

Before Jasgurpreet Singh Puri, J.

NATIONAL INVESTIGATION AGENCY—Petitioners

versus

AMRITPAL SINGH @ AMRIT SINGH—Respondents

CRM-M No. 19293 of 2021

July 26, 2022

Code of Criminal Procedure, 1973— S. 407 read with S. 482— Unlawful Activities (Prevention) Act, 1967— Ss. 13, 18, 18A, 18B, 20 and 23— Indian Penal Code, 1860— Ss. 120B and 153A— Juvenile Justice (Care and Protection of Children) Act, 2015, Section 1(4) — Commissions for Protection of Child Rights Act, 2005— S.25 —Transfer of trial— As per allegations, respondent along with co-accused was also nursing intent to spread disharmony to de-stablize Security, Integrity, Unity and Sovereignty of India and was part of conspiracy to target Muradpura Dera— Held, when FIR is registered under Scheduled Act prescribed under NIA Act and juvenile directed to be tried as adult by Children's Court, then jurisdiction would vest in Children's Court and not in Special Judge under NIA Act.

Held, that after giving my thoughtful consideration to the aforesaid facts and circumstances as well as the legal position especially considering the effect of Section 1(4) of the JJ Act, 2015, it is held that when an FIR is registered under a Scheduled Act prescribed under the NIA Act and a juvenile has been directed to be tried as an adult by the Children's Court, then the jurisdiction would vest in the Children's Court and not in the Special Judge under the NIA Act.

(Para 40)

Sukhdeep Singh Sandhu, Advocate, *for the petitioner.*

Bhanu Pratap Singh, Advocate, *for the respondent.*

JASGURPREET SINGH PURI, J.

(1) The present is a petition filed under Section 407 read with Section 482 of the Code of Criminal Procedure seeking transfer of trial in case No. RC-20/2019/NIA/DLI dated 23.09.2019, FIR No. 280 dated 05.09.2019, under Sections 120-B/153-A IPC, Section 13/18/18A/18B/20/23 of Unlawful Activities (Prevention) Act, 1967 and Sections 3, 4 & 5 of Explosive Substances Act, 1908, Police Station Sadar, Tarn Taran, District Tarn Taran, which is pending before

the Court of learned Additional Sessions Judge/Children's Court, Tarn Taran.

(2) The Courts of all the Sessions Judges and Additional Sessions Judges at each district headquarter in the State of Punjab (except the Additional Sessions Judges (Adhoc), Fast Track Courts) have been designated as Children's Court in exercise of powers conferred by Section 25 of the Commissions for Protection of Child Rights Act, 2005, vide notification dated 10th September, 2013 issued by the Department of Home Affairs and Justice, Punjab.

Facts of the case

(3) One FIR No.280 dated 05.09.2019 was registered under Section 304 IPC and Sections 4 and 5 of Explosive Substances Act, 1908 at Police Station Sadar, Tarn Taran on the basis of information received by the police party who were present at Kad Gill Chowk, Bagarian at about 19:45 hours that a powerful explosion took place at a vacant plot in the outskirts of Village Pandori Gola, Police Station Sadar Tarn Taran, Punjab while deceased accused Bikkar Singh @ Vikram @ Vicky, Harpreet Singh @ Happy and Gurjant Singh were digging a pit to retrieve explosives which were buried in the said plot. It was due to the impact of digging tools on explosives contained in a plastic container that the explosion had taken place which resulted in the death of Bikkar Singh and Harpreet Singh who died on the spot whereas the other co-accused Gurjant Singh was seriously injured and lost vision of both eyes. The aforesaid injured Gurjant Singh was admitted in Guru Nanak Dev Hospital by other co-accused Harjeet Singh @ Harjit whose house is located near the place of incident and allegedly he had provided spade (Kai) for digging out the explosives. Thereafter, the National Investigation Agency (hereinafter referred to as 'NIA') re-registered the case as RC-20/2019/NIA/DLI in compliance of the orders received vide F.No.110-11/47/2019/NIA dated 20.09.2019 from the Ministry of Home Affairs, Government of India and took up the investigation of the case. During the investigation by the NIA, the present respondent who was a juvenile at that time was nominated on the ground that he was also associated with the other co-accused and they had performed a gang. As per the allegations, the respondent and the other co-accused and they had formed a gang came into contact with each other in the year 2015 during protest organized by them against sacrilege incident of Shri Guru Granth Sahib Ji and formed a terrorist gang due to similar religious thoughts and thereafter they started meeting at Amritsar and Tarn Taran. They were allegedly

planning to carry out violent acts against the members of a particular community and, therefore, they procured explosive materials and training was given by one of the members of the gang for making bombs. They had planned to target Dera of Divya Jyoti Jagran Sanstha founded by Ashutosh Maharaj in the night hours of 04.09.2019. As per investigation, the respondent was also related with one of the co-accused and he came into contact with the other co-accused during participation in various agitations and protests and had also conspired with the other co-accused for planning to carry out terrorist attacks by causing explosion. As per the allegations, the respondent alongwith co-accused was also nursing intent to spread disharmony to de-stabilize the Security, Integrity, Unity and Sovereignty of India and was part of the conspiracy to target Muradpura Dera (DJJS, Tarn Taran).

(4) On the day of aforesaid incident i.e. 04.09.2019 the respondent was a juvenile as he was less than 18 years. The date of birth of the respondent is 15.09.2001 and was a few days short of attaining the age of 18 years. In view of the fact that the respondent was a juvenile, his preliminary assessment was conducted by the Juvenile Justice Board under the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'JJ Act, 2015'). On the basis of aforesaid assessment by considering various parameters as provided under the JJ Act as well as considering the Social Investigation Report and the Social Background Report, the Juvenile Justice Board, Tarn Taran came to the conclusion that the respondent was capable of understanding the consequences of offence and the circumstances in which he allegedly committed the same and therefore, there was a need for trial of the respondent as an adult and as a natural corollary, the trial of the case of the respondent being juvenile was ordered to be transferred to the learned Children's Court/learned Sessions Judge, Tarn Taran as per the statutory provisions of Section 18(3) of the JJ Act, 2015. He was therefore directed to appear before the learned Sessions Judge, Tarn Taran on 07.01.2021. The fact that respondent was juvenile at the time of incident and the order by which he was directed to be tried as an adult is not in dispute in the present case.

(5) Thereafter, the learned Additional Sessions Judge, Tarn Taran /Children's Court framed the charges against the respondent vide Annexure P-5 on 02.02.2021. The charges were framed under Sections 120-B,153-A IPC and Sections 18 and 20 of Unlawful Activities (Prevention) Act, 1967. Thereafter, the present petition was filed by the

NIA seeking transfer of the case to the NIA Special Court, Mohali. The constitution of the NIA Special Court at Mohali had been notified by the Central Government on 20th September, 2019 vide Annexure P-4 in exercise of powers conferred by Section 11 of the National Investigation Agency Act, 2008. As per the learned counsel for the parties, after the framing of the charges by the learned Children's Court further trial of the case has not commenced as yet and trial of the co-accused who were not juveniles is being conducted before the NIA Special Court, Mohali.

Submissions made by counsel for the petitioner

(6) The learned counsel for the petitioner submitted that the Children's Court does not have jurisdiction to try the present case and, therefore, the trial should be transferred to the Special Court constituted under the NIA Act. The following arguments were raised by the learned counsel for the petitioner:-

(i) The National Investigation Agency Act, 2008 is a special legislation and under Section 11, the powers are vested with the Central Government to designate the Courts of Session as Special Court in consultation with the Chief Justice of the High Court by way of a notification in the official gazette for the trial of scheduled offences and in pursuance of the aforesaid provisions, the Central Government has already notified NIA Court at Mohali vide Annexure P-4 dated 20.09.2019. Section 13 provides for a non- obstante clause whereby it has been provided that notwithstanding anything contained in the Code, every scheduled offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed. As per the schedule of the NIA Act, there is a specific insertion of 'The Unlawful Activities (Prevention) Act, 1967' (hereinafter referred to as 'UAPA Act') at serial No.2 . In this way, every offence under the UAPA Act can be tried only by the Special Courts constituted under the NIA Act and by no other Court.

