

Bail Provision in Juvenile Justice System and Ground Reality: A Study

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ABSTRACT

At the outset we need to know who is a Juvenile, what type of offences are generally attached to the Juvenile, Powers of authorities regarding detention of the juvenile. All the legal provisions of arrest, detention are subject to reasonable restrictions imposed by various Laws. The Law always recognises and presumes that a person unless convicted is innocent. Section 3(1) The Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after called JJ ACT) lays down fundamental principles in the Juvenile Justice System. Section 12 of the JJ Act specifically mentions the Right to Bail besides other common Laws. It is of common experience that the Courts, particularly the trial Courts are hesitant in granting Bail even where grounds of bail exist. In fact the members of JJ Board are ignorant of Law and they have not been trained in this field. One Principal Magistrate comes from judiciary but he/she is a generally new incumbent and has little experience. Here in this paper efforts have been made to critically analyze the Jurisprudence in regards to bail in the Juvenile Justice System in India. Various pronouncements of High Courts and Supreme Courts will be analyzed. The field study of particular cases dealt with by the JJ Board Gorakhpur will also be shared in this paper.

KEY WORDS: Juvenile, Juvenile Justice, Principle of Natural Justice , detention, arrest, Bail , Section 12, Grounds of Bail, Study

I. INTRODUCTION

There are two categories of Juveniles. One in need of care. The other is a juvenile in conflict with Law. The paper discusses the Doctrinal as well as empirical aspects of the subject. In India the Juvenile Justice System established under the JJ ACT is a unique Law dedicated to persons upto eighteen years. Any person upto eighteen years of age who is delinquent shall be covered by JJ ACT. Any other law has been barred. Under this Act a person convicted for whatever offence can not be sentenced for more than three years. The system works with a pious approach of ensuring the best interest of Child as per section 2(9) of JJ ACT. This is a welfare provision encompassing care, protection development and well being as laid Down in *Rohithanmmana Gowda v. State of Karnataka* 2022. The concept of best interest of child includes Parental association and care as laid down in *Yashita Sahu v. state of Rajasthan*, 2022. Importance of developmental needs have been laid down in *Lahari Sakhamuri v. Shobhan Kodali* 2019. To save and protect from victimization and exploitation has been emphasized in *Eera v. NCT of Delhi* 2017. The Indian Constitution's Article 21, guaranteeing the right to life and personal liberty, is a key factor in interpreting the Juvenile Justice Act. This right is particularly relevant for children, who are considered vulnerable and in need of special care and protection. The Juvenile Justice Act aims to reform and rehabilitate children in conflict with law, rather than simply punishing them. Therefore, bail is seen as the primary way to ensure the child's continued education, development, and family support while proceedings are ongoing. The Juvenile Justice System works on the basic principles listed in Section 3 including the presumption of innocence, best interest not stigmatizing, semantics, equality and non discrimination, family responsibility, diversion, repatriation and restoration and institutionalization as a measure of last resort. These principles carry with them to ensure diversionally, child friendly and child right friendly approach deal with child in conflict with law. The system focuses on the juvenile and addresses the causes which is resultant to his/her vulnerability. The law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, herein under and for matters connected therewith or incidental thereto.

II. CONSTITUTIONAL PROVISIONS REGARDING BAIL

Bail is a provision under law which restores liberty of a person from arrest and detention. The nomenclature of bail has its origin from the term *bailliar* used in French language. This translates to mean to control, to guard, to deliver. This is also noted in the latin term *baiulare* which means to bear a burden.¹ The Law Commission of India has also explained its meaning i.e. release from custody. In the recent times, bail in India is a highly debated issue. There are number of reports that shed light on the state of the criminal justice system in India. More than 50% of all detainees, and in some countries more than 70% are in pre-trial detention..., something is wrong. It usually means that criminal proceedings last far too long, that the detention of criminal suspects is the rule rather than the exception, and that release on bail is misunderstood by judges, prosecutors and the prison staff as an incentive for corruption.

Historically, bail was a tool to ensure the appearance of the person accused of an offence at trial or to ensure the integrity of the process by preventing such a person from tampering with evidence or witness. Under the Criminal procedure Code of 1973 (hereinafter Cr.P.C.), the police, prosecutors magistrates and judges have been enjoined to exercise the best judgment and discretion within the confines of the law for ensuring the appearance of the person accused of an offence without jeopardizing the interests of the society.

