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A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 497 of 2025

Pawan Kumar (Corpus)Petitioners(s)
And Another

Versus

State Of Uttar PradeshRespondents(s)
And 4 Others

Counsel for Petitioners(s)	: In Person, Mohd Salman, Nazia Nafees
Counsel for Respondent(s)	: G.A.

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.
HON'BLE SANDEEP JAIN, J.

(Delivered by Hon'ble Salil Kumar Rai, J.)

The present petition for writ of habeas corpus has been filed for release of petitioner no. 1 from Naini Central Jail, Prayagraj pleading that the detention of petitioner no. 1 in Naini Central Jail is illegal and violates his fundamental rights under Article 21 of the Constitution of India.

The petition has been filed by petitioner no. 2 on behalf of petitioner no. 1. The petitioner no. 2 claims herself to be a social worker involved in protecting legal rights of juvenile, women and down trodden

of the society. The petitioner no. 2 claims that she has been honoured for her acts by the District Administration and Judicial Authorities.

The relevant facts of the case are that on 1.4.2017, Case Crime No. 0195 of 2017 under Section 302 of the Indian Penal Code was registered against the petitioner no. 1 as well as against his elder brother and mother at Police Station Tharwai, District Allahabad with the allegation that petitioner no. 1, along with his mother and other brother, had beaten to death his eldest brother. The petitioner no. 1, along with other accused, was arrested by the police on 2.4.2017 and was detained in Naini Central Jail, Prayagraj. Charge-sheet in the case was filed on 21.5.2017 and the Chief Judicial Magistrate, Allahabad vide his order dated 5.7.2017 committed the case for trial to the Sessions Court. The trial is at present pending before the Additional Sessions Judge / Special Judge (M.P. / MLA), Prayagraj. Charges in the case were framed by the trial court on 17.11.2017. Before the trial court, the petitioner no. 1 claimed that he had studied till Class – V in Primary School, Bhogatpur, Police Station Tharvai, District Prayagraj and his date of birth was 13.12.2002. In order to verify the claim of petitioner no. 1, the trial court summoned the Principal of the school. The Principal appeared before the trial court and produced the scholar register in which the date of birth of petitioner no. 1 was recorded as 13.12.2002. The date of birth of petitioner no. 1 as recorded in the scholar register showed that petitioner no. 1 was 14 years, 3 months and 19 days on the date the crime was committed. The trial court, through its letter dated 18.7.2024, forwarded the matter to the Juvenile Justice Board (hereinafter referred to as, 'Board'), Khuldabad, Prayagraj for appropriate orders. It is to be noted that no order passed by the trial court determining the age of petitioner no. 1 or examining either the evidentiary value of the entries in scholar register or the veracity of the statement of the Principal has been brought on record before this Court. The Board, after considering the scholar register and after recording the statement of the Principal, held that, on the date the offence was committed, petitioner no. 1 was 14 years, 3 months and 19 days. Consequently, an order dated 15.5.2025 was passed

by the Board declaring the petitioner no. 1 juvenile on the date the offence was committed and a copy of the said order was forwarded to the trial court and also to the Superintendent, District Jail Naini, District Prayagraj. However, the petitioner no. 1 is still in detention in Naini Central Jail, Prayagraj even though no case other than the one referred above is registered against him. Thus, the present petition for the relief noted above.

It has been argued by the counsel for the petitioner that in view of Section 18 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as, 'Act, 2015'), a juvenile can remain in custody for a maximum period of three years and because the petitioner no. 1 has been in custody for almost eight years, therefore, in any case, the present detention of petitioner no. 1 is illegal and unconstitutional and violates his fundamental rights under Article 21 of the Constitution of India. It has been pleaded that because the petitioner no. 1 has not been released from jail despite the order dated 15.5.2025 passed by the Board, therefore, a writ of habeas corpus be issued directing the release of petitioner no. 1 from jail.

Sri Paritosh Kumar Malviya, the Additional Government Advocate (hereinafter referred to as, 'AGA') has opposed the petition. The objections of AGA is that the detention of petitioner no. 1 in Naini Central Jail is by a judicial order, the validity of which cannot be considered in a petition for a writ of habeas corpus, therefore, the petition is not maintainable and is liable to be dismissed. It has been argued by the AGA that the petitioner no. 1 has the statutory remedy to apply for bail available to a child in conflict with law.

