

Ghoksadanga PS No-529/2023 (Regd No: GR-61/2023)
CNR No: WBCB09-000085-2023
J.O Code No: WB01362

Present: Smt. Peden Dukpa, Ld. Principal Magistrate, JJB, CBR
Present: Smt. Runa Ganguly, Board Member, JJB, CBR
Present: Sri. Kamalesh Ch. Biswas, Board Member, JJB, CBR

Order No:15

Dated 20.09.2024

Today is fixed for appearance of CCLs and filing documents and passing necessary order.

Both the CCLs are present before this Board by filing their respective haziras.

Copy is ready and supplied to CCL's Ld. Advocate after proper endorsement.

We have noted the submission of the Ld. Defence Counsel and the Ld. P.P-In-Charge.

Members of this Board are also present.

Now the record is taken up for Preliminary Assessment of CCL namely Reshmi Khtaun.

The Ld. Defence Counsel while taking us to the definitional dynamics of section 2 of the Act, with a particular reference to section- 3 and 15 of the Juvenile Justice. Act, 2015, has strenuously argued that his client has been falsely implicated in this case and there is hardly any evidence against her. It has been submitted that his client does not possess the requisite understanding of the offences he has been charged with. Taking us through the relevant portions of the Social Background Report (S.B.R), the Ld. Defence Counsel has contended that the CCL girl does not have any criminal record. In order to ensure that his career prospects are not jeopardized considering her studies, the Ld. Defence Counsel has prayed for passing necessary order enabling his client to face the inquiry before this Board as a Child In Conflict With Law. To this effect, the Ld. Advocate for the CCL Reshmi Khatun has also filed by firisti photocopy of her educational documents.

Let the same be kept with the record.

The Ld. P.P In Charge left the matter to the discretion of the Board.

For the purpose of appreciating the contention of the Ld. Defence Counsel and the Ld. PP-In-Charge, it would be apposite to have a cursory glance at the relevant statutory provision which has been reproduced hereunder:-

"Section 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".

It should be borne in mind that the preliminary assessment concerns four aspects: (a) the child's mental and (b) physical capacity to commit such offence; (c) his ability to understand the consequences of the offence; (d) and the circumstances in which he allegedly committed the offence. The preliminary assessment has to be conducted and evaluated on all the four aspects-physical capacity, mental ability, understanding, and the circumstances-none is dispensable. They all must be present, for they are not in the alternative. Just because the statute permits a child of 16 years and beyond can stand trial in a heinous offence as an adult, it does not mean that the statute intends that all those children should be subject to adult punishment.

In the instant case, this Board has to ascertain, by way of conducting a preliminary assessment, whether CCL deserves to be tried as an adult or as a child in conflict with law. In order to arrive at a definitive conclusion, this Board will have to consider the Social Background Report (S.B.R), Social Investigation Report (S.I.R) and the Mental Health Assessment Report among the other materials available on record.

Let us first examine the Social Investigation Report. Prefatorily, the Report classifies the offence as heinous. There is no adverse report in respect of the CCL. Perused the Social Background Report and the Social Investigation Report.

The Mental Health Assessment Report suggests that the CCL is found both mentally and physically sound and he has the ability to understand the consequences and the circumstances in which he allegedly committed the offence

The explanation to section-15 of the Act clarifies that the preliminary assessment is not a trial, it is an exercise to assess the child's capacity to commit and understand the consequences of the alleged offence. The whole endeavour of the JJ Act is to save the child in conflict with the law from the path of self- destruction and from being a menace to the society. It is reformative, not retributive. Merely on the premise that the offence is heinous would not invite retributive approach unless there are exceptional circumstances, involving gross moral turpitude and irredeemable proclivity for the crime.

Having due regard to her age, her studies, social antecedents, environmental situation, emotional attitude and other collateral factors as gathered from the materials available on record and while considering them in light of the guiding principles of the JJ Act relating to the care and protection of children, this Board has unanimously arrived at the conclusion that CCL deserves an opportunity to face inquiry before this Board as a child and not as an adult in accordance with the provisions laid down under section 15 (2) JJ Act 2015.

Fix 05.10.2024 for Appearance of both the CCL and plea.

The above order has been duly communicated to the Ld. P.P In Charge and Ld.Defence Counsel in open Board.

D/C

Sd/- (Smt.Peden Dukpa) Principal Magistrate Juvenile Justice Board Cooch Behar	Sd/- (Smt. Runa Ganguly) Board Member Juvenile Justice Board Cooch Behar	Sd/- (Shi.Kamalesh Ch. Biswas) Board Member Juvenile Justice Board Cooch Behar	Sd/- (Smt.Peden Dukpa) Principal Magistrate Juvenile Justice Board Cooch Behar
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