(ii) The Children's Court constituted under the Commissions for Protection of Child Rights Act, 2005 has a jurisdiction to try an offence pertaining to a juvenile when being tried as an adult but when the offence falls under the UAPA Act, the jurisdiction shall vest in the Special Court constituted under the NIA Act and, therefore, the present

case was required to be transferred from Children's Court to Special Court constituted under the NIA Act.

(iii) No prejudice will be caused to the respondent who even though was a juvenile at the time of commission of offence in case the trial is transferred to the Special Court constituted under the NIA Act since both the Courts provide speedy trial and rather under Section 19 of the NIA Act it has been so provided that the trial by a Special Court will have precedence and the Special Court shall hold the trial on day- to-day basis.

(iv) Section 2(20) of the JJ Act defines 'Children's Court' to mean a Court established under the Commissions for Protection of Child Rights Act, 2005. As per this provision, the Children's Court can be either under the Commissions for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012 and where such Courts have not been designated, then the Sessions Court will have the jurisdiction to try the offences under the Act. Under the NIA Act also the Sessions Court has been designated as Special Court. Since under both the legislations it is the Sessions Judge/Additional Sessions Judge who has been designated as Special Court, no prejudice would be caused to the respondent in case the same is tried by the Court of NIA.

(v) Section 16(3) of the NIA Act provides that subject to the other provisions of this Act, a Special Court shall for the purpose of trial of any offence have all the powers of a Court of Sessions and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session. The expression 'Code' has been defined to be Code of Criminal Procedure, 1973. Therefore, once the Special Court already has powers of the Court of Sessions and it is to try an offence as a Court of Sessions, then there would be no difference in case the present case is tried by the Special Court under the NIA Act and not by the Children's Court/Sessions Court under the JJ Act, 2015.

(vi) The respondent although was a juvenile at the time of commission of offence but he will be attaining the age of 21 years on 15.09.2022. The benefit of not sending him to jail

is provided for the age of less than 21 years which will no longer be available to him. Such like benefits would not be available to the respondent in this regard after he attains the age of 21 years. Section 17 of the NIA Act provides for protection of witnesses and in it various types of protections have been provided to the witnesses which would not be available to the witnesses in case the trial is held by the Children's Court.

(vii) The scheduled offences under the NIA Act are serious in nature which involves national security, interest and sovereignty of the State and in order to deal with such serious situation, a special procedure has been laid down under the NIA Act. The present case also falls under this category of serious and heinous offence regarding which the trial should be conducted by a Special Court constituted under the NIA Act.

(viii) Under Section 21(2) of the NIA Act, every appeal shall be heard by a Bench of two Judges of the High Court whereas an appeal from the judgment/order passed by the learned Children's Court under the JJ Act, 2015 shall be heard by a learned single Judge of the High Court.

(ix) Reliance has been placed upon a judgment of Hon'ble Supreme Court in *Naser Bin Abu Bakr Yafai versus State of Maharashtra and another (2021 (4) RCR (Criminal) 533)* to contend that once NIA takes over the investigation, then Special Court designated under Section 11 of the NIA Act would have sole jurisdiction to try a case. Further reliance has been placed upon a judgment of this Court in *Master Bholu versus State of Haryana and another [2020(3) RCR (Criminal) 160]* to contend that in such like serious cases, the juvenile should be treated as an adult for the purpose of trial for deciding bail application.

Submissions made by counsel for the respondent

(7) The learned counsel for the respondent submitted that the impugned order by which learned Juvenile Justice Board, Tarn Taran has transferred the trial to the Children's Court was in accordance with law and once it has been decided by the learned Juvenile Justice Board that the juvenile is to be tried as an adult, then there is no other alternative but to transfer the trial of the case to the learned Children's

Court as per the statutory provisions whereby only a Children's Court has exclusive jurisdiction to try such an offence. He has also made the following submissions:-

(i) Section 18(3) of the JJ Act, 2015 provides that where the Board after preliminary assessment under Section 15 passes an order that there is a need for trial of a 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. Therefore, the jurisdiction has been vested to the Children's Court by virtue of Section 18(3) and, therefore, no other Court /Special Court can have jurisdiction in this regard.

(ii) Section 1(4) of the JJ Act, 2015 provides for a non-obstante clause by providing that this Act shall apply to all the matters concerning children in need of care and protection and children in conflict with law including apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and also procedure and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection. The JJ Act, 2015 has come into force w.e.f. 15.01.2016 and Section 1(4) therefore overrides any other legislation apart from the fact that it is also not only a special legislation but also later in point of time and, therefore, jurisdiction would vest only in the Children's Court and in no other Court.

(iii) Section 3 of the JJ Act, 2015 provides for general principles to be followed in the administration of the Act and various safeguards have been provided to the juveniles.

(iv) Section 8(3) of the JJ Act, 2015 deals with the functions of the Board and provides for a number of safeguards to the juveniles. Section 21 of the Act provides that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence either under the provisions of this Act or under the provisions of the IPC or any other law for the time being in force. Therefore, this provision also overrides any other legislation regarding the quantum of punishment. Section 23 of the Act is another non-obstante clause which provides

that there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child and this provision has overriding effect upon the Code of Criminal Procedure or any other law for the time being in force. Therefore, transferring the trial to some other Court would amount to deprivation of various Statutory rights available to the respondent who is a child in conflict with law.

(v) Right of appeal against the orders passed by the Special Judge under the NIA Act and also by the Children's Court is available in both the statutes and an appeal would lie before the High Court. The mere fact that against the orders passed by the Special Judge under the NIA Act, an appeal would lie to a Division Bench of the High Court whereas under the Children's Court it would lie before a learned single Judge cannot become a ground for conferring of jurisdiction to a Special Judge under the NIA Act especially by taking away the Statutory rights and privileges available under the JJ Act, 2015.

(vi) Reliance has been placed upon a judgment of the Hon'ble Supreme Court in *Solidaire India Ltd. versus Fairgrowth Financial services [AIR 2001 SCC 958]* to contend that when there is conflict between the Special Acts, then the later Act will prevail.

Issue involved in the petition

(8) The core issue involved in the present petition pertains to jurisdiction of Court and the said issue can be crystallized as follows:-

“When an FIR has been registered under a Scheduled Act prescribed under NIA Act, 2008, then whether a juvenile who has been directed to be tried as an adult be tried by the Children's Court established under the Commissions for Protection of Child Rights Act, 2005 or under the NIA Act, 2008 by a Special Judge designated under the provisions of NIA Act”.

Reference To relevant provisions

(9) Before considering the arguments raised by the learned counsel for the parties it would be necessary to reproduce the relevant legislative provisions since the present issue involves not only

interpretation of statutes qua interplay of different statutes but also the question of jurisdiction of Court.

The Juvenile Justice (Care and Protection of Children) Act, 2015

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social re- integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, here in under and for matters connected therewith or incidental thereto.

WHEREAS, the provisions of the Constitution confer powers and impose duties, under clause (3) of article 15, clauses (e) and (f) of article 39, article 45 and article 47, on the State to ensure that all the needs of children are met and that their basic human rights are fully protected;

AND WHEREAS, the Government of India has acceded on the 11th December, 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child;

AND WHEREAS, it is expedient to re-enact the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) to make comprehensive provisions for children alleged and found to be in conflict with law and children in need of care and protection, taking into consideration the standards prescribed in the Convention on the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1993), and other related international instruments.

Section 1(4)

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Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including :

(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;

(ii) procedures and decisions or orders relating to rehabilitation, adoption, re-integration, and restoration of children in need of care and protection.

Section 2(12)

"**child**" means a person who has not completed eighteen years of age;

Section 2(13)

"**child in conflict with law**" means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;

Section 2(20)

"**Children's Court**" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

Section 2(24)

"**corporal punishment**" means the subjecting of a child by any person to physical punishment that involves the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming the child;

Section 2(33)

"**heinous offences**" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is

imprisonment for seven years or more;

Section 2(35)

"juvenile" means a child below the age of eighteen years;

Section 2(54)

"serious offences" includes the offences for which the punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force, is imprisonment between three to seven years;

Section 2(61)

All words and expressions used but not defined in this Act and defined in other Acts shall have the meanings respectively assigned to them in those Acts.

Section 3

General principles to be followed in administration of Act-

The Central Government, the State Governments, the Board, and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following fundamental principles, namely:

(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human beings shall be treated with equal dignity and rights.

