

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL REVISION APPLICATION (FOR REGULAR BAIL) NO. 2538
of 2025**

=====

CHILD IN CONFLICT WITH LAW THROUGH HIS FATHER – RAMSETH
AMARYA BHOSALE
Versus
STATE OF GUJARAT

=====

Appearance:

MR JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1

MR BHARGAV PANDYA, APP for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MS. JUSTICE GITA GOPI

Date : 13/04/2026

ORDER

1. **RULE.** Learned APP waives service of Rule on behalf of the respondent – State.
2. The Child in Conflict with Law (hereinafter referred to as "CCL"), through his father, has filed an application under Section 102 read with Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "JJ Act") challenging the order dated 14.11.2025 passed by the learned Additional Sessions Judge, Valsad under the heading of Criminal Misc. Application (for regular bail) no. 701 of 2025 in connection with FIR bearing CR no. 11200048250436 of 2025 registered with Vapi Town Police

Station, District Valsad for the offence punishable under Sections 103(1) & 3(5) of the Bharatiya Nyaya Sanhita, 2023, and to release CCL on regular bail. It does not become clear by the status record of the learned Judge as Additional Sessions Judge, Valsad whether the Court is a Children's Court as per the JJ Act. However, assuming the same as an Additional Court, then, it was required for the learned Additional Sessions Judge to have considered an application as an appeal under Section 101 of the JJ Act. The learned Trial Court Judge has entertained the application as if it is a regular bail application.

3. The facts of the case, as have been brought to the notice, are that one eye-witness – Prashant, son of Ganesh Shivram Chauhan informed the police about the deceased aged about 40-45 years who was a beggar. When eye-witness – Prashant was inquired by the police, he has stated that on 4.3.2025, he had gone into Memu train at 3 O' Clock in the afternoon for purchasing balloons at Surat and while returning from Surat, Zampa Bazar purchasing the balloons at about 7 in the evening in the express train from Vapi Railway Station since his mother and sister were staying at the open land in front of Sahara Market Building at Imrannagar, he had joined them

during the night, when he was resting and watching his phone, at that time, at night at about 10 O' Clock, he saw one CCL no.2, aged about 13 years 8 months and CCL no.3, aged about 16 years 11 months 2 days were taking lame and bearded man on the open land besides the nursery and the present CCL was having stick in his hand and he was following them. According to the eye-witness, all the three wanted the lame and bearded man to beg and when he had refused to do so, his clothes were removed and was beaten with stick and stones on both the limbs and his legs were fractured. According to the eye-witness, because of that injury, the injured died.

4. The facts of the case suggest that the deceased was himself was a beggar. The complainant appears to be the person who was also sleeping in the open area along with mother and sister. He only could have seen the CCL nos. 2 and 3 taking the lame and bearded person towards the open land besides the nursery and according to him, the present CCL was following them with a stick. The facts do not suggest that the witness – Prashant is an eye-witness to the incident. The facts and circumstances under which the offence got committed does prima facie suggest that the witness had seen the

incident. The complainant – Jivla son of Gavjibhai Kurkutiya is the security guard and he is not the eye-witness to the incident. The facts do not become clear under what circumstances and why CCLs were with the deceased aged about 40 to 45 years whose even full name and place of residence is also not clear on the record, the police has failed to find the residence of the deceased.

5. The JJ Board as well as the Appellate Court have not even taken into consideration the Probation Officer's report to find out the actual facts from the side of the CCL. According to the Probation Officer, after conversing with the sister and the father of the CCL, this was the first incident. The CCL has studied upto Std.8 at Village Nasik and had come for the Shivratri festival at the house of his sister at Vapi. The Probation Officer has also referred that he has not found of any bad habits of the child and CCL had been suffering from mental illness because of his accident, which he suffered 3-5 years ago.
6. Mr. Bhargav Pandya, learned APP has referred to the reports of the Police Inspector as well as Probation Officer to submit that the bail rejection is just and proper.

7. The JJ Board as well as the Children's Court, while considering the bail application of the CCL under Section 12 of the JJ Act, was required to call for the report of the Probation Officer to examine under what circumstances, the offence came to be committed when all the CCLs have been alleged to have caused the death of an adult, aged about 40-45 years who was alleged to be a beggar. The cause, as has been shown by the eye-witness – Prashant, also becomes doubtful in that circumstances.

8. This Court had an occasion to deal with the bail application of a CCL and while granting bail, this Court had an occasion to deal with the provisions of Section 12 of the Act and had explicitly laid down that Section 439 of the Cr.P.C. would not be applicable on the issue of grant or denial of bail to a child alleged to have committed bailable or non-bailable offence which is dealt with by the special statute i.e. Juvenile Justice (Care and Protection of Children) Act, 2015, which contains specific provision for bail under Section 12 of the Act. In the case of **Child in Conflict with Law Through Savitaben Vitthalbhai Vasava v. State of Gujarat, 2022 (0) AIJEL-HC 244005** (passed in CRR no.901 of 2021 on 28.04.2022), it has been observed as under:-

“15. Explanation to Section 15 of the JJ Act, 2015 stipulates that 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 consequence of the offence and the circumstances in which he allegedly committed the offence and then may pass an order in accordance with the provisions of sub-section (3) of Section 18. Thus, the whole endeavour of the JJ Act, 2015 is to protect a child in conflict with law from the path of destruction and being a menace to the Society. The object is reformatory and not retributive.

16. Now, under these circumstances upon preliminary assessment made by the JJ Board under Section 15(2) of the JJ Act, 2015 and when the need is found for the trial of the child as an adult and his case is ordered to be transferred to the Children’s Court, the relevant consideration would be whether the child in conflict with law de-jure become an adult to be treated as a child in the subsequent proceedings and thus the question would be whether the application for bail would be maintainable in the High Court under Section 439 for the child in conflict with law, who is sent for trial before the Children’s Court or whether the application for bail should be considered under Section 12 of the JJ Act.

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.

18. The order under Section 18(3) of the JJ Act transferring the trial of the case to the Children's Court would not declare the child as an adult. Child in conflict with law is defined under Section 2(13) of the JJ Act, 2015 to mean a child who has not completed 18 years as on date of the commission of the offence.

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 non-bailable 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."

9. In this background of the matter having observed the Probation Officer's report, the present application is allowed. The Child in Conflict with Law is ordered to be released on bail in connection with the FIR bearing CR no. 11200048250436 of 2025 registered with Vapi Town Police Station, District Valsad on the applicant's father executing a personal bond in sum of Rs.10,000/- each (Rupees ten thousand only) with surety of like amount before the Children's Court with a condition to that he would take care of his child for his good behaviour and his well being.

10. 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 CCL for any behaviour modification, then necessary therapy and psychiatric support be provided to the CCL.

11. Rule is made absolute in the above terms. Direct service is permitted.

Maulik

(GITA GOPI,J)