

Jharkhand High Court

Ajay Bhuiyan @ Ajay Kumar Bhuiyan vs The State Of Jharkhand on 25 August, 2021

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Cr.M.P. No. 561 of 2021

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 561 of 2021

Ajay Bhuiyan @ Ajay Kumar Bhuiyan, aged about 20 years,  
son of Nanka Bhuiyan, resident of Village-Rajbar, P.O., P.S.  
and District-Latehar, represented through his natural guardian  
father Nanka Bhuiyan, son of Bhulan Bhuiyan, resident of  
Village-Rajbar, P.O., P.S. and District-Latehar. .... ... Petitioner

Versus

The State of Jharkhand ..... ... Opposite Party

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CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

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For the Petitioner : Mr. Prashant Kumar Rahul, Advocate For the State : Mrs. Vandana Singh, Sr. S.C.-III.

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C.A.V. on 09.08.2021 Pronounced on 25.08.2021.

Heard Mr. Prashant Kumar Rahul, learned counsel for the petitioner and Mrs. Vandana Singh, learned Sr. S.C.-III, learned counsel for the State.

2. This petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic. None of the parties have complained about any technical snag of audio-video and with their consent this matter has been heard.

3. This criminal miscellaneous petition has been filed for quashing of the order dated 16.06.2020, passed by the learned Principal Magistrate, Juvenile Justice Board, Latehar, whereby by way of invoking power under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, transferred the trial of the case to the learned Children's Court, Latehar and also for quashing of the order dated 29.01.2021, whereby the surrender-cum-bail petition, filed by the petitioner has been rejected. The prayer for quashing of the order dated 03.02.2021 has also been made, by which, charge has been re-framed under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'), in connection with Children Court Case No. 03 of 2020, pending in the Court of learned Additional sessions Judge-I-cum-Children's Court, Latehar.

4. On the following premises, the case in question was lodged:-

The case has been instituted on the basis of the fardbeyan of the informant Reena Devi, alleging therein that she used to work as a cook in Rajhara Gurukul. It is further alleged that on 03.8.2017 at about 7.00 P.M., she along with her colleague Kaushlya Devi, wife of Rajesh Prasad Sao were cooking food for the children of the Gurukul then one Jitendra Singh, the student of the said Gurukul came there with Ajay Bhuiyan (petitioner). It is further alleged that at that time Ayushi Kumar @ Khushi was standing there then the said Ajay Bhuiyan told her to take food with him, thereafter, the said Ayushi ate food with the petitioner. Thereafter the informant went to bathroom after leaving them. It is further alleged that at about 8 P.M. when the informant saw that all the students of the Gurukul were eating food, but the said Ayushi was not there, thereafter she along with Kaushlya Devi, Awadhesh Munda, Gopal Munda and Jitendra Singh made hectic search for the said Ayushi and after finding no clue, the informant returned to Gurukul and further tried to search her, in the meantime at about 10.00 hrs. Ajay Bhuiyan and Ayushi were coming from Panchayat Bhawan situated at Gaushi College. On enquiry, the said Ayushi started weeping in the meantime, Ajay Bhuiyan also came there. The informant asked the reason for weeping from Ayushi, then Ayushi told that the said Ajay Bhuiyan assaulted her and was strangulating her. The said Ayushi also showed her private part indicating ache in her private part. It is also alleged that the informant found blood stained in the cloth of Ayushi and it was also found that the said Ajay Bhuiyan committed wrong with the said Ayushi. On the basis of these allegations, the instant case has been lodged against the petitioner under Section 376 of the Indian Penal Code and Sections 4/8 of the POCSO Act on 04.08.2017.