(iii) Principle of participation: Every child shall have a right to be heard and to participate in all processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to the age and maturity of the child.

(iv) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(v) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child

shall be that of the biological family or adoptive or foster parents, as the case may be.

(vi) Principle of safety: All measures shall be taken to ensure that the child is safe and is not subjected to any harm, abuse or maltreatment while in contact with the care and protection system, and thereafter.

(vii) Positive measures: All resources are to be mobilized including those of family and community, for promoting the well-being, facilitating development of identity and providing an inclusive and enabling environment, to reduce vulnerabilities of children and the need for intervention under this Act.

(viii) Principle of non-stigmatizing semantics: Adversarial or accusatory words are not to be used in the processes pertaining to a child.

(ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a Committee and any non-exercise of a fundamental right shall not amount to waiver.

(x) Principle of equality and non-discrimination: There shall be no discrimination against a child on any grounds including sex, caste, ethnicity, place of birth, disability and equality of access, opportunity and treatment shall be provided to every child.

(xi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and throughout the judicial process.

(xii) Principle of institutionalization as a measure of last resort: A child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.

(xiii) Principle of repatriation and restoration: Every child in the juvenile justice system shall have the right to be reunited with his family at the earliest and to be restored to the same socio-economic and cultural status that he was in, before coming under the purview of this Act, unless such restoration and repatriation is not in his best interest.

(xiv) Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances..

(xv) Principle of diversion: Measures for dealing with children in conflict with law without resorting to judicial proceedings shall be promoted unless it is in the best interest of the child or the society as a whole.

(xvi) Principles of natural justice: Basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under this Act.

Section 5

Placement of person, who cease to be a child during process of inquiry.

Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.

Section 6

Placement of persons, who committed an offence, when person was below the age of eighteen years.

(1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.

(2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.

(3) The person referred to in sub-section(1) shall be treated as per the procedure specified under the provisions of this Act.

Section 8

Powers, functions and responsibilities of the Board.

(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include:

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions.

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognizing that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organization, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of such a child to the observation home;

and

(n) any other function as may be prescribed.

Section 18(3)

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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.

Section 19

Powers of Children's Court.

(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that:

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformative services including educational services, skill development, alternative therapy such as counseling, behavior modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

Section 21

Order that may not be passed against a child in conflict with law.

No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.

Section 23

No joint proceedings of child in conflict with law and person not a child.

(1) Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

Section 39 (2)

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For children in conflict with law the process of rehabilitation and social integration shall be undertaken in the observation homes, if the child is not released on bail or in special homes or place of safety or fit facility or with a fit person, if placed there by the order of the Board.

Section 101 (5)

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Any person aggrieved by an order of the Children's Court may file an appeal before the High Court in accordance with the procedure specified in the Code of Criminal Procedure, 1973 (2 of 1974).

The National Investigation Agency Act, 2008

An Act to constitute an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organizations and for matters connected therewith or incidental thereto.

Section 1

Short title, extent and application.—(1) This Act may be called the National Investigation Agency Act, 2008.

(2) It extends to the whole of India and it applies also to citizens of India outside India;

(a) to persons in the service of the Government wherever they may be;

(b) to persons on ships and aircrafts registered in India wherever they may be; [and]

(c) to persons who commit a Scheduled Offence beyond India against the Indian citizens or affecting the interest of India.

Section 2 (b)

“Code” means the Code of Criminal Procedure 1973 (2 of 1974).

Section 2(g)

“Scheduled Offence” means an offence specified in the Schedule.

Section 2(h)

“Special Court” means [a Court of Session designated as Special Court] under section 11 or, as the case may be, under section 22.

Section 11

Power of Central Government to [designate Court of Session as] Special Courts:

(1) [The Central Government shall, in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, for the trial of Scheduled Offences, designate one or more Courts of Session as Special Court] for such area or areas, or for such case or class or group of cases, as may be specified in the notification.

[Explanation- For the purpose of this sub-section, the expression “High Court” means the High Court of the State in which a Court of Sessions to be designated as Special Court is functioning.]

(2) Where any question arises as to the jurisdiction of any Special Court, it shall be referred to the Central Government whose decision in the matter shall be final.

[****]

(8) For the removal of doubts, it is hereby provided that the attainment [by the Sessions Judge of the Court of Session referred to in sub-section (1)] of the age of superannuation under the rules applicable to him in the service to which he belongs shall not affect his continuance as [Judge of the Special Court and the appointing authority in consultation with the Central Government] may by order direct that he shall continue as Judge until a specified date or until completion of the trial of the case or cases before him [whichever is earlier].

(9) When more than one Special Court is designated for an area or areas, the senior most Judge shall distribute the business among them.

Section 13

Jurisdiction of Special Courts:

(1) Notwithstanding anything contained in the Code, every Scheduled Offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed.

(2) If, having regard to the exigencies of the situation prevailing in a State if,—

(a) it is not possible to have a fair, impartial or speedy trial;
or

(b) it is not feasible to have the trial without occasioning the breach of peace or grave risk to the safety of the accused, the witnesses, the Public Prosecutor or a judge of the Special Court or any of them; or

(c) it is not otherwise in the interests of justice, the Supreme Court may transfer any case pending before a Special Court to any other Special Court within that State or in any other State and the High Court may transfer any case pending before a Special Court situated in that State to any other Special Court within the State.

(3) The Supreme Court or the High Court, as the case may be, may act under this section either on the application of the Central Government or a party interested and any such application shall be made by motion, which shall, except when the applicant is the Attorney-General for India, be supported by an affidavit or affirmation.

Section 16(3)

XXX XXX XXX

Subject to the other provisions of this Act, a Special Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

Section 17

Protection of witnesses:

(1) Notwithstanding anything contained in the Code, the proceedings under this Act may, for reasons to be recorded in writing, be held in camera if the Special Court so desires.

(2) On an application made by a witness in any proceeding before it or by the Public Prosecutor in relation to such witness or on its own motion, if the Special Court is satisfied that the life of such witness is in danger, it may, for reasons to be recorded in writing, take such measures as it deems fit for keeping the identity and address of such witness secret.

(3) In particular, and without prejudice to the generality of

the provisions of sub-section (2), the measures which a Special Court may take under that sub-section may include—

- (a) the holding of the proceedings at a place to be decided by the Special Court;
 - (b) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;
 - (c) the issuing of any directions for securing that the identity and address of the witnesses are not disclosed; and
 - (d) a decision that it is in the public interest to order that all or any of the proceedings pending before such a Court shall not be published in any manner.
- (4) Any person who contravenes any decision or direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to one thousand rupees.

Section 21(2)

XXX XXX XXX

Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

The Schedule

XXX XXX XXX

2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967)

The Commissions for Protection of Child Rights Act, 2005

An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

WHEREAS India participated in the United Nations (UN)

General Assembly Summit in 1990, which adopted a Declaration on Survival, Protection and Development of Children;

AND WHEREAS India has also acceded to the Convention on the Rights of the Child (CRC) on the 11th December, 1992;

AND WHEREAS CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's rights enumerated in the Convention;

AND WHEREAS in order to ensure protection of rights of children one of the recent initiatives that the Government have taken for Children is the adoption of National Charter for Children, 2003;

AND WHEREAS the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "A World Fit for Children" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

AND WHEREAS it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in this regard, standards prescribed in the CRC, and all other relevant international instruments;

Section 2(b)

XXX XXX XXX

"**child rights**" includes the children's rights adopted in the United Nations convention on the Rights of the Child on the 20th November, 1989 and ratified by the Government of India on the 11th December, 1992;

Section 25

Children's Courts.—For the purpose of providing speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try the said offences:

Provided that nothing in this section shall apply if—

- (a) a Court of Session is already specified as a special court; or
- (b) a special court is already constituted, for such offences under any other law for the time being in force