We have considered the rival submissions of the counsel for the parties.

The issue in the present petition is whether the Court in a Petition for a Writ of Habeas Corpus can consider the legality of the detention of petitioner no. 1 even though the detention is by a judicial order and whether a Writ of Habeas Corpus is to be issued directing the release of

petitioner no. 1 because the Board vide its order dated 15.5.2025 has declared the petitioner no. 1 a juvenile on the date the crime was committed.

It would be appropriate that the objections of the AGA to the maintainability of the petition be considered first.

So far as the contention of AGA that the validity of a judicial order authorizing detention of any person cannot be examined in a petition of habeas corpus is concerned, it would be apt to refer to the judgment of the Supreme Court in ***Manubhai Ratilal Patel Through Ushaben vs. State of Gujarat & Others (2013) 1 SCC 314***. In paragraph – 31 of the aforesaid judgment, the Supreme Court observed as follows : -

“31. ... (T)he order of remand which is a judicial act, as we perceive, does not suffer from any infirmity. The only ground that was highlighted before the High Court as well as before this Court is that once there is stay of investigation, the order of remand is sensitively susceptible and, therefore, as a logical corollary, the detention is unsustainable. It is worthy to note that the investigation had already commenced and as a resultant consequence, the accused was arrested. Thus, we are disposed to think that the order of remand cannot be regarded as untenable in law. It is well accepted principle that a writ of habeas corpus is not to be entertained when a person is committed to judicial custody or police custody by the competent court by an order which prima facie does not appear to be without jurisdiction or passed in an absolutely mechanical manner or wholly illegal. As has been stated in the cases of B. Ram Chandra Rao and Kanu Sanyal, the court is required to scrutinize the legality or otherwise of the order of detention which has been passed. Unless the court is satisfied that a person has been committed to jail custody by virtue of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law.”

(emphasis supplied)

It is apparent from the observations of the Supreme Court reproduced above that in a habeas corpus petition, the legality of the detention order can be examined to ascertain whether the order suffers from a lack of jurisdiction or is absolutely illegal or has been passed in a

wholly mechanical manner. If the order detaining the person is without jurisdiction or is absolutely illegal or has been passed in a mechanical manner, a writ of habeas corpus directing the release of the detainee would be issued.

Moreover, there may be cases where the detention of a person may be invalid initially but, for some reason, may subsequently become valid. Similarly, there may be cases where the detention of a person may have been valid initially but, for some reasons, may subsequently become invalid. In a petition of habeas corpus the legality of present detention is examined and the legality of detention prior to filing of the petition is not relevant. In the aforesaid context, it would be relevant to refer to the judgments of the Supreme Court in ***Manubhai Ratilal Patel*** (supra) and ***Kanu Sanyal vs. District Magistrate, Darjeeling & Others (1974) 4 SCC 141***.

In ***Kanu Sanyal*** (supra), the Supreme Court, after referring to its earlier judgments on the issue as to which date would be relevant to examine the legality of detention challenged in a habeas corpus proceeding, observed as follows : -

“4. These two grounds relate exclusively to the legality of the initial detention of the petitioner in the District Jail, Darjeeling. We think it unnecessary to decide them. It is now well settled that the earliest date with reference to which the legality of detention challenged in a habeas corpus proceeding may be examined is the date on which the application for habeas corpus is made to the Court. This Court speaking through Wanchoo, J., (as he then was) said in A. K. Gopalan v. Government of India :

"It is well settled that in dealing with the petition for habeas corpus the Court is to see whether the detention on the date on which the application is made to the Court is legal, if nothing more has intervened between the date of the application and the date of the hearing".

In two early decisions of this Court, however, namely, Naranjan Singh v. State of Punjab, and Ram Narain Singh v. State of Delhi a slightly different view was expressed and that view was reiterated by this Court in B. R. Rao v. State of Orissa, where it was said 9 (at page 259, para 7) :

"in habeas corpus proceedings the Court is to have regard to the legality or otherwise of the detention at the time of the return and not with reference to the institution of the proceedings".

and yet in another decision of this Court in Talib Husain v. State of Jammu & Kashmir, Mr. Justice Dua, sitting as a Single Judge, presumably in the vacation, observed that (at page 121, para 6) :

"in habeas corpus proceedings the Court has to consider the legality of the detention on the date of the hearing".