5. Mr. Prashant Kumar Rahul, learned counsel for the petitioner submitted that the petitioner is innocent. According to him, the petitioner was minor, aged about 17 years at the time of occurrence. He submitted that after investigation, chargesheet has been submitted on 31.08.2017 against the petitioner under Section 376 of the Indian Penal Code and under Section 4 of the POCSO Act. Charge was framed against the petitioner in both the sections on 05.4.2017. According to him after framing of charge, six witnesses have been examined on behalf of the prosecution. After examination of the prosecution witness, statement under Section 313 of the Cr.P.C. was recorded on 07.11.2019 by the Court of learned Additional Sessions Judge-III, Latehar. After statement under Section 313 of the Cr.P.C., the case was transferred to the learned Principal Magistrate, Juvenile Justice Board, Latehar. By invoking power under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the learned Principal Magistrate, Juvenile Justice Board after conducting enquiry came to the conclusion that the petitioner is mentally and physically major to commit offence, alleged to have committed by him and having sufficient maturity of mind to understand the nature and consequences of such offence and the Board is of the view that there is a need for trial of the child as an adult and transferred the trial to the Children's Court, Latehar. The petitioner appeared and filed surrender- cum-bail petition on 29.01.2021 before the learned Children's Court, Latehar. He submitted that the learned Additional Sessions Judge-I, Latehar without conducting any independent enquiry, which is condition precedent under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 rejected the surrender-cum-bail petition of the petitioner and directed the office to prepare custody warrant and send him to Latehar Jail.

6. The main point argued by learned counsel for the petitioner was that Section 19(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 has not been taken care of and straightway this petitioner has been treated as an adult and proceeded in that direction. He further submitted that after transfer the case to the Court of Sessions, again the charge has been framed, which is bad in law.

7. He relied in the case of *Lalu Kumar @ Lal Babu @ Lallu & Ors. Versus State of Bihar*, reported in (2019) 4 Crimes (HC) 249. He referred paragraphs-142 to 152 of the said judgment. The reference made before the Court was sum up at paragraph-178 of that judgment, which is quoted hereinbelow:-

178. We, thus, sum up the references by holding as under:-

Q. (i). Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015?

A. For the reasons recorded hereinabove, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015.

Q. (ii). Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail after the transfer of his case to the Children's Court for trial by the Board ?

A. For the reasons recorded hereinabove, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 after the transfer of his case to the Children's Court.

Q. (iii). Whether the powers conferred on the Board in the matter of bail to a person, who is apparently a child alleged to be in conflict with law are also available to the Children's Court ?

A. In view of clear, unambiguous and specific stipulation in Section 8(2) of the Act of 2015, which provides that the powers conferred on the Board under the Act may also be exercised by the High Court and the Children's Court in the matter of grant of bail to a person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, the powers conferred on the Board under the Act of 2015 are also available to the Children's Court and the High Court.

Q. (iv). Whether seriousness of the offence alleged is a ground for rejecting the bail in case of a child in conflict with law?.

A. Seriousness of the offence alleged cannot be made a ground for rejecting bail under the Act of 2015.

Q. (v). Whether an appeal under Section 101(5) of the Act of 2015 or an application under Section 439 of the CrPC would be maintainable before the High Court by any person aggrieved by the order granting or rejecting bail by the Children's Court?

A. Against an order granting or refusing bail passed by the Children's Court, no application for bail or cancellation of bail under Section Section 439(1) or 439(2) of the CrPC shall lie before the High Court and against such an order only an appeal under Section 101(5) of the Act of 2015 would be maintainable. The 'phrase' "in accordance with the procedure specified in the Code of Criminal Procedure" does not allude to application of the entire CrPC to the Act of 2015. The said reference to the CrPC in Section 101(5) of the Act of 2015 only means that the procedure, and not the substantive Sections, prescribed under Chapter XXIX shall apply to the appeal that could be filed under the said Section. To clarify further, the appeal, in terms of Section 101(5) has to be considered on the basis of material available on the record, i.e., material produced before the Board under Section 13 of the Act of 2015 and considerations arrived at in terms of Section 12 of the Act of 2015 for the purpose of grant of bail and not the considerations of grant of bail in terms of Sections 437, 438 and 439 of the CrPC.

The reference in Section 101(5) to "procedure specified in the Code of Criminal Procedure" does not enlarge the scope of sub-sections to create a substantive right in terms of Section 439 of the CrPC in Section 101(5) of the Act of 2015.