Scope of Juvenile Justice Act

(10) The legislative action for providing protection to children had always been very dynamic and progressive. During the period of last three decades, three legislations pertaining to juveniles were enacted by the Parliament in succession. Juvenile Justice Act, 1986 was repealed by the Juvenile Justice Act, 2000 which came into force w.e.f. 01.04.2001 and thereafter, the Juvenile Justice Act, 2000 was repealed by the Juvenile Justice (Care & Protection) Act, 2015 which came into force w.e.f. 15.01.2016. The legislature in its wisdom substituted new comprehensive legislations in order to augment the care, protection and need of the juveniles since the legislations were beneficial legislations apart from being self- contained Codes. A Constitution Bench of Hon'ble Supreme Court in *Partap Singh versus State of Jharkhand and another*¹ dealt with the scope of Juvenile Justice Act, 1986 and 2000. The issue involved was as to whether the date of occurrence will be reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced before the Court/competent authority and whether the Act of 2000 will be applicable in case a proceeding was initiated under Act of 1986 and pending when the Act of 2000 was enforced with effect from 01.04.2001. The preamble as well as statement of objects and reasons were discussed and it was observed that the whole object of the Act is to provide for care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles and that it was a settled law that interpretation of the statute of a beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation. The objects of juvenile justice legislations were discussed and it was observed that the purpose of a juvenile justice legislation is to provide succor to the children who were being incarcerated along with adults and were subject to various abuses. The Hon'ble Supreme Court observed that Juvenile Justice Act

¹ (2005) 3 SCC 551

is not only a beneficent legislation but also a remedial one. The term 'Juvenile' must be given a definite connotation. A person cannot be a juvenile for one purpose and an adult for other purpose. The Courts lean strongly against any construction which tends to reduce a statute to a futility. The relevant portion of the aforesaid judgment is reproduced as under:-

8. Thus, the whole object of the Act is to provide for the care, protection, treatment, development and rehabilitation of neglected delinquent juveniles. It is a beneficial legislation aimed at to make available the benefit of the Act to the neglected or delinquent juveniles. **It is settled law that the interpretation of the Statute of beneficial legislation must be to advance the cause of legislation to the benefit for whom it is made and not to frustrate the intendment of the legislation.**

(emphasis supplied)

21. As stated hereinabove the whole object of the Acts is to provide for the care, protection, treatment, development and rehabilitation of juveniles. **The Acts being benevolent legislations, an interpretation must be given which would advance the cause of the legislation i.e. to give benefit to the juveniles.**

(emphasis supplied)

43. The purpose of the juvenile justice legislation is to provide succor to the children who were being incarcerated along with adults and were subjected to various abuses. It would be in the fitness of things that appreciation of the very object and purpose of the legislation is seen with a clear understanding which sought to bring relief to juvenile delinquents.

44. The problem of juvenile justice is, no doubt, one of tragic human interest so much so in fact that it is not confined to this country alone but cuts across national boundaries. In 1966 at the Second United Nations Congress on the Prevention of Crime and Treatment of Offenders at London this issue was discussed and several therapeutic recommendations were adopted. To bring the operations of the juvenile justice system in the country in conformity with the UN Standard Minimum Rules for the Administration of

Juvenile Justice, the Juvenile Justice Act came into existence in 1986. A review of the working of the then existing Acts both State and parliamentary would indicate that much greater attention was found necessary to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The justice system as available for adults could not be considered suitable for being applied to juveniles. There is also need for larger involvement of informal system and community-based welfare agencies in the care, protection, treatment, development and rehabilitation of such juveniles.

70. This argument cannot be accepted for more than one reason. **The said Act is not only a beneficent legislation, but also a remedial one.** The Act aims at grant of care, protection and rehabilitation of a juvenile vis-à-vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well-being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded. In essence, Rule 5 calls for no less and no more than a fair reaction in any given case of juvenile delinquency and crime. The meaning of the expression “juvenile” used in a statute by reason of its very nature has to be assigned with reference to a definite date. The term “juvenile” must be given a definite connotation. **A person cannot be a juvenile for one purpose and an adult for other purpose.** It was, having regard to the constitutional and statutory scheme, not necessary for Parliament to specifically state that the age of juvenile must be determined as on the date of commission of the offence. The same is inbuilt in the statutory scheme. The statute must be construed having regard to the scheme and the ordinary state of affairs and consequences flowing therefrom. The modern approach is to consider whether a child can live up to the moral and psychological components of criminal

responsibility, that is, whether a child, by virtue of his or her individual discernment and understanding can be held responsible for essentially antisocial behavior.

(emphasis supplied)

75. The statute, it is well known, must be construed in such a manner so as to make it effective and operative on the principle of *utres magis valeat quam pereat*. The courts lean strongly against any constructions which tend to reduce a statute to a futility. When two meanings, one making the statute absolutely vague, wholly intractable and absolutely meaningless and the other leading to certainty and a meaningful interpretation, are given, in such an event the latter should be followed. (See *Tinsukhia Electric Supply Co. Ltd. v. State of Assam* 1989 3 SCC 709, *Andhra Bank v. B. Satyanarayana* 2004 2 SCC 657 and *Indian Handicrafts Emporium v. Union of India* 2003 7 SCC 589.)

(11) The Hon'ble Supreme Court in *Salil Bali versus Union of India and another*² again discussed the scope of Juvenile Justice Act, 2000 pertaining to the rights of children. The vires of Juvenile Justice (Care and Protection of Children) Act, 2000 was challenged and upheld although broadly the scope of the bunch of petitions pertained to fixation of age of a juvenile. Various international conventions, declarations and resolutions were discussed and it was also observed that Juvenile Justice Act, 2000 was in tune with the provisions of the Constitution and various declarations and conventions adopted by the world community represented by the United Nations. The relevant portion of the aforesaid judgment is reproduced as under:-

41. It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation. International community has been alive to the problem for a long time. After the aftermath of the First World War, the League of Nations issued the Geneva Declaration of the Rights of the Child in 1924. Following the gross abuse and violence of human rights during the Second World War,

² (2013) 7 SCC 705

which caused the death of millions of people, including children, the United Nations had been formed in 1945 and on 10th December, 1948 adopted and proclaimed the Universal Declaration of Human Rights. While Articles 1 and 7 of the Declaration proclaimed that all human beings are born free and equal in dignity and rights and are equal before the law, Article 25 of the Declaration specifically provides that motherhood and childhood would be entitled to special care and assistance. The growing consciousness of the world community was further evidenced by the Declaration of the Rights of the Child, which came to be proclaimed by the United Nations on 20th November, 1959, in the best interests of the child. This was followed by the Beijing Rules of 1985, the Riyadh Guidelines of 1990, which specially provided guidelines for the prevention of juvenile delinquency, and the Havana Rules of 14th December, 1990. The said three sets of Rules intended that social policies should be evolved and applied to prevent juvenile delinquency, to establish a Juvenile Justice System for juveniles in conflict with law, to safeguard fundamental rights and to establish methods for social re-integration of young people who had suffered incarceration in prison or other corrective institutions. One of the other principles which was sought to be reiterated and adopted was that a juvenile should be dealt with for an offence in a manner which is different from an adult. The Beijing Rules indicated that efforts should be made by member countries to establish within their own national jurisdiction, a set of laws and rules specially applicable to juvenile offenders. It was stated that the age of criminal responsibility in legal systems that recognize the concept of the age of criminal responsibility for juveniles should not be fixed at too low an age-level, keeping in mind the emotional, mental and intellectual maturity of children.

42. Four years after the adoption of the Beijing Rules, the United Nations adopted the Convention on the Rights of the Child vide the Resolution of the General Assembly No. 44/25 dated 20th November, 1989, which came into force on 2nd September, 1990. India is not only a signatory to the said Convention, but has also ratified the same on 11th December, 1992. The said Convention sowed the seeds of

the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2000, by the Indian Parliament.

43. India developed its own jurisprudence relating to children and the recognition of their rights. With the adoption of the Constitution on 26th November 1949, constitutional safeguards, as far as weaker sections of the society, including children, were provided for. The Constitution has guaranteed several rights to children, such as equality before the law, free and compulsory primary education to children between the age group of six to fourteen years, prohibition of trafficking and forced labour of children and prohibition of employment of children below the age of fourteen years in factories, mines or hazardous occupations. The Constitution enables the State Governments to make special provisions for children. To prevent female feticide, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act was enacted in 1994. One of the latest enactments by Parliament is the Protection of Children from Sexual Offences Act, 2012.