Of these three views taken by the Court at different times, the second appears to be more in consonance with the law and practice in England and may be taken as having received the largest measure of approval in India, though the third view also cannot be discarded as incorrect, because **an inquiry whether the detention is legal or not at the date of hearing of the application for habeas corpus would be quite relevant, for the simple reason that if on that date the detention is legal, the Court cannot order release of the person detained by issuing a writ of habeas corpus.** But, for the purpose of the present case, it is immaterial which of these three views is accepted as correct, for it is clear that, whichever be the correct view, the earliest date with reference to which the legality of detention may be examined is the date of filing of the application for habeas corpus and **the Court is not, to quote the words of Mr. Justice Dua in B. R. Rao v. State of Orissa (supra), "concerned with a date prior to the initiation of the proceedings for a writ of habeas corpus"**. Now the writ petition in the present case was filed on January 6, 1973 and on that date the petitioner was in detention in the Central Jail, Visakhapatnam. The initial detention of the petitioner in the District Jail, Darjeeling had come to an end long before the date of the filing of the writ petition. It is, therefore, unnecessary to examine the legality or otherwise of the detention of the petitioner in the District Jail, Darjeeling. The only question that calls for consideration is whether the detention of the petitioner in the Central Jail, Visakhapatnam is legal or not. Even if we assume that grounds A and B are well founded and there was infirmity in the detention of the petitioner in the District Jail, Darjeeling, that cannot invalidate the subsequent detention of the petitioner in the Central Jail, Visakhapatnam. See para 7 of the judgment of this Court in B. R. Rao v. State of Orissa (supra). The legality of the detention of the petitioner in the Central Jail, Visakhapatnam would have to be judged on its own merits. We, therefore, consider it unnecessary to embark on a discussion of grounds A and B and decline to decide them."

(emphasis supplied)

Similarly, the Supreme Court in **Manubhai Ratilal Patel** (supra) after referring to **Kanu Sanyal** (supra) held in Paragraph no. 21 of the reports that '**any infirmity in the detention of the petitioner at the initial stage cannot invalidate the subsequent detention and the subsequent detention has to be judged on its own merits.**'

In **Kanu Sanyal** (supra) and **Manubhai Ratilal Patel** (supra) the detenu had pleaded that the initial detention and consequently, the continuation of the detention and the present detention was invalid but the Courts held that any illegality in the initial detention, would not by itself, be sufficient to invalidate the subsequent or present detention, i.e., the detention at the time the petition for Habeas Corpus was considered.

The principle of law that can be derived from the judgments of the Supreme Court in **Kanu Sanyal** (supra) and **Manubhai Ratilal Patel** (supra) is that in a Habeas Corpus petition, it is the legality of the present detention which is to be examined and the merits of the detention before the filing of the petition is not relevant in a habeas corpus petition.

As a corollary to the aforesaid it can be held that in a Habeas Corpus petition, the validity of the present detention can be examined and a writ would be issued even where the initial detention was legal and valid but the present detention was found to be illegal. At this stage, it would also be relevant to refer to the judgment of the Supreme Court in **Sapmawia vs. Deputy Commissioner, AIJAL (1970) 2 SCC 399** wherein the Court had directed the release of the detainee on the ground that his continued detention was illegal even if the initial detention was valid in law. The observations of the Supreme Court in Paragraph - 9 of the aforesaid judgment are relevant and reproduced below : -

*“9. The last order of remand as disclosed to this Court is dated February 2, 1970, but that order is silent as to for how many days the petitioner was remanded and it also does not in terms authorise the authorities of Dibrugarh Jail to keep the petitioner in their custody. Reasons for keeping him in jail custody are also not stated. **I am, however, prepared to assume that the remand was to be in the custody of the Superintendent, Dibrugarh Jail. The question, however, arises under which process of law was the order of remand made?** The State Counsel was unable to throw any light in this connection and he admitted that he was not in a position to make any positive statement. Further assuming that the order of remand was by a Magistrate during the course of the investigation it could not, under 'the Code of Criminal Procedure, extend beyond a term of 15 days. There was no suggestion on behalf of the State counsel that any special law authorised a remand for a longer period in this case. Even the order of the High Court directed the investigation to be completed within two months. These two months expired a long time ago. In the return, though it is asserted that the investigation was complete by March 20, 1970 and sanction is also stated to have been obtained on May 12, 1970, no order by a Magistrate authorising the petitioner's detention in custody has been produced. In these circumstances I am constrained to hold that the **petitioner's present custody in Dibrugarh Jail** has not been shown to be in accordance with the procedure established by law.”*