In general parlance, bail refers to release from custody, whether it be on personal bond or with sureties. In *Moti Ram v. State of Madhya Pradesh*, the Supreme Court clarified that the definition of the term bail includes both release on personal bond as well as with sureties. It is to be noted that even under this expanded definition, 'bail' refers only to release on the basis of monetary assurance—either one's own assurance (also called personal bond or recognizance) or third party's sureties.

Personal liberty and the rule of law find its rightful place in the Constitution in Article 22 which includes measures against arbitrary and indefinite detention. It further provides that no person shall be detained beyond the maximum period prescribed by any law made by the Parliament. Even with the adoption of an elaborate procedure by the judiciary to deal with matters regarding grant of bail, the system is somehow unable to meet the parameters of an archetypal system giving rise to the notion that the bail system is unpredictable.

Bail in its essence is a fine balance between the right to liberty of the person accused of an offence and the interests of society at large. Thus, the task ahead would not only include stricter bail legislations optimal for dealing with the growing rate of crime, but at the same time making them equitable. This will harmonise the bail legislations with the current socio-legal problems and ensure that under-trials and indigent persons have access to justice.

The concept of bail has been recognized in the various international covenants and instruments upholding human values. Article 9(3) of the International Covenant on Civil and Political Rights, 1966 12 (hereinafter ICCPR) states that the general rule shall not be detention in custody of persons awaiting trial and release may be conditioned on the guarantees to appear at the trial. Similarly, Article 10 (2) (a) of ICCPR also refers to the same principle as it states that accused must not receive same treatment as a convict Above all, Article 14 (2) cardinally provides for the presumption of innocence until proven guilty as an axiomatic principle of law. This principle imposes on the prosecution the burden of proving the charge, ensures that the accused has the benefit of doubt and obliges public authorities to refrain from prejudging trial outcome. It shifts the burden of proof on the prosecution and postulates for an unbiased trial.

Bhartiya Nagarik Suraksha Sanhita 2023 (hereinafter called BNSS) has defined the term **Section 2(b)** "bail means release of a person accused of or suspected of commission of an offence from the custody of law upon certain conditions imposed by an officer or Court on execution by such person of a bond or a bail bond." The term is essentially has element of liberty jurisprudence which strives to protect the liberty of the individual from state excesses.² (KHURSHEED, 2022 P 177-182).

The principle of bail is rooted in article 21 of the constitution of india and provides that a person's liberty is not curtailed or deprived without just cause.

III. IMPORTANCE OF BAIL UNDER THE PROVISIONS OF JJ ACT, 2015

The provision of bail is more specific in the JJ Act. Section 12³ of the Act has to be followed.

(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

¹ SINGHVI, 2022 P.2

² KHURSHEED, 2022 P 177-182

³THE JUVENILE JUSTICE (CARE & PROTECTION OF CHILDREN) ACT,2015

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

The juvenile Justice system in India is governed by JJ ACT which covers all children under age of eighteen years. It also deals with the children who were alleged or found to have committed an offence. As well as the children in need of care from the state. This Act is a dedicated legislation with the objective of ensuring the welfare and protection of child (Preamble). Protection of the best interest of the child is the basis and Goal of decisions and measures taken under JJ ACT.

IV. STATUTORY RIGHT

It has been observed in *Sandeep Ayodhya Prasad Rajak A Minor v. State of Maharashtra, 2022*¹ it has been laid down that section 12 operates as an imperative mandates, this mandate is strongly supported with use of word **SHALL** which signifies that the bail has to be granted as a rule and the Board has no any other option.

The Supreme court has clearly laid down that Bail Is A Mandatory rule in Juvenile Justice System. ² IN THIS JUDGEMENT the Supreme Court has observed that the letter of Law requires that the Child Be released on Bail and the embargo on the liberty of the child can be imposed in only three exceptional situations, which are not in the best interest of the Child. In case the JJ Board choose to skip the grant of Bail the JJB has to play a pro active role to ensure that the immediate grant of Bail in accordance with the letter and spirit of the JJ Act. Supreme Court held in *Juvenile in Conflict with Law v. State of Rajasthan* and another, 2024 that a Child in Conflict with Law cannot be denied bail without recording a finding regarding the applicability of the provisio to section 12(1) i.e the existence of reasonable grounds to deny Bail.