44. The Juvenile Justice (Care and Protection of Children) Act, 2000, is in tune with the provisions of the Constitution and the various Declarations and Conventions adopted by the world community represented by the United Nations. The basis of fixing of the age till when a person could be treated as a child at eighteen years in the Juvenile Justice (Care and Protection of Children) Act, 2000, was Article 1 of the Convention of the Rights of the Child, as was brought to our notice during the hearing. Of course, it has been submitted by Dr. Kishor that the description in Article 1 of the Convention was a contradiction in terms. While generally treating eighteen to be the age till which a person could be treated to be a child, it also indicates that the same was variable where national laws recognize the age of majority earlier. In this regard, one of the other considerations which weighed with the legislation in fixing the age of understanding at eighteen years is on account of the scientific data that indicates that the brain continues to develop and the growth of a child continues till he reaches at least the age of eighteen years and that it is at that point of

time that he can be held fully responsible for his actions. Along with physical growth, mental growth is equally important, in assessing the maturity of a person below the age of eighteen years. In this connection, reference may be made to the chart provided by Mr. Kanth, wherein the various laws relating to children generally recognize eighteen years to be the age for reckoning a person as a juvenile/ child including criminal offences.

(12) In *Dr. Subramanian Swamy and others versus Raju through Member Juvenile Justice Board and another*³, the Supreme Court again dealt with the scope of Juvenile Justice Act, 2000. Although the vires of the Act was not directly in issue nor was the fixation of age of 18 years in issue but the scope was only restricted to need for analysis of the mental, intellectual and emotional state of mind of a person (under the age of 18). The laws relating to juveniles pertaining to various other countries were referred and it was observed that the Act is a beneficial piece of legislation. The relevant portion of the aforesaid judgment is reproduced as under:-

39. Having laid bare all that is necessary for a purposive adjudication of the issues that have been raised by the rival camps we may now proceed to examine the same.

The Act, as manifestly clear from the Statement of Objects and Reasons, has been enacted to give full and complete effect to the country's international obligations arising from India being a signatory to the three separate conventions delineated hereinbefore, namely, the Beijing Rules, the UN Convention and the Havana Rules. Notwithstanding the avowed object of the Act and other such enactments to further the country's international commitments, all of such laws must necessarily have to conform to the requirements of a valid legislation judged in the context of the relevant constitutional provisions and the judicial verdicts rendered from time to time. **Also, that the Act is a beneficial piece of legislation** and must therefore receive its due interpretation as a legislation belonging to the said category has been laid down by a Constitution Bench of this Court in *Pratap Singh vs. State of Jharkhand and Another*[10]. In other words, the Act must be interpreted and understood to

³ (2014) 3 SCC (CrL.) 482

advance the cause of the legislation and to confer the benefits of the provisions thereof to the category of persons for whom the legislation has been made.

(emphasis supplied)

43. In the present case there is no difficulty in understanding the clear and unambiguous meaning of the different provisions of the Act. There is no ambiguity, much less any uncertainty, in the language used to convey what the legislature had intended. All persons below the age of 18 are put in one class/group by the Act to provide a separate scheme of investigation, trial and punishment for offences committed by them. A class of persons is sought to be created who are treated differently. This is being done to further/effectuate the views of the international community which India has shared by being a signatory to the several conventions and treaties already referred to.

45. If the provisions of the Act clearly indicate the legislative intent in the light of the country's international commitments and the same is in conformity with the constitutional requirements, it is not necessary for the Court to understand the legislation in any other manner. In fact, if the Act is plainly read and understood, which we must do, the resultant effect thereof is wholly consistent with Article 14. The Act, therefore, need not be read down, as suggested, to save it from the vice of unconstitutionality for such unconstitutionality does not exist.

(13) The Juvenile Justice Act, 2015 rebuilds and fortifies the earlier Acts pertaining to Juvenile Justice although the broad objectives and nature of legislation is the same. The statement of objects and reasons and the preamble reflects the foundation and purpose of the Act. The JJ Act, 2015 was enacted for care and protection of juveniles by catering to their basic needs through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established. The enactment has its source from rights and duties under Clause (3) of Article 15 as well as Clauses (e) and (f) of Article 39, Article 45 and Article 47 of the Constitution of India. Apart from the same, the Government of India has acceded to the convention of the rights of the child adopted by the

General Assembly of United Nations which has prescribed a set of standards to be adhered to by all State parties in securing the best interest of the child.

(14) The Hon'ble Supreme Court in *Independent thought versus Union of India and another*⁴ was dealing with exception 2 of Section 375 IPC pertaining to the offence of rape which was directed to be read as sexual intercourse or sexual acts by a man with his own wife, wife not being the age of 18 years of age is not rape. The doctrine of 'reading down' was invoked and it was observed that it was only through this reading that the intent of social justice to the married girl child and the constitutional vision of the framers of our Constitution can be preserved and protected and perhaps given impetus. It was in this background that the provisions of Juvenile Justice Act, 2015 were also discussed and it was observed that the JJ Act, 2015 is also relatable to Article 15 of the Constitution of India. Not only the JJ Act, 2015 was discussed but the provisions of other legislations including POCSO Act were also discussed as they pertain to the rights of children. It was also observed that all these 'child-friendly statutes' are essential for the well-being of the girl child (whether married or not) and are protected by Article 15(3) of the Constitution. Furthermore, it was also observed that under pro-child statutes which have been enacted in the recent past though not effectively implemented, a child is and remains a child regardless of the description or nomenclature given to the child. It was further observed that the statutes concerning the rights of children are special laws concerning a special subject of legislation and therefore, the provisions of such subject-specific legislations must prevail and take precedence over the provisions of a general law such as the IPC. The intention of the JJ Act, 2015 is to benefit a child rather than place her in difficult circumstances. A contrary view would not only destroy the purpose and spirit of the JJ Act, 2015 but would also take away the importance of Article 15(3) of the Constitution of India. The relevant portion of the aforesaid judgment is reproduced as under:-

79. There is no doubt that pro-child statutes are intended to and do consider the best interest of the child. These statutes have been enacted in the recent past though not effectively implemented. Given this situation, we are of opinion that a few facts need to be acknowledged and accepted.

Firstly, a child is and remains a child regardless of the

⁴ (2017) 10 SCC 800

description or nomenclature given to the child. It is universally accepted in almost all relevant statutes in our country that a child is a person below 18 years of age. Therefore, a child remains a child whether she is described as a street child or a surrendered child or an abandoned child or an adopted child. Similarly, a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child. At this stage we are reminded of Shakespeare's eternal view that a rose by any other name would smell as sweet - so also with the status of a child, despite any prefix.

95. Whatever be the explanation, given the context and purpose of their enactment, primacy must be given to pro-child statutes over the IPC as provided for in Sections 5 and 41 of the IPC. There are several reasons for this including the absence of any rationale in creating an artificial distinction, in relation to sexual offences, between a married girl child and an unmarried girl child. **Statutes concerning the rights of children are special laws concerning a special subject of legislation and therefore the provisions of such subject-specific legislations must prevail and take precedence over the provisions of a general law such as the IPC.** It must also be remembered that the provisions of the JJ Act as well as the provisions of the POCSO Act are traceable to Article 15(3) of the Constitution which enables Parliament to make special provisions for the benefit of children. We have already adverted to some decisions relating to the interpretation of Article 15(3) of the Constitution in a manner that is affirmative, in favour of children and for children and we have also adverted to the discussion in the Constituent Assembly in this regard. There can therefore be no other opinion regarding the pro-child slant of the JJ Act as well as the POCSO Act.

(emphasis supplied)

(15) The Juvenile Justice Act, 2015 is therefore more protective and supportive legislation as compared to the earlier Acts. There is a progressive change in the language of the preamble and reference is also made to the Hague Convention in respect of inter-country adoption and other related international instruments. The specific provisions for

'abandoned child' have been introduced changing the classification of heinous offence and new provisions for Children's Court apart from enhancement of punishment for juveniles against the heinous crime has been effected in the new legislation of 2015. Apart from the same, the scope of overriding clause under Section 1(4) has also been enlarged.