Q. (vi). What is the scope of Section 19(1)(i) of the Act of 2015 in connection with the trial of a child as an adult? Whether the provisions of Section 19 of the Act of 2015 are mandatory or the Children's Court has to compulsorily follow the recommendations of the Board made under Section 15 read with Section 18(3) of the Act of 2015 ?

A. Upon a case of a child having been transferred to the Children's Court, a duty has been cast upon the Children's Court to further decide about the suitability of the child to be tried as an adult. The words used in Section 19(1)(i) and 19(1)(ii) of the Act of 2015 give two options to the Children's Court. First, to try the transferred child as an adult and second not to deal with child as an adult. The Children's Court is required to record its reason while arriving at a conclusion whether the child should be treated as child or an adult in view of Rule 13 (6) of the Rules. In case, the Children's Court decides to deal with child as a child it has to conduct an inquiry as a Board following the procedures for trial of a summons case in accordance with the provisions of Section 18 as would appear from the words used in Section 19(1)(i) of the Act of 2015. In case, it decides to try the child as an adult, it shall follow the procedure as prescribed by the CrPC for the purpose of trial by Sessions Court and pass appropriate orders after trial without prejudice to the provisions of Sections 19 and 21 of the Act of 2015 considering special 'needs of the child' the tenets of 'fair trial' and maintaining a 'child friendly' atmosphere as provided under Section 19(1)(i) of the Act of 2015.

The provisions of Section 19(1) of the Act of 2015 are mandatory. The Children's Court cannot dispense with the requirement of deciding as to whether there is need to try the transferred child as an adult or to deal with the transferred child as a child.

Q. (vii). What is the scope of application of the provisions of CrPC after the Board transfers the trial of the case to the Children's Court having jurisdiction to try such offences and the Children's Court decides that there is a need for trial of the child as an adult?

A. The procedure followed by the Children's Court for trial of a child as an adult would be of a warrant case and the proceedings in Chapter XVIII prescribed under Sections 225 to 237 of the CrPC, which deal with warrant cases by a Court of Sessions only would be applicable while trying a child as an adult, subject to exceptions indicated under the Act of 2015.

8. Mrs. Vandana Singh, learned Sr. S.C.-III for the respondent- State submitted that there is no illegality in the impugned orders. She submitted that the I.O. recorded the statement of the witnesses under Section 161 Cr.P.C. The petitioner was being haunted by the police and on 5.8.2017 at about 11.25 hours the petitioner was apprehended and his statement was recorded and the petitioner was produced before the learned Court. After supervision and completion of investigation, the chargesheet has been submitted on 31.08.2017 under Section 376 of the Indian Penal Code and under Section 4 of the POCSO Act. She submitted that six prosecution witnesses have been examined, which needs to be analyzed at the time of trial. She submitted that on 18.01.2020, the learned Sessions Judge-III, Latehar sent the case of the petitioner, being the child in conflict with law to Juvenile Justice Board, Latehar for enquiry and disposal under Juvenile Justice (Care and Protection of Children) Act, 2015. The Board vide order dated 18.2.2020 came to the conclusion that the alleged offence was heinous in nature and the Board is to conduct the enquiry under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015. The Board sent a letter to the Director, RINPAS, Ranchi for preliminary assessment of the petitioner in connection with his mental and physical condition to commit the crime. The petitioner was examined by the Medical Board and as per the finding of the Medical Board, the petitioner was found to be of sufficient mental maturity to the extent that the petitioner was able to understand the nature of offence. The petitioner was found to be physically, mentally, sexually and psychologically matured. Thereafter the Board, on the basis of the said Medical Board report came to the conclusion that there is need for trial of the child as an adult. Thus, the Trial Court transferred the case by order dated 16.6.2020 in Special POCSO Case No. 15/2017, in which Special POCSO Court has followed the provision of Section 15 and 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. She submitted that there is no illegality in the impugned orders. However by way of drawing the attention of this Court to the order dated 30.5.2020 for the grant of interim bail. She further submitted that in cancelling the bail of the petitioner there is no illegality, as the condition has not been complied by the petitioner.

