisdiction of the Court of Sessions and the High Court thus:

> "8. A conjoint reading of Sections 6 and 12 of the Act would reveal that to deal with all the proceedings including bail, etc., in respect of juvenile, a Juvenile Board is the appropriate authority and it has been constituted exclusively for this purpose and no court, either Sessions Court or High Court has jurisdiction to deal with the proceedings pertaining to a juvenile. Therefore, it is clear that the bail application of a juvenile can be entertained by the Board only when he is arrested or detained or appears or is brought before the Board, otherwise the application cannot be entertained. If the juvenile is arrested or detained or appears or is brought before the Board, then certainly bail application will be filed under Section 12 and the same has to be decided by the Board only, but not by the High Court or Court of Sessions. However, Section 52 of the Act gives right to a juvenile, who is accused of a bailable or non-bailable offence, if he has been refused bail, to file an appeal under Section 52 of the Act within 30 days from the date of such order or after the expiry of the said period if prevented by sufficient cause to prefer an appeal within time, to the Court of Sessions, and in case the appeal fails, he can file a revision against the appellate order before the High Court in accordance with Section 53 of the Act. Therefore, the Act

specifically envisages that the powers conferred on the Board by or under this Act can be exercised by the High Court and the Court of Sessions, only when the proceeding comes before them in an appeal, revision or otherwise.

9. Such being the legal position, if any bail application filed by a juvenile is entertained by the High Court and rejected, certainly, the juvenile would be left with no option, since he would have been deprived of the right of appeal before the Court of Sessions and revision before the High Court. In fact, no provision in the Act or in the Code of Criminal Procedure enables the juvenile to move an application for anticipatory bail either before the Court of Sessions or High Court or even before the Board, which has been exclusively constituted for the purpose of dealing with the proceedings pertaining to a juvenile.

11. In fact, the very object to promulgate the Juvenile Justice (Care and Protection of Children) Act, 2000 is to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment. Therefore, as already discussed above, when the Juvenile Board has been constituted as per the provisions of the Act, 2000 to deal exclusively with all proceedings in respect of a juvenile in conflict with law, no court, either Sessions Court or High Court has jurisdiction to deal with the proceedings pertaining to a juvenile, otherwise, the very purpose of the object would be defeated. Accordingly, bail in respect of the juvenile has to be considered purely under the parameters of Section 12 of the said Act which, in fact, mandates grant of bail to a juvenile unless the Board feels that the release of the juvenile is likely to bring him into association of any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice."

19. There is still an avenue left which the learned counsel for the complainant/opposite party has not left unexplored to say that the learned Special Judge had jurisdiction in the matter, and, jurisdiction also to decide the said bail application like that of an adult. For the purpose learned counsel for opposite party No. 2 has invited the attention of the court to the observation extracted in an earlier part of this judgment, where the learned Special Judge while parting with the matter has recorded in the impugned order that the revisionist is accused of a heinous offence and his age is above 16 years. This Court has remarked there that perhaps the learned Special Judge has been inspired by the provisions of Sections 15 and 18 (3) of the Act into believing that the revisionist being accused of a heinous offence and aged above 16 years, he could be tried as an adult by dint of the aforesaid provision, and, a fortiori to have his bail application dealt with like an adult, and, by the regular court.

20. In this connection, the provisions of Sections 15 and 18 (3) may be gainfully referred to:

"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) 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 subsection (2) of Section 101:

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

18. Orders regarding child found to be in conflict with law.-

(1) x xxx

(2) x x x x

(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."*

(Emphasis by court)

21. A conjoint reading of the provisions of Sections 15 (1) and 18(3) leads one to the inescapable conclusion that before a juvenile who is above 16 years of age and is accused of a heinous offence as defined under the Act may be tried as an adult, an enquiry for the purpose has to be held by the Board statutorily called a preliminary assessment. If at the conclusion of such enquiry, the Board reaches the conclusion enumerated under Section 15 (1) of the Act, the Board may pass an order that there is a need for trial of the child as an adult. In that eventuality the Board would direct transfer for trial of the case to the Children's Court having jurisdiction to try such offences.

22. It is not known to this Court whether the learned Special Judge is the Children's Court has jurisdiction to try offences of which the revisionist is charged, but before the revisionist on account of the offence being heinous, and his age being above 16 years, could be dealt with as an adult for any purpose, including bail, a preliminary assessment on relevant considerations as prescribed by the statute had to be done by the Board and not by the court. An order thereafter under Section 18 (3) might have been passed directing the trial of the revisionist as an adult before the competent Children's Court. A child in conflict with law cannot be tried as an adult except

through the procedure mandated by statute. For the same reason a child in conflict could not have his bail application dealt with as an adult by any court, including the learned Special Judge, unless there is decision in relation to him arrived at by the Board under Section 18 (3) of the Act. The court could not have surreptitiously treated him, as it did, to be an adult in the absence of a declaration made in accordance with law that the revisionist was a child who had to be tried as an adult. Thus, on this premise too, the impugned order rejecting the revisionist's bail application by the learned Special Judge is patently flawed; on account of being again, without jurisdiction.

23. The bail application made by the revisionist having not been dealt with at all in the manner prescribed and by the competent Tribunal under the Act, which in the first instance is the Juvenile Justice Board, it would not at all be appropriate for this Court to assume jurisdiction over proceedings which are held to be taken by the court below without jurisdiction. This Court for the same reason too would have no jurisdiction to deal with the revisionist's bail plea on merits against the order impugned. The remedy has to be sought, in the first instance, before the Board invoking the provisions of the Act.

24. In the result, this revision succeeds and is allowed in part. The impugned order dated 21.9.2017 passed by the Additional Sessions Judge, Court No. 8/Special Judge (P.O.C.S.O. Act), Meerut in Bail Application No. 4293 of 2017 relating to Case Crime No. 417 of 2017, under Sections 354, 376, 511, I.P.C. and Section 3/4 of the P.O.C.S.O. Act, Police Station Transport Nagar, District Meerut, is held to be a nullity with the direction that it would be open to the revisionist to approach the Juvenile Justice Board, Meerut, and, to make an appropriate application for bail where the case is pending, which if made, shall be dealt with and disposed of by the concerned Board with utmost promptitude.