Effect of non-obstante clauses

(16) In order to deal with the arguments raised by the learned counsel for the petitioner, it will be necessary to consider the non-obstante clause provided under Section 1(4) of the JJ Act, 2015. The said provision has already been reproduced above for the purpose of reference. It provides that the Act will have overriding effect upon any other law for the time being in force and the provisions of this Act shall apply to the matters concerning children in need of care and protection as well as children in conflict with law. The scope of the same has also been stated in Section 1(4) to include apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and also procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection. This provision is somewhat similar kind of provision which was also inserted by way of amendment in the year 2006 w.e.f. 22.08.2006 in the old Act of 2000 but the present provision under the new Act of 2015 is more elaborative and illustrative. The provision can be analyzed by dissecting the same as follows:

- (i) The Act of 2015 shall override **any other law** for the time being in force.
- (ii) The Act applies to all matters concerning in need of care and protection.
- (iii) The Act also applies to children in conflict with law.
- (iv) The areas of operation whereby this Act applies will include apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law and procedures and decisions or orders relating to rehabilitation, adoption, re-integration and restoration of children in need of care and protection.
- (v) The scope of areas of operation as aforesaid are inclusive in nature and are therefore not exhaustive.

As compared to earlier provision under 2000 Act, the aforesaid

areas have now been mentioned in the clause itself. The non-obstante clause in the new Act of 2015 therefore becomes much more clarificatory, illustrative and unambiguous in nature reflecting the intention of legislature.

(17) In *M/s Maruti Udyong Ltd. versus Ram Lal*⁵ it was held by Hon'ble Supreme Court that it is well settled that when both statutes containing non-obstante clauses are special statutes, then an endeavour should be made to give effect to both of them. In case of conflict, the latter shall prevail. Reference was also made to the earlier judgement of the Supreme Court in *Solidaire India Ltd. versus Fairgrowth Financial services (Supra)*.

(18) In the light of the aforesaid specific provision contained under Section 1(4) of the JJ Act, 2015, the scope and effect of non-obstante clause needs to be further discussed.

(19) A non-obstante clause is normally incorporated in a section at the beginning of a statute which gives an overriding effect over a provision or an Act which is specifically mentioned in the provision itself. In a normal language it would also mean that inspite of the provisions of some other provisions or some other Act, the enactment in which the non-obstante clause has been incorporated will operate and a conflict, if any, gets fully resolved. The language used in the non-obstante clause is of utmost importance. It can provide for overriding effect over other provisions of the Act or any other law for the time being in force and therefore, the language used therein needs to be given effect. A non-obstante clause is always used as a contradistinction to the phrase 'subject to'. Furthermore the effect of a non-obstante clause is similar to that of 'proviso' or an 'exception' but the aforesaid two expressions are used normally for the purpose of interpreting and giving effect to a particular provision in a particular statute.

(20) In the present case, the expression used by the legislature in its wisdom while incorporating a non-obstante clause under Section 1(4) is clear and unambiguous when it provides that it will have an overriding effect upon 'any other law for the time being in force'. Apart from the same, the JJ Act, 2015 also provides for various provisions pertaining to apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law. The inclusive clauses of Section 1(4) would further

⁵ (2005)(2) SCC 638

substantiate the intention of legislature to mean that in the aforesaid areas as well and without any doubt the operation of the present Act of 2015 shall prevail and will have an overriding effect over any other law for the time being in force. Although the description of the aforesaid areas is inclusive in nature and not exhaustive but the intention of legislature speaks for itself. It is a fundamental rule of construction that normally no provision or word should be considered to be either superfluous or redundant and the Courts must always presume that the legislature has inserted every part thereof with a purposeful legislative intention and must be given effect.

(21) The Hon'ble Supreme Court in *Sarwan Singh versus Kasturi Lal*⁶ observed that the object and purpose of a legislation assumes greater relevance if the language of the law is obscure and ambiguous. When there is a conflict of two or more laws which operate in same field and they contain non-obstante clauses, then they have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one another test may also be applied through a persuasive force of such a test but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one.

(22) In *Union of India and another versus G.M. Kokil and others*⁷, it was observed by the Hon'ble Supreme Court that it is well-known that a non-obstante clause is a legislative device which is usually employed to give an overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment, that is to say, to avoid the operation and effect of all contrary provisions.

(23) In *Chandravarkar Sita Ratna Rao versus Ashalata S. Guram*⁸ the Hon'ble Supreme Court observed that it is well settled that the expression 'notwithstanding' is in contradistinction to the phrase 'subject to', the latter conveying the idea of a provision yielding place to another provision or other provisions to which it is made subject.

(24) In *Yakub Abdul Razak Memon versus The State of Maharashtra, through CBI, Bombay*⁹, the Hon'ble Supreme Court

⁶ (1977) AIR SC 265

⁷ (1984) AIR SC 1022

⁸ (1986) (4) SCC 447

⁹ (2013) 13 SCC 1

dealt with the cases pertaining to Bombay bomb blast under the provisions of Terrorist and Disruptive Activities (Prevention) Act, 1987 (in short 'TADA Act'). The issue with regard to conflict of laws was also considered. One of the appellants in that case was of the age of about 17 years and 3 months on the date of commission of offence and an argument was raised on his behalf that he ought to have been dealt with under the JJ Act, 2000 and the provisions of TADA Act were not applicable to him. There were two different legislations and both of them contained non- obstante clause. The TADA Act was of the year 1987 but it was repealed in the year 1995, although the incident had taken place in Bombay in the year 1993 which was prior to the repeal of the Act. Section 25 of the TADA Act provided for an overriding clause wherein it was provided that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act. The JJ Act, 2000 which was enacted after the incident and after the repeal of the TADA Act did not originally have any non-obstante clause for giving an overriding effect to any other law. However, JJ Act, 2000 was amended w.e.f. 22.08.2006 wherein Section 1(4) was added by way of an amendment which gave an overriding effect to the Act over other statutes. In this way, both the statutes i.e. TADA Act and JJ Act, 2000 contained non-obstante clauses and had an overriding effect upon each other. The Hon'ble Supreme Court referred to two maxims for the purpose of examination of issue which are as follows:

1. *Leges posteriores priores contrarias abrogant* (later laws abrogate earlier contrary laws)
2. *Generalia specialibus non derogant* (a general provision does not derogate from a special one)

(25) It was further observed by the Hon'ble Supreme Court that the principle that the later Act would prevail over the earlier Act has consistently been held to be subject to the exception that a general provision does not derogate from a special one. It means that where the literal meaning of the general enactment covers a situation for which specific provision is made by another enactment contained in the earlier Act, it would be presumed that the situation was intended to continue to be dealt with by the specific provision rather than the later general one. It was further observed that where there is inconsistency between the provisions of two statutes and both can be regarded as special in nature, the conflict has to be resolved by reference to the purpose and policy

underlying the two enactments and the clear intendment of the legislature conveyed by the language of the relevant provisions therein. While referring to another judgment of Supreme Court in *Employees Provident Fund Commissioner versus Official Liquidator of Esskay Pharmaceuticals Ltd.*¹⁰, it was further observed that the Court had earlier held that the non-obstante nature of a provision although may be of wide amplitude, the interpretative process thereof must be kept confined to the legislative policy. The non-obstante clause must be given effect to, to the extent the legislature intended and not beyond the same. Reference was also made to the declaration of the rights of the child adopted by the United Nations on 20.11.1959 which provides that the child by reason of his physical and mental immaturity needs special safeguards and care including his appropriate legal protection before as well as after birth. Reference was also made to the United Nations adopted the Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) dated 29.11.1985 and India is a signatory to the declaration and effectively participated in bringing the declaration into force. The Rules guide the States to protect children's rights and respect their needs during the development of separate and particular system of juvenile justice. It is also in favour of meeting the best interests of the child while conducting any proceedings before any authority. If children are processed through the criminal justice system, it results in the stigma of criminality and this in fact amplifies criminality of the child. The Rules say that depriving a child/juvenile of his liberty should be used as the last resort and that too, for the shortest period. These Rules direct the juvenile justice system to be fair and humane emphasizing the well being of child. It was further observed that the objects and reasons of the JJ Act, 2000 reveal that the Act is in consonance with the provisions under Article 21 read with clause (f) of Article 39 of the Constitution of India which provides that the State shall direct its policy towards securing the children or give opportunities and facilities to develop in a healthy manner and in conditions of freedom, dignity, childhood and youth are protected against exploitation and against moral and material abandonment. It was further observed that there can be no doubt that the JJ Act is beneficial in nature i.e. socially oriented legislation. Para No.1535 of *Yakub Abdul Razak Memon (Supra)* is reproduced as under:-

1535. Therefore, there can be no doubt that the JJ Act is **beneficial in nature** i.e. socially oriented legislation. In

¹⁰ (2011) 10 SCC 727

case the provisions are not complied with, the object of its enactment would be frustrated.