9. She relied upon the judgment of the Hon'ble Delhi High Court in the case of CCL LK Versus State, reported in (2019) SCC Online Del 9075. By way of relying this judgment she submitted that even the Children's Court has not passed any order in terms of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rules 13(1) and 13(6) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, The Children's Court can pass the order in terms thereof. She relied upon paragraphs 19 to 37, which reads as under:-

"19. Though, once again the expression used in Rule 13(1) is that the Children's Court may decide, however, Rule (6) uses the expression 'shall' and mandates the Children's Court to record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

20. Rule 13(7) stipulates that in case the Children's Court decides that there is no need for trial of the child as an adult, then it shall decide the matter itself. It is thereafter to conduct an inquiry as if it was functioning as a Board and follow the procedure for trial in summon cases under Cr. P.C.

21. Rule 13(8) stipulates that in case the Children's Court decides that there is need for trial of the child as an adult, it is to follow the procedure prescribed by Cr. P.C. or trial by Sessions.

22. Reading of Rule 13 in conjunction with Section 19 of JJ Act clearly shows that it is obligatory on the part of the Children's Court to take a decision after receipt of the preliminary assessment report from the Board as to whether there is need for trial of the child as an adult or as a child. Appropriate speaking order recording reasons for arriving at the conclusion is to be passed by the Children's Court.

23. In the present case, once the preliminary assessment report was received from the Board opining that the child should be treated as an adult, record does not reveal any application of mind or an independent decision taken by the Children's Court in terms of Section 19 read with Rule 13(1) and 13(6). The Children's Court has thereafter proceeded on to frame charges by the impugned order.

24. Perusal of the record further shows that the testimony of the child victim has already been partly recorded before the trial court.

25. No doubt, the Children's Court has not passed an order under Section 19, independently taking a decision as to whether the petitioner is to be tried as an adult or as a child, the same in my opinion would not vitiate the proceedings, thereafter undertaken but, would be an irregularity which would be curable.

26. The reason for holding so, is that in both eventualities, i.e. trial as an adult and trial as a child, the proceedings have to continue before the Children's Court.

27. In terms of Rule 13 (7) in case the Children's Court decides that there is no need for trial of the child as an adult, then, it (Children's Court) has to conduct an inquiry as if it were functioning as a Board and following the procedure for trial of the summon cases.

28. In case the Children's Court decides to try the child as an adult, then, it (Children's Court) has to conduct the trial following the procedure of trial by Sessions Court.

29. In either eventuality, charge/notice which is to be framed on the same set of facts, would not be altered in so far as the offence is concerned. The only difference is as to the procedure to be followed by the Children's Court for trial.

30. Even the absence of a charge has been held by the Constitution Bench of the Supreme Court in Willie (William) Slanley Versus State of Madhya Pradesh (1955) 2 SCR 1140 to be a curable irregularity unless prejudice is caused.

31. In the present case, the Children's Court has framed charges against the Petitioner deeming it to be a Sessions triable Case. So no prejudice is caused to the Petitioner.

32. The Supreme Court in Supdt. and Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 has held that trial of a summons case as a warrants case does not amount to an illegality but is a mere irregularity that does not vitiate trial, unless there is prejudice.

33. In the present case, there is no prejudice, even alleged to have been caused to the petitioner. No submission has been made that the procedure followed or proceedings held thereafter have caused any prejudice to the petitioner.

34. In view of the above, there is no ground to set aside the impugned order on charge dated 04.09.2018 or any proceedings conducted thereafter.

35. However, since the Children's Court has not passed any order in terms of Section 19 of the JJ Act read with Rule 13(1) and Rule 13(6) of the Rules, the Children's Court is directed to pass an order in terms thereof.

36. In case the Children's Court opines that there is no need for trial of the child as an adult; it shall follow the procedure as prescribed under Rule 13(7) and in case it holds that there is need for trial of the child as an adult it shall follow the procedure as prescribed under Rule 13(8).

37. In either eventuality, the proceedings that have so far been conducted and the evidence that has already come on record would be saved."

