

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/CRIMINAL REVISION APPLICATION (FOR REGULAR BAIL) NO. 648 of
2025**

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YOGESHBHAI S/O PRAVINBHAI @ PREMJBHAI JIVANBHAI MAKWANA
THROUGH PRAVINBHAI JIVANBHAI MAKWANA

Versus
STATE OF GUJARAT

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Appearance:

JAY J JANI(9303) for the Applicant(s) No. 1

MR HD CHUDASAMA(234) for the Applicant(s) No. 1

MR NIRAJ SHARMA APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 21/04/2026

ORDER

1. **RULE.** Learned APP waives service of notice of Rule on behalf of respondent - State.

2. The Child in conflict with law (herein after referred to as 'the CCL'), by way of the present revision application filed through his father, under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after referred to as 'the J.J. Act'), challenges the order dated 13.08.2024 passed by the learned Additional Sessions Judge, Limbdi, Surendranagar in Criminal Appeal No.58 of 2024 and the order dated 22.04.2024 passed in Juvenile Criminal Case No.27 of 2024 by the Principal Magistrate, Juvenile Justice Board, Surendranagar in connection with FIR being C.R. No.11211031240003 of 2024 under Sections 302, 323, 504,

506(2), 447 and 114 of the Indian Penal Code and Section 135 of the G.P. Act registered before the Limbdi Police Station.

2.1 In the FIR accused No.1 is the father himself, accused No.2 is the mother and accused No.3 is grandfather of the present CCL.

3. Learned advocate Mr. Jay J.Jani submitted that the appellate Court was required to analyse the facts of the case and the original incident, where it was the case that whole of the family have been made accused in the matter, where the quarrel was between the distant cousin i.e. the mother of the complainant and the father of the CCL. Advocate Mr. Jani stated that the accused were alleged to have verbally abused the mother of the complainant when the father of the complainant was admitted in the Civil Hospital for cancer treatment.

3.1 Advocate Mr. Jani submitted that the allegation is of the morning and then in the afternoon; the real maternal uncle's son Ankit along with Nareshbhai Makwana and the younger brother of the complainant Vikash had come, at that time, the complainant herself had asked the accused to restrain themselves from using unnecessary address in communication. Advocate Mr. Jani stated that at that time, the father of the CCL had quarreled with the younger brother of the complainant, and as per the complainant, the father of the CCL stated by expressing his enrage that he would do away with the life of the brother and had given fisticuffs, at that

time, the complainant, brother Vikas and maternal uncle's son Ankit had intervened to release them and it is stated that hearing the outcry, the aunt Chandrikaben i.e. the mother of the CCL and grandfather of the CCL along with CCL had come to their house. Mr. Jani submitted that as per the complaint, in the hands of Chandrikaben there was wooden baton, in the hands of Jivabhai there was wooden raft of the tree, and with the log Chandrikaben had given blow on knee of the left leg of the maternal uncle's son Ankit and all the four assaulted the younger brother Jigar, who sustained injury below the right eye and on the back because of the fisticuffs.

3.2 As per advocate Mr. Jani, the complainant stated that all the four had exhorted saying that today they were to kill children and after the assault they uttered filthy abuses and during this quarrel it is stated that the present CCL went to his house and brought metal scissor and in that excitement, had given a blow on the left side of neck of the complainant's brother Vikash and because of the injury and the bleeding, he fell down. Advocate Mr. Jani stated that as per the complaint, all the four thereupon climbed onto the chest of the brother and to the maternal uncle's son Ankit who had intervened, the CCL had also given injury on the right hand elbow and the upper arms, who also started bleeding; and thereafter the neighbours had come to intervene and had released them. Mr. Jani submitted that the injured were taken to the hospital and Vikash during the treatment died in U.N. Mehta Hospital.

3.3 Learned advocate Mr. Jani submitted that all the three i.e. father, mother and the grandfather had been released on default bail. Advocate Mr. Jani submitted that it is not the case that parents were not present there, what had actually occurred for the CCL to intervene and come with scissor from his house, does not become clear. The CCL in the excitement would have not known about the consequences of his own act.