(emphasis supplied)

(26) While considering the conflict between two legislations it was observed that when the JJ Act, 2000 itself provides for an exception under which even bail may not be granted, the contention that JJ Act would override the provisions of TADA in all circumstances without any exception and in case the legislature itself has carved out an exception not to grant relief to a juvenile under the JJ Act, it cannot be held that it would prevail over TADA under all possible circumstances. Further reference was made to Section 1(4) which was added by way of amendment w.e.f. 22.08.2006 and while referring to the same it was observed that although this provision gives overriding effect over other statutes but the provisions of TADA left long back and were admittedly not in force on 22.08.2006 when the amendment of JJ Act, 2000 came into force. Thus, the question that arose was as to what is the meaning of 'the law for the time being in force'. The Court had earlier interpreted this phrase to include the law in existence on the date of commencement of the Act having overriding effect and the law which may be enacted in future during the life of the Act having overriding effect. Therefore, the Supreme Court was of the view that the JJ Act, 2000 would not have overriding effect on TADA which was not in existence on the date of commencement of the amended provision of Section 1 (4) of the JJ Act, 2000. It was further observed that the TADA being a special Act meant to curb the menace of terrorist and disruptive activities will have effect notwithstanding the fact that the JJ Act is general and beneficial legislation.

Consideration of submissions made by learned counsel for the parties

(27) The first and foremost submission made by the learned counsel for the petitioner was pertaining to Section 11 and 13 of the NIA Act, 2008 which revolves around the issue of jurisdiction of Court. Section 11 of NIA Act, 2008 provides for the power of the Central Government to designate the Court of Sessions as Special Courts which has already been done in the State of Punjab. Section 13 provides for jurisdiction of Special Courts and opens with a non-obstante clause by providing that every scheduled offence investigated by the Agency shall be tried only by the Special Court within whose local jurisdiction it was committed. In the Schedule of the NIA Act, vide entry No.2, the UAPA Act has been inserted. The present FIR and

the charges framed are also under the provisions of UAPA Act. It is the argument of the learned counsel for the petitioner that in view of the aforesaid specific provisions, whenever an offence pertains to UAPA Act it has to be tried by a Special Court under the NIA Act in view of Section 13 of the Act. However, on the other hand, the argument raised by the learned counsel for the respondent was that by virtue of Section 1(4) of the JJ Act, 2015 the non-obstante clause provided therein has an absolute overriding effect upon any other law for the time being in force which includes the NIA Act, 2008.

(28) A perusal of Section 13 of the NIA Act would show that the non-obstante clause provides for overriding effect upon the 'Code' and does not provide any overriding effect over any other law for the time being in force. In other words, the overriding effect is to the limited extent only. The expression 'Code' has also been defined under Section 2(b) of the NIA Act to mean the Code of Criminal Procedure, 1973. The language used in Section 13(1) by the legislature in its wisdom is clear and unambiguous. The intention of the legislature was to give the provisions of NIA Act an overriding effect over the Code of Criminal Procedure only. On the other hand, a perusal of Section 1(4) of the JJ Act, 2015 would show that it provides that the Act has an overriding effect upon **any other law for the time being in force**. Furthermore, the operation of overriding effect has also been clarified and illustrated by including apprehension, detention, **prosecution, penalty or imprisonment**, rehabilitation and social re- integration of children in conflict with law. The present is a case pertaining to child in conflict with law. The language used by the legislature in its wisdom in Section 1(4) is also clear and unambiguous. Furthermore, while listing the areas of operation of non-obstante clause which are non-exhaustive, a clarificatory projection has been made so as to avoid any confusion or doubt and to make the provision more apparent and unambiguous. The importance of the areas so provided in the inclusive clause will become more clear when compared with the amended provisions of Section 1(4) of JJ Act, 2000. Both the provisions are reproduced below in a tabulated form.

JJ Act, 2000	JJ Act, 2015
Section 1(4)	Section 1(4)
Notwithstanding anything contained in any other law for the time being in force, The	Notwithstanding anything contained in any other law for the time being in force, the

<p>provisions of this Act shall apply to all cases involving detention, prosecution, penalty or sentence of imprisonment of juveniles in conflict with law under such other law.</p>	<p>provisions of this Act shall apply to all matters concerning children in need of care and protection and children in conflict with law, including-</p> <p>(i) apprehension, detention, prosecution, penalty or imprisonment, rehabilitation and social re-integration of children in conflict with law;</p> <p>(ii) procedures and decisions or orders relating to rehabilitation, adoption, re integration, and restoration of child in needs of care and protection.</p>
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(29) A comparison of both the provisions would show that although the intention of legislature in both the enactments of 2000 and 2015 was the same i.e. to give an overriding effect to the JJ Act over any other law for the time being in force, However, in Section 1(4) of JJ Act, 2015, the scope has been extended even to matters concerning children in need of care and protection which was absent in JJ Act of 2000. The areas of operation of non-obstante clause has also been elaborated and classified. Therefore, it is not only an improvement by way of clarification but also reflects strong intention of the legislature by inserting Section 1(4) in the JJ Act, 2015 in a more elaborate form. On the other hand, Section 13(1) of the NIA Act does not provide for any overriding effect over the provisions of the JJ Act.

(30) Apart from the same, the preamble of the JJ Act, 2015 clearly provides that the Act is to consolidate and amend the law relating to children in need of care and protection by catering to their basic need through proper care, protection, development, treatment, social re- integration, by adopting a child-friendly approach in the **adjudication and disposal of matters in the best interest of children** and for their rehabilitation through processes provided and **institutions and bodies established herein under** and for matters connected therewith or incidental thereto.

(31) Therefore the intention of legislature is also reflected in the spirit of preamble itself that the Act is also for adjudication and disposal of matters in the best interest of children and that too through

the institutions and bodies established under the Act.

(32) The JJ Act, 2015 came into force w.e.f. 15.01.2016 and is therefore later in point of time as compared to the NIA Act, 2008. The basic rule of interpretation is that when there is a conflict between two statutes then the latter shall prevail. However, in case of interpretation of statutes, two more situations may arise. Firstly, when there are two special statutes and the conflict arises between them and secondly, when the earlier statute is a special statute and later statute is a general statute and a conflict arises between them. In the first category, it can be noticed at the first instance that in case both the statutes are to be treated as special statutes, then the latter shall prevail but in the present case the JJ Act, 2015 provides for a non-obstante clause qua any other law for the time being in force whereas NIA Act, 2008 provides for a non-obstante clause qua Code of Criminal Procedure only and therefore, a conflict does not arise in the present case. In the second category in case the JJ Act, 2015 is to be treated as a general statute, again a conflict would not arise in view of the same reasoning that JJ Act, 2015 has provided for a specific non-obstante clause giving overriding effect over other laws for the time being in force. Apart from the above, Section 8(1) of JJ Act, 2015 provides for another non-obstante clause by providing that notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in this Act, the Board constituted for any district shall have the power to deal exclusively with 'all the proceedings under this Act' relating to children in conflict with law, in the area of jurisdiction of such Board. Section 8(2) provides that the powers on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under Section 19 or in appeal, revision or otherwise. In the present case, the trial is before the Children's Court and the powers conferred on the Board are also to be exercised by the Children's Court and by virtue of Section 8(1), the Children's Court will have the power to deal exclusively with all the proceedings under this Act relating to children in conflict with law. Therefore, the twin non-obstante clauses would have an overriding effect upon the NIA Act, 2008 which does not provide for any non-obstante clause qua other laws except for the Code of Criminal Procedure.

(33) The Hon'ble Supreme Court in *Independent Thought versus Union of India and another* (*supra*) has categorically observed that statutes concerning the rights of children are special laws

concerning the special subject of legislation and therefore, the provisions of such subject- specific legislations must prevail and take precedence over the provisions of the general law such as IPC.

(34) The Hon'ble Supreme Court in *Dr. Subramanian Swamy and others versus Raju through Member Juvenile Justice Board and another* (*Supra*) also observed that the JJ Act is a beneficent legislation.