Learned counsel for the State finally submitted that there is no illegality in the impugned orders.

10. For the ready reference, Rule 13 of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 reads as follows:-

"13. Procedure in relation to Children's Court and Monitoring Authorities.-

(1) Upon receipt of preliminary assessment from the Board the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(2) Where an appeal has been filed under sub-section (1) of section 101 of the Act against the order of the Board declaring the age of the child, the Children's Court shall first decide the said appeal.

(3) Where an appeal has been filed under sub-section (2) of section 101 of the Act against the finding of the preliminary assessment done by the Board, the Children's Court shall first decide the appeal.

(4) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that there is no need for trial of the child as an adult, it shall dispose of the same as per section 19 of the Act and these rules.

(5) Where the appeal under sub-section (2) of section 101 of the Act is disposed of by the Children's Court on a finding that the child should be tried as an adult the Children's Court shall call for the file of the case from the Board and dispose of the matter as per the provisions of the Act and these rules.

(6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

(7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).

(v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child

and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct the child to be produced before it periodically and at least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Children's Court shall:

(a) interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the Probation Officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) After making the evaluation, the Children's Court may decide to:

(ca) release the child forthwith;

(cb) release the child on execution of a personal bond with or without sureties for good behaviour; (cc) release the child and issue directions regarding education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.; (cd) release the child and appoint a monitoring authority for the remainder of the

prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form 14.

(vii) For the purpose of sub-rule (vi) (c) (cd) of this rule:

(a) A Probation Officer or Case Worker or Child Welfare Officer or a fit person may be appointed as a monitoring authority.

(b) The District Child Protection Unit shall maintain a list of such persons who can be engaged as monitoring authorities which shall be sent to the Children's Court along with bi-annual updates.

(c) The child shall for the first quarter after release, meet with the monitoring authority on a fortnightly basis or at such intervals as may be directed by the Children's Court. The monitoring authority shall fix a time and venue for such meetings in consultation with the child. The monitoring authority will forward its observations on the progress of the child on a monthly basis to the Children's Court.

(d) At the end of the first quarter the monitoring authority shall make recommendations regarding the further follow up procedure required for the child.

(e) Where the child, after release is found to be indulging in criminal activities or associating with people with criminal antecedents, he shall be brought before the Children's Court for further orders.

(f) If it is found that the child no longer requires to be monitored, the monitoring authority shall place the detailed report with recommendations before the Children's Court which shall issue further directions either terminating the monitoring or for its continuation.

(g) After the first quarter, the child shall meet the monitoring authority at such intervals as may be directed by the Children's Court based on the recommendations made by the monitoring authority at the end of the first quarter and the monitoring authority shall forward its report to the Children's Court which shall review the same every quarter."

11. It has been recorded in the impugned order that the Medical Board examined the physical position of the petitioner under Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Board submitted the report, wherein the Medical Board found the petitioner physically, mentally, sexually and psychologically matured. Thereafter, the case was transferred to the Court of learned Special Judge-POCSO to be tried as an adult. The petitioner has been granted interim bail on 30.5.2020 for 45 days, which was extended from time to time by the Court which was allowed on the ground of ailment of the petitioner. The case was transferred on 16.6.2020 for regular trial by the concerned Court. A petition was filed on 10.7.2020 for extension of interim bail,

which was extended for one month with a direction to remain physically present before the Court on 17.8.2020 and on 6.8.2020 for another one month the date was extended and by order dated 17.8.2020 the petitioner was directed to remain physically present. On 08.9.2020 on a petition the interim bail was again extended for another one week. Due to COVID-19 the bail was again extended by the Court up to 25.9.2020 with a direction to present before the Court on 25.9.2020, but he flouted the same and not appeared. The interim bail granted to the petitioner by the Juvenile Justice Board, Latehar on 30.5.2020 has lost force on 25.9.2020 and considering all this and the petitioner flouted the bail, the bail was cancelled. There is no illegality in the impugned order dated 29.1.2021. The framing of second charge by the Additional Sessions Judge-I, Latehar is not sustainable in law as submitted by learned counsel for the petitioner has got no force, as the case was to be tried as an adult and no prejudice is caused to the petitioner. Thus this submission of the learned counsel for the petitioner with regard to framing of the charge is not sustainable.