3.4 Advocate Mr. Jani has referred to the provisions of section 18 of the J.J. Act, to submit that after the amendment by insertion in the provision for the application to be disposed of after the preliminary assessment of the child aged above 16 years who had committed heinous offence, the Board is required to consider the circumstances, as has been brought out in social investigation report and the past conduct of the child. Advocate Mr. Jani submitted that CCL is residing in a family, there is no criminal antecedent of the CCL, therefore, both the Court i.e. J.J.B. as well as the Children Court, were required to consider the bail, in the background of the actual occurrence.

3.5 Learned advocate Mr. Jani has also placed reliance on the Juvenile Justice Model Rules, 2016. Mr. Jani submits that Rule 11(1) makes it incumbent on the Board after preliminary assessment under section 15 of the J.J. Act in cases of heinous offence to dispose the matter and the Board while passing the dispositional orders has to follow the provision under section 18 of the J.J. Act.

4. Countering the arguments, learned APP Mr. Niraj Sharma for the State has referred to the psychiatrist report, where it is noted from the history and clinical examination that CCL has impulsive behaviour, however the psychiatrist had recommended for examination of all documents and had observed that the reliable history given, is required for confirmation of diagnosis. Learned APP stated that the psychiatrist noted that currently there was no major active situation found, which can impact person's ability to commit or understand the consequences of crime, however the psychiatrist had made a recommendation for psychological examination.

4.1 Learned APP Mr. Sharma has also referred to the clinical psychologist report, to submit that it is very categorically noted that the CCL had the understanding about the crime and the consequences of the crime, and the clinical psychological report has observed the level of understanding between 90-110. Learned APP has also referred to the Probation Officer's report and submitted that the Board has taken into consideration the Probation Officer's report, psychiatric report as well as the clinical psychological report to pass an order under section 15 of the J.J. Act.

5. Heard learned advocates appearing for the respective parties, reference of section 18(3) of the J.J. Act would become relevant, which has remained intact even after the insertion in the section for disposal of the preliminary assessment under under section 15 of the J.J. Act for the child

above the age of 16 years, who is alleged to have committed the heinous offence. Section 18(3) is reproduced herein under:

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

(1) ...

(2) ...

(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.”

5.1 After the preliminary assessment under section 15 of the J.J. Act, if the Board considers 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.

5.2 Section 19 of the J.J. Act, gives power to the Children's Court to again reassess the preliminary assessment report received from the Board and after considering the need for trial of the child as an adult, as per the provisions of Code of Criminal Procedure, may pass an appropriate order after the trial subject to the provisions of sections 19 and 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.

6. Here, the CCL would be facing trial before the Children's Court and the trial would be as per the adult. In case of heinous offences, provisions under section 21 of the J.J. Act, would be made applicable, where the act has provided

that no order would be passed against the CCL sentencing him to death or for life imprisonment without the possibility of release for the offence invoked under IPC.

7. The Probation Officer's report is with the fact that when the officer had visited the house; the parents were not available and after inquiring from the neighbours, it had come to the knowledge of the officer that the child was suffering from some mental ailment and he was also on some medication. The Probation Officer was of the opinion that if such mentally ill child would be released on bail, then it would not be safe for the public and CCL would be a danger for the society.

8. It has been brought on record that thereafter an order was passed for fresh report of the Probation Officer by the co-ordinate bench of this Court and the Probation Officer on visiting the present CCL has noted that there was some positive change in the behaviour and the nature of the CCL, however, had expressed the apprehension that if again he is sent in the same atmosphere and in the same situation, then there would be all possibility of the CCL getting infuriated, which would affect his future.

9. The facts of the matter, as gets disclosed shows that originally the present CCL was not involved in the incident, which had been alleged to have occurred in the afternoon. It was only when the quarrel took place between the complainant's side, as referred herein above, and the father of

the CCL, hearing the outcry, the mother and grandfather with the CCL had rushed to the place. It is alleged that the mother and grandfather had wooden baton and wooden raft of the tree in their hands, and when the quarrel continued, at that time, the CCL rushed to his house and picked up the metal scissor, which is allegedly said to be used for inflicting the blow on the neck.

10. Section 12 of the J.J. Act clearly overrides the bail provisions as contained in Criminal Procedure Code, 1973 or any other law for the time being in force. Section 12 of the Act, as could be read in its true meaning shows bail to the juvenile is a rule and refusal of the same is an exception. The refusal of the bail can only be on the following grounds:

- (i) If there appears reasonable ground for believing that the release is likely to bring that person in association with any known criminal or,
- (ii) expose the said person to moral, physical or psychological danger or,
- (iii) the person's release would defeat the ends of justice.