(35) While discussing the juvenile issue, the Hon'ble Supreme Court in *Yakub Abdul Razak Memon versus The State of Maharashtra* (*Supra*) observed that there is no doubt that JJ Act is beneficial in nature and is socially oriented legislation and in case the provisions are not complied with, the object of its enactment would be frustrated. However, while resolving the conflict between the JJ Act, 2000 and TADA Act, 1987, it was observed that Section 1(4) of JJ Act, 2000 was added w.e.f. 22.08.2006 which gave overriding effect over other statutes. However, the other statute in that case was TADA Act which was not in existence and was repealed much before coming into force of the amendment of 22.08.2006. Since the overriding effect was provided over other statutes and TADA Act stood repealed much before the same, it could not be said that JJ Act, 2000 will have an overriding effect upon the TADA Act. In the present case, both the NIA Act, 2008 and JJ Act, 2015 are in operation. The later in point of time is JJ Act which provides for clear cut non-obstante over any other law for the time being in force whereas Section 13 of the NIA Act provides for non-obstante clause giving an overriding effect only upon the Code of Criminal Procedure and therefore, this Court is of the view that the JJ Act, 2015 will have an overriding effect over the NIA Act, 2008.

(36) Another argument raised by the learned counsel for the petitioner was that the Special Court constituted under the NIA Act provides speedy trial and rather under Section 19 it has been so provided that the trial by Special Court will have precedence and the Special Court shall hold the trial on day-to-day basis. However, the said argument although seems to be attractive but does not cut any ice. The argument of speedy trial, if any, cannot be given preference when issue of jurisdiction of Court is involved. The jurisdiction of a Court can neither be taken away nor vested in a particular Court on the basis of aforesaid argument.

(37) The next argument raised by the learned counsel for the petitioner was that under Section 2(20) of the JJ Act, the expression 'Children's Court' means established under the Commissions for

Protection of Child Rights Act, 2005 and a Children's Court can be either under the aforesaid Act or a Special Court under the POCSO Act and where such Courts have not been designated, then the Sessions Court will have the jurisdiction to try the offences under the Act. Under the NIA Act also the Sessions Courts have been designated as Special Court and since under both the legislations the Sessions Judge /Additional Sessions Judge has been designated as Special Court, then no prejudice would be caused to the respondent in case the same is tried by a Special Court constituted under NIA Act. In the present case, under Section 25 of the Commissions for Protection of Child Rights Act, 2005, Children's Court has already been designated and is operational. The argument raised by the learned counsel for the petitioner that in both the legislations the Court is held by Presiding Officer of the rank of Sessions Judge/Additional Sessions Judge and therefore, no prejudice would be caused to the respondent is also not sustainable in view of the fact that such a reasoning cannot become a ground for conferring a jurisdiction upon a particular Court. In the present case, the jurisdiction is vested in the Children's Court under Section 18(3) of the JJ Act, 2015 and by virtue of Section 1(4) of the Act, the provisions of the Act will have an overriding effect upon any other law for the time being in force. The learned counsel also referred to Section 16(3) of the NIA Act, 2008 to contend that the Special Court under NIA Act has all the powers of a Court of Sessions and try the offence as if it were a Court of Sessions in accordance with the procedure prescribed under the Code of Criminal Procedure and therefore, there would be no difference with regard to the procedure adopted by the Court, if it is tried by the Special Court constituted under the NIA Act or by the Children's Court. Reliance placed by the learned counsel for the petitioner on Section 16(3) of the NIA Act is also misconceived. The mere fact that the procedure adopted by both the Courts i.e by the Special Court under the NIA Act and Children's Court is similar cannot vest or take away jurisdiction of a Court on this ground alone.

(38) The next argument raised by the learned counsel for the petitioner that the respondent will attain the age of 21 years on 15.09.2022 and therefore, the benefit of not sending him to jail will no longer be available to him after the aforesaid date. Furthermore, Section 17 also provides for protection of witnesses since the matter involved was serious and heinous in nature and therefore, such a protection which is available to the witnesses of the case will not be available under the JJ Act. In continuation of the aforesaid argument

the learned counsel for the petitioner has also submitted that the offences under the NIA Act were very serious and involved national Security, Interest and Sovereignty of the State and therefore, must be tried under the NIA Act. However, on the other hand, the learned counsel for the respondent rather relied upon various provisions of the JJ Act, 2015 wherein various procedures and safeguards have been provided for the purpose of protection and care of a juvenile. He referred to Section 3 of the JJ Act, 2015 which provides for general principles to be followed in the administration of Act. A number of safeguards and protections have been enumerated in the aforesaid section for which the respondent is entitled. He further referred to Sections 5 and 6 which provide that when an offence is committed by a child less than 18 years, he shall be continued to be treated as a child during the course of trial and it also provides for a non-obstante clause by giving an overriding effect over any other law for the time being in force. Furthermore, Section 8(3) of JJ Act, 2015 also provides for another set of safeguards wherein powers of Children's Court has been provided. He further referred to Section 21 of the JJ Act, 2015 which is another provision which gives an overriding effect over any other law for the time being in force and provides that no child in conflict with law shall be sentenced to death or life imprisonment without the possibility of release for any such offence either under the provisions of this Act or under the provisions of IPC or any other law for the time being in force. In this way, a ceiling in the quantum of sentence has also been prescribed by giving an overriding effect. Another safeguard has been provided under Section 23 of the JJ Act, 2015 which provides that there shall be no joint proceedings of a child who is alleged to be in conflict with law and this provision also has an overriding effect upon any other law for the time being in force. He submitted that in case the trial is transferred to NIA Court, then all the safeguards and protections which have been provided to the respondent will not be available to him. The argument raised by the learned counsel for the respondent carries weight due to three reasons. Firstly, the safeguards which are provided under the JJ Act, 2015 which is a beneficial legislation cannot be snatched away from the respondent since it is a socially oriented legislation deriving its source from the Constitution of India and from various international conventions and resolutions. The safeguards are also supported by non-obstante clauses which have overriding effect over any other law for the time being in force. Secondly, the provisions for protection of witnesses under the NIA Act, 2008 cannot deprive the respondent of his statutory rights available to him under the

JJ Act, 2015. Thirdly, all these issues raised by learned counsel for the petitioner would be subservient to the dominant issue of jurisdiction.

(39) The next argument raised by the learned counsel for the petitioner is that under Section 21(2) of the NIA Act, 2008 every appeal shall be heard by a Bench of two Judges of the High Court whereas an appeal from judgment/order passed by the learned Children's Court under the JJ Act, 2015 would be heard by learned single Judge of the High Court. Such argument would also be not sustainable in view of the fact that the remedy of appeal is provided under both the statutes and it will be insignificant and unnecessary to discuss with regard to the number of Judges in a Bench especially when the core issue relates to the point of jurisdiction of Court.

(40) The learned counsel for the petitioner has also placed reliance upon two judgments. While referring to judgment of Hon'ble Supreme Court in *Naser Bin Abu Bakr Yafai versus State of Maharashtra and another* (*Supra*) his submission was that once NIA took up the investigation, then Special Court designated under Section 11 of the NIA Act would have sole jurisdiction to try a case. The aforesaid judgment would be distinguishable from the present case in view of the fact that there is no dispute with regard to the proposition that in a given case when NIA takes up investigation, then the jurisdiction would vest in the NIA Court under Section 13 of the NIA Act, 2008 which will have the sole jurisdiction. However, in the aforesaid judgment the issue of applicability of Juvenile Justice Act, 2015 and its overriding effect was not involved and therefore, it is distinguishable from the present case. Another judgment relied upon by the learned counsel for the petitioner was *Master Bholu versus State of Haryana and another* (*Supra*) to contend that in such like serious cases a juvenile should be treated as an adult for the purpose of trial for deciding bail application. The said judgment is also distinguishable in view of the fact that it pertains to subject matter of bail and does not pertain to the issue of jurisdiction of Court.

Conclusion

(41) After giving my thoughtful consideration to the aforesaid facts and circumstances as well as the legal position especially considering the effect of Section 1(4) of the JJ Act, 2015, it is held that when an FIR is registered under a Scheduled Act prescribed under the NIA Act and a juvenile has been directed to be tried as an adult by the Children's Court, then the jurisdiction would vest in the Children's Court and not in the Special Judge under the NIA Act.

(42) Consequently, finding no merit in the present petition, the same is hereby dismissed. Interim order dated 11.05.2021 stands vacated.

Ritambhra Rishi