12. The point of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as argued by learned counsel for the petitioner has been considered in the case of *Lalu Kumar @ Lal Babu @ Lallu and Ors. (Supra)* by the Hon'ble Patna High Court and in the case of *CCL LK (Supra)* by the Hon'ble Delhi High Court and both the Courts came to the conclusion that the provisions of Section 19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 are mandatory and that cannot be dispensed with for deciding as to whether there is need to try the transferred child as an adult or to deal with the transferred child as a child.

13. Reading of Rule 13 in conjunction with Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 clearly stipulates that it is obligatory on the part of the Children's Court to take a decision after receipt of the preliminary assessment report from the Board, as to whether there is need for trial for an adult or a child and appropriate speaking order recording reasons for arriving at the conclusion is to be passed by the Children's Court. In the case in hand, preliminary assessment report was received from the Board and on the basis of Medical Board, the case was transferred to the Court of learned Additional Sessions Judge-III, Latehar. Thereafter the Court proceeded and reframed charges by the impugned orders. In the case in hand the Children's Court has framed charges against the petitioner as sessions triable case, no prejudice is caused to the petitioner. This cannot be said to be illegality, but is a mere irregularity that does not vitiate the trial. Unless there is prejudice, no case of prejudice has been made out by the petitioner and the same was not argued. As the Children's Court has not passed any order in terms of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rules 13(1) and 13(6) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, the Children's Court can be directed to pass an order in terms thereof and not passing any order under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 would be an irregularity, which could be curable.

14. The Hon'ble Supreme Court has considered the Juvenile Justice (Care and Protection of Children) Act, 2015 in the case of *Shilpa Mittal Versus State (NCT of Delhi) & Ors.*, reported in (2020) SCC 787 in paragraphs-18 and 22 of the said judgment reads as follows:-

"18. The Children's Court constituted under the Act of 2015 has to determine whether there is actually any need for trial of the child as an adult under the provisions of

Cr.PC and pass appropriate orders in this regard. The Children's Court should also take into consideration the special needs of the child, tenets of fair trial and maintaining childfriendly atmosphere. The Court can also hold that there is no need to try the child as an adult. Even if the Children's Court holds that the child has to be tried as an adult, it must ensure that the final order includes an individual care plan for rehabilitation of the child as specified in Subsection (2) of Section 19. Furthermore, under Subsection(3) such a child must be kept in a place of safety and cannot be sent to jail till the child attains the age of 21 years, even if such a child has to be tried as an adult. It is also provided that though the child may be tried as an adult, reformative services, educational services, skill development, alternative therapy, counselling, behaviour modification, and psychiatric support is provided to the child during the period the child is kept in the place of safety.

22. It is true that if we accept the submission of Mr. Luthra, then things will fall into place. There would be only 3 categories of offences and all offences punishable with imprisonment of 7 years and above would be classified as 'heinous offence'. However, we are not solving a jigsaw puzzle where we have to put all the pieces in place. We are interpreting a statute which must be interpreted as per its language and intent."

15. In view of the above discussions and after considering the judgments of Hon'ble Patna High Court, Hon'ble Delhi High Court and Hon'ble Supreme Court, no prejudice has been caused to the petitioner in not passing any order under Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015, put as an irregularity, which is curable and no interference is required.

16. The petitioner is now attained 21 years of age.

17. However, since the Children's Court has not passed any order in terms of Section 19 of the Juvenile Justice (Care and Protection of Children) Act, 2015 read with Rules 13(1) and 13(6) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, the Children's Court is directed to pass the order in terms thereof. The evidence that has already been come on record would be saved.

18. This criminal miscellaneous petition is dismissed with above observation.

(Sanjay Kumar Dwivedi, J.) Jharkhand High Court, Ranchi.

Dated the 25th of August, 2021.

NAFR/ Amitesh/-