10.1 The use of expression "such person shall be released on bail" in section 12(1) of the J.J. Act shows that the grant of bail to the juvenile is mandatory unless grounds for denial of the bail overweight the concession of bail. Seriousness of the alleged offence or the age of the juvenile are also no relevant consideration for denial of the bail under Section 12 of the J.J.

Act. Section 12 of the J.J. Act in consonance with the object of the Act intends not to punish the CCL, but to reform and rehabilitate them by proper care, protection, development and social reintegration by adopting a child friendly approach in the adjudication and disposal of the matter in the best interest.

11. In the case of **Child in Conflict with Law Through Savitaben Vitthalbhai Vasava Vs. State of Gujarat**, 2022 (0) AIJEL-HC 244005 (passed in CRRA No.901 of 2021 on 28.04.2022), it has been observed as under:

17. Section 12 of the JJ Act, 2015 which deals with the grant of bail to a child expressly contains the nonobstante phrase to be as “.... notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail ...”. This very provision in Section 12 clarifies that provisions of Cr.PC is excluded in the case of bail plea of the child. Further, it requires to be noted that Section 12 is a specific provision under the special statute that deals with the matter of bail and accordingly, the application of Section 439 of the Cr.PC is also necessarily excluded. Cr.PC contains a corresponding clause which is for application on special lines. Considering this aspect in case of a bail application on behalf a child, it would be required to be concluded that such bail plea would not be maintainable under Section 439 of Cr.PC.

19. Non-applicability of Section 439 of Cr.PC in case of child in conflict with law has been appreciated by various High Courts. This Court would like to refer to the decision of the High Court of Delhi in the case of CCL ‘A’ v. State (NCT of Delhi) in Bail Application No.2510/2020 (dated 19.10.2020), where the Court had observed as under :-

“44. In formulating the above position, this court finds support in the view taken by the Division Bench of the Chhattisgarh High Court in Tejram Nagrachi Juvenile vs. State of Chhattisgarh Through the Station House Officer4, where the Division Bench has opined that an

application for grant of bail under section 437 Cr.P.C. or 439 Cr.P.C. would not be maintainable in the case of a juvenile. The relevant paras of the judgment are as under:

"7. A conjoint analysis of the provisions contained in Sections 437 and 439 of the Code viz a viz Sections 8, 10 and 12 of the Act, 2015 would discern that while there are certain general guidelines under Sections 437 & 439 of the Code, power in respect of grant of bail to a juvenile is more liberal in the nature of command under Section 12(1) that whenever an apparent juvenile alleged to have committed a bailable or nonbailable offence is detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code 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. The only rider for not releasing the apparent juvenile is that whenever there appears reasonable grounds for believing that the release is likely to bring that person (Juvenile) into association with any known criminal or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice, the Board shall record the reasons for denying the bail and circumstances that led to such a decision. This rider as contained in proviso to Section 12(1) requires the Board to record reasons for denying the bail. It would mean that ordinarily the bail is to be allowed to a juvenile. The denial being exceptional on certain reasons to be recorded by the Board as provided in the proviso. This special provision is not contained under Section 439 of the Code.

"8. While there is no denial of the fact that when the Court of Sessions exercises appellate power under Section 101(2) and the High Court exercises revisional power under Section 102 of the Act of 2015, it shall exercise power of the Board provided under Section 8(2), but this power of the Board would also be available to the Court of Sessions or to the High Court when it proceeds to examine the plea of juvenile for grant of bail whenever such occasion arises on account of bail application of juvenile being rejected under Section 12 of the Act of 2015. Therefore, by use of the term "otherwise" in Section 8(2), jurisdiction under Section 439 of the Code would not be attracted which is otherwise excluded by use of the term "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force", as occurring in Section

12 (1)." (emphasis supplied)

20. The law therefore, is clear on the aspect that since Section 12 of the JJ Act bears a non-obstante clause which indicates legislative intent that the source of power to grant bail under the JJ Act, 2015 is independent from that of the Cr.PC. Thus, it can be said to be concluded that Section 439 of the Cr.PC is not applicable on the issue of grant or denial of bail to a child alleged to have committed bailable or non-bailable offence who is to be dealt with by the Special Statute, i.e. JJ Act, 2015 which contains the specific provision for bail under Section 12 of JJ Act, 2015."