OUTCOME OF THE FIELD STUDY REGARDING GRANT OF BAIL BY JJB GORAKHPUR

During field study it has come to light that in almost all the cases the Board is hesitant in granting bail and contrary to the provisions prefers to deny bail to the child in conflict with law. This is so particularly in serious and heinous cases. For example one case is being mentioned. In this case despite presence of all grounds the JJB denied bail. Saying that the offence alleged was under 376 of IPC and POCSO Act. (case crime number 306of 2023 Police Station Gida District Gorakhpur). In this case the poor juvenile had to approach the children's Court for bail which too has a narrow mind and due to ill found reasons denied the Bail. The juvenile had to travel a long journey from Gorakhpur to Allahabad for seeking Bail in the High Court. It is pity to note that the Punishment is confined to only three years but despite mandatory provisions of section 12 JJ Act High Court had to be approached. As is of common experience a long time is consumed for the case before High Court to come up of actual hearing. To approach the High Court, it is very expensive. A failure on the part of JJ board and the Children's Court to recognize the importance of section 12 despite clear and unambiguous mandate to grant bail. This results into abuse of process of Law and punishment to the Juvenile without trial. This is one example. A number of such cases exist wherein the JJ Board failed to follow mandatory provision contained in section 12 of JJ ACT resulting into miscarriage of justice. This is just because the JJ Board and District level Courts save themselves from motive being attached or to help the prosecution for obvious reasons. In many cases the JJ Board avoids going against the Police contention.

FIR IN PETTY OFFENCES

Under JJ Act it has been prohibited to register an FIR against Juvenile in petty offences. But in all the petty offences an FIR is registered by the police violating the provisions and they produce the Juvenile with the FIR of petty offences.

In turn the JJ Board, to oblige the Police administration does not go deep into the matter and despite unauthorized FIR and detention, it grants blanket remands.

¹ CRIMINAL BAIL APPLICATION NUMBER 3838 OF 2021

² STATE OF TAMIL NADU V. UOI 2020

Most of the time the police at the time of registration of FIR mentions the age of the Child to be Major and produces him in the Court of magistrates. They falsely mention a higher age to punish the child. So that he is sent to central jail with hardened criminals. Here again at the time of granting remand the Magistrate generally does not observe physically the accused person and remand is granted inside the chambers without looking at the accused. For Example it was found in jail visit on 26.7.2025 that one child claiming the age about 14 years was in central Jail Gorakhpur but the police recorded the age as 20 years. Since the remand Magistrate granted the remand from his chambers without physical production of the child, he endorsed the Police version. However the Jail authorities protested against the remand to the Central Jail and sent letters to the Magistrate concerned.

V. CONCLUSION

Unlike BNS or BNSS 2024 The Juvenile Justice Act 2015 is welfare legislation. The intention of the Legislature is to treat the Juvenile as a person who is unable to take decisions regarding himself and is dependent upon the guardians for everything including fooding clothing, shelter , patronage financial needs medical care, education etc. He is dependent upon his guardians what they do shall be done, He cannot do anything of his own. The prudent society has recognized the importance of appropriate and adequate care of the children. The JJ Act 2015 has been passed by parliament to ensure that the welfare aspect should be kept supreme. For all the Children including children in conflict with Law. The best interest of the Child is of paramount importance. The Act 2015 provides only three years punishment in the JJ ACT regarding any offence some of which under BNS carries punishment of life imprisonment, even death penalty. During field study, it is regretted, to express that the cruel mindset of the Police ,Prosecutors and the Board members. Treat the Juvenile as an adult and all type of harsh proceedings are undertaken to defeat the intention of the legislature. Whereas the right of the Child has to be upheld and the attitude of all concern should be focused on reformation and rehabilitation.

It is suggested that all concerned dealing with the Juvenile in conflict with law should be trained in such a manner that they shed their prejudices and bias against the children and positive and effective interpretation of Section 12 of JJ Act 2015, are ensured in the best interest of child.