

Annual National Seminar
on
“Working of the Juvenile Justice Boards in India”

GRANT OF BAIL TO JUVENILES IN CONFLICT WITH LAW



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**Why there should be any
dichotomy between
CICL with CNCP ?**

CICL is actually a CNCP.

The Beijing Rules (13.1 & 13.2) provides that ;

- Detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.
- Whenever possible, detention pending trial shall be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home.

Already every human right of such child is violated, as such child comes from extreme poverty, broken family, where they have been neglected, severely abused, emotionally, physically or even sexually, or, have undergone severe trauma and deprivation.

➤ Endeavour of JJB should be, therefore, to remove this trauma and to ensure that he/she is kept in a conducive surrounding.

➤ Not to detain him/her in any Observation Home.

Adult Criminal Justice System

- Bail is not as a matter of right.
- Depends on whether offence is bailable or non-bailable.
- Gravity of the offence.
- Chances of the Accused absconding
OR
- Tampering with prosecution witnesses etc.

Section 12

As against it, in J.J. - Grant of bail not only as a matter of right, but also mandatory. Whatever may be the nature of the offence, except in three circumstances;

➤ If there appear '**reasonable grounds**' for believing that release of child on bail is likely to bring the child into association with "**known**" criminal;

OR

➤ Shall expose him or her to moral, physical or psychological danger;

OR

➤ Where his / her release would defeat the ends of justice.

Shimil Kumar Vs. State of Haryana

[2014 (1) Crimes 74 (Del.)]

Apprehensions as to whether a release of a juvenile would be detrimental to him and bring him in association with moral or physical danger, would depend upon the facts of each case. But in cases where a juvenile has been accused of aggravated offences, which shock the conscience of the society, it would be safer to protect him from collective wrath of a community or a society, on account of retribution such a dastardly act may possibly invite.

Shimil Kumar Vs. State of Haryana *[2014 (1) Crimes 74 (Del.)]*

Factors preceding the commission of an offence, his collaborators and accomplices would be the indices for a person being endangered by evil influence, and likewise the Board and the Court have to imaginatively conceive of succeeding consequences to the offence, to conclude regarding the safety of a juvenile.

Shimil Kumar Vs. State of Haryana

[2014 (1) Crimes 74 (Del.)]

All these aspects are extremely significant for they would reflect and play upon the mind of the Court, when it considers the question of sentence to be visited upon a juvenile in conflict with law.

This provision of bail is notwithstanding anything contained in Cr.P.C. or in any other law for the time being in force.

➤ If the JJB wants to deny the bail, then, it has to record reasons for doing so and also the circumstances that lead to such decision.

➤ He/she is to be released on bail ;

◆ With or without surety.

OR

◆ Placed under supervision of a Probation Officer.

OR

◆ Under the care of any fit person.

➤ JJB is not to wait for Bail Application to be filed on behalf of a Juvenile.

➤ JJB has to be proactive and suo-motu grant bail on befitting conditions.

➤ If he or she is released on bail, subject to certain terms and conditions and child is unable to fulfill those conditions within seven days of the bail order;

➤ Such child has to be produced before JJB for modification of the conditions of the bail.

- If the child is not released on bail, JJB has to make an order;

Sending him to an Observation Home

OR

A place of safety

- For such period during pendency of the inquiry, as may be specified in the order.

Criteria, which are not relevant for deciding the bail

- Gravity of Offence.
- Seriousness of Punishment.
- Tampering of witnesses / evidence
- Chances of absconding.

While passing the bail order, JJB should :-

➤ Call for Social Investigation Report from Probation Officer;

➤ Giving correct picture of child's economic, social and financial conditions;

And

➤ Circumstances in which the incident occurred.

While releasing on bail, an endeavour should be to enforce accountability from child by enabling him to enjoy his right to reform and not culpability by detaining or punishing him.

- Bail order should be individualized and on case-to-case basis.
- Bail order should be passed keeping in mind rehabilitative process.
- Bail order should include details of the rehabilitation plan and services that need to be provided.

➤ To ensure that no child suffers expulsion from the school.

➤ If expelled, to ensure that child is re-admitted in the school.

To make order for
psychological counselling to
help child regain his / her self-
worth.

- Direct / request counselling to the parents / guardians.
- To keep child engaged in hobby classes.
- To provide a de-addiction treatment, if required.

To direct Probation Officer :-

- To monitor progress of child.
- To assist child and parents in rehabilitative process and in re-bonding.