12. The case of **Barun Chandra Thakur Vs. Master Bholu & Anr.**, in Criminal Appeal No.950 of 2022, was declared on 13.07.2022 [(2023) 12 SCC 401]. The Hon'ble Supreme Court while dealing with section 15 of the J.J. Act for preliminary assessment of child in conflict with law, observed as under:

"65. While considering a child as an adult one needs to look at his/her physical maturity, cognitive abilities, social and emotional competencies. It must be mentioned here that from a neurobiological perspective, the development of cognitive, behavioural attributes like the ability to delay gratification, decision making, risk taking, impulsivity, judgement, etc. continues until the early 20s. It is, therefore, all the more important that such assessment is made to distinguish such attributes between a child and an adult.

66. Cognitive maturation is highly dependent on hereditary factors. Emotional development is less likely to affect cognitive maturation. However, if emotions are too intense and the child is unable to regulate emotions effectively, then intellectual insight/knowledge may take a back seat.

70. A child with average intelligence/IQ will have the intellectual knowledge of the consequences of his actions. But whether or not he is able to control himself or his actions will depend on his level of emotional competence. For example, risky driving may result in an accident. But if emotional competence is not high, the urge for thrill seeking may get the better of his

intellectual understanding.

71. Children may be geared towards more instant gratification and may not be able to deeply understand the long-term consequences of their actions. They are also more likely to be influenced by emotion rather than reason. Research shows that young people do know risks to themselves. Despite this knowledge, adolescents engage in riskier behaviour than adults (such as drug and alcohol use, unsafe sexual activity, dangerous driving and/or delinquent behaviour). While they do consider risks cognitively (by weighing up the potential risks and rewards of a particular act), their decisions / actions may be more heavily influenced by social (e.g. peer influences) and/or emotional (e.g. impulsive) tendencies. In addition, the lack of experience coupled with the child's limited ability to deeply understand the long-term consequences of their actions can lead to impulsive / reckless decision making.

12.1 In **Barun Chandra Thakur** (supra), the Hon'ble Supreme Court has referred to the factum of cognitive maturation, observing intense emotion, likely to affect the cognitive maturation, the child with average intelligence may have the knowledge of the consequences of his action, but his ability to control himself in his actions depends on his level of emotional competence.

13. The report of the Probation Officer gets reflected from the statements of the neighbours that the CCL was suffering from mental ailment and was also put on medication. If that has to be kept in mind, then what triggered the CCL to rush to his house and to come back with metal scissor also would be a relevant consideration to be examined, whether at that relevant time the CCL had any knowledge or understanding about the consequences of his act required due consideration. It appears that the fact of mental ailment of CCL had not been

brought to the knowledge of the clinical psychologist.

13.1 It has been submitted by learned advocate Mr. Jani that now the family is not residing in the same vicinity, they have shifted to some other place.

14. Having considered the report of the Probation Officer, which has been called for by the order of the co-ordinate bench, which reflects that at the relevant time the CCL was under mental ailment and the parents had put him under medication and having considered the circumstances of the matter, and as whole of the family were in jail because of the personal quarrel which took place between two distant relatives staying in the neighbourhood and when the trial will take its own time to conclude, this Court considers that the CCL is required to be released on bail. Hence, the present CCL is ordered to be released on bail in connection with C.R. No.11211031240003 of 2024 registered before the Limbdi Police Station on the applicant's father executing a personal bond in the sum of Rs.10,000/- with a condition that father would take care of his child for his good behaviour and his well being.

15. It is directed that the Probation Officer shall monitor the conduct of the CCL and shall quarterly submit the report before the concerned Board/Children's Court till completion of the trial. Moreover, if the Probation Officer considers any necessity of sending the juvenile for any behavior modification then necessary therapy and psychiatric support be provided to

the child in conflict with law.

16. In view of the above, the present application stands disposed of. Rule is made absolute to the aforesaid extent.

17. Direct service is permitted. Registry to communicate this order to the concerned Court/authority by Fax or Email forthwith.

(GITA GOPI,J)

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