(emphasis supplied)

Before proceeding further, it would be appropriate to refer to certain provisions of the Act, 2015 relevant to decide the legality of the present detention of petitioner no. 1.

The Act, 2015 came in force w.e.f. 15.1.2016 and was in force on the date the crime was committed.

Section 1(4) of the Act, 2015 starts with a non-obstante clause and provides that ***‘notwithstanding anything contained in any other law for the time being in force, the provisions of the Act shall apply to all matters concerning the children in conflict with law including apprehension, detention, prosecution, penalty or imprisonment of children in conflict with law’***. Juvenile has been defined in Section 2(35) to mean a child below the age of eighteen years. Child has been defined in Section 2(12) of the Act, 2015 to mean a person who has not completed eighteen years of age and ***a child in conflict with law is defined in Section 2(13) as a child who is alleged or is 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(54) of the Act, 2015 defines ‘serious offences’ to include offences for which 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(33) of the Act, 2015 defines ‘heinous offences’ to include offences for which 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(46) of the Act, 2015 defines ‘place of safety’ to mean any place or institution, ***not being a police lockup or jail***, established separately or attached to an observation home or a special home, as the case may be, the person in-charge of which is willing to receive and take care of the child alleged or found to be in conflict with law, by an order of the Board or the Children’s Court, both during inquiry and ongoing rehabilitation after having been found guilty for a period and purpose as specified in the order.

Section 3 of the Act, 2015 prescribes the general principles to be followed in the administration of the Act and provides that the Central

Government, the State Governments, the Board, **and other agencies** while implementing the provisions of the Act, 2015 shall be guided by the fundamental principles enumerated in said provision. **Section 3(ix) of the Act, 2015 provides that no waiver of any of the right of the children is permissible or valid, whether sought by the children 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.**

Section 6 (1) of the Act, 2015 provides that ‘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 Section 6, be treated as a child during the process of inquiry’. Section 6(2) of the Act, 2015 states that ‘the person referred to in sub-section (1), if not released by the Board shall be placed in a place of safety during the process of inquiry and shall be treated as per the procedure specified under the provisions of the Act, 2015’.

Section 9 of the Act, 2015 provides as follows : -

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act. - (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and **forward the child immediately along** with the record of such proceedings **to the Board** having jurisdiction.

(2) In case a person alleged to have committed an offence **claims before a court other than a Board**, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the **said court shall make an inquiry, take such evidence as may be necessary** (but not an affidavit) **to determine the age of such person, and shall record a finding on the matter**, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) **If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.**

*(4) In case a person under this section is **required to be kept in protective** custody, while the person's claim of being a child is being inquired into, such person may be placed, **in the intervening period in a place of safety.**"*

(emphasis supplied)

Section 10(1) provides as follows: -

"10. Apprehension of child alleged to be in conflict with law. - (1)
As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:

Provided that in no case, a child alleged to be in conflict with law shall be placed in a police lockup or lodged in a jail."

(emphasis supplied)

The prohibition contained in the proviso to Section 10(1) is also incorporated in Rule 54 (8) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

Sections 14, 15 and 18 of the Act, 2015 contain provisions for inquiry by the Board regarding the child in conflict with law. The relevant parts of Sections 14 and 15 are reproduced below : -

"14. Inquiry by Board regarding child in conflict with law. - (1)
Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

(2) ...

(3) ...

(4) ...

(5) The Board shall take the following steps to ensure fair and speedy inquiry, namely:—

(a) ...

(b) ...

(c) ...

(d) ...

(e) inquiry of serious offences shall be disposed of by the Board, by following the procedure, for trial in summons cases under the Code of Criminal Procedure, 1973 (2 of 1974);

(f) inquiry of heinous offences,—

*(i) for child **below the age of sixteen years** as on the date of commission of an offence shall be disposed of by the Board under clause (e);*

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

15. Preliminary assessment into heinous offences by Board.- (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of subsection (3) of section 18:

Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.

Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.

(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

...

...”

Section 18 of the Act, 2015 provides as follows : -

“18. Orders regarding child found to be in conflict with law. - (1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;

(b) direct the child to participate in group counselling and similar activities;

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on

such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years;

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

(g) **direct the child to be sent to a special home, for such period, not exceeding three years**, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

(emphasis supplied)

At this stage, it would also be relevant to reproduce Sections 19 and 20 of the Act, 2015 which deal with the powers of Children's Court where the Board passes an order that there is need for trial of the child as an adult : -

"19. Power 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) ...

(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:

...

(4) ...

(5) ...

20. Child attained age of twenty-one years and yet to complete prescribed term of stay in place of safety. - (1) **When the child in conflict with the law attains the age of twenty-one years and is yet to complete the term of stay**, the Children's Court shall provide for a follow up by the probation officer or the District Child Protection Unit or a social worker or by itself, as required, to evaluate if such child has undergone reformatory changes and if the child can be a contributing member of the society and for this purpose the progress records of the child under sub-section (4) of section 19, along with evaluation of relevant experts are to be taken into consideration.

(2) After the completion of the procedure specified under sub-section (1), the Children's Court may—

(i) decide to release the child on such conditions as it deems fit which includes appointment of a monitoring authority for the remainder of the prescribed term of stay;

(ii) **decide that the child shall complete the remainder of his term in a jail:**

Provided that each State Government shall maintain a list of monitoring authorities and monitoring procedures as may be prescribed."

(emphasis supplied)

A reading of the aforesaid provisions shows that the Act, 2015 has an overriding effect over any other law for the time being in force in all matters concerning the child in conflict with law especially in matters regarding apprehension, detention, prosecution or imprisonment of the child in conflict with law. No waiver of the rights of the child in conflict with law as provided under the Act, 2015 is permissible and any non-exercise of fundamental right shall not amount to waiver. Further, any person who has committed an offence when he was below the age of eighteen years shall be treated as a child during the process of inquiry even if he has completed eighteen years of age when he was apprehended or completes the age of eighteen years during the course of inquiry by the Board or the Children's Court or any other agency.

A reading of Section 9 of the Act, 2015 shows that if a person accused of committing an offence **claims before a court** that he was a child on the date of commission of the offence, **the court shall make** an inquiry and after taking such evidence as may be necessary, **determine the age** of the person and **shall record a finding on** the matter stating the age of the person as nearly as may be. In case, the court finds that the

person was a child on the date of commission of the offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect. It is apparent from a reading of Sections 9(2) and 9(3) of the Act, 2015 that the claim of being a child shall be decided by the Court and not the Board if the claim is raised before the Court. The phrase ‘appropriate orders’ in Section 9(3) refers to orders under Sections 14 and 18 of the Act, 2015 and does not confer power on the Board to determine the age of a person who raises his claim of being a child before a Court. The Board has the power to determine the age of the person claiming himself to be a child only in cases covered under Section 9(1) and Section 10(1), i.e., when the child, after being apprehended, is produced before the Board or where the Magistrate under Section 9(1) forwards the child to the Board and not in cases covered under Section 9(2) where the person alleged to have committed the offence claims in a ‘Court’ that he was a child at the time of the commission of offence.

The aforesaid view is supported by the decision of the Supreme Court in ***Rishipal Singh Solanki vs. State of Uttar Pradesh & Ors. (2022) 8 SCC 602***. The observations of the Supreme Court in Paragraph nos. – 33.1 to 33.2.2 of the aforesaid judgment are reproduced below : -

“33. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the Court or the JJ Board.

33.2.1. When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.”

(emphasis supplied)

In the present case, the offence was committed on 1.4.2017. The

petitioner no. 1 is an accused in the offence. The offence alleged to have been committed is a heinous offence as defined in the Act, 2015. A charge-sheet was filed in the case on 21.5.2017. The case was committed to trial on 5.7.2017 and the trial is, at present, pending in the court of Additional Sessions Judge / Special Judge (M.P. / MLA), District Allahabad. The claim that petitioner no. 1 was a child on the date the offence was committed was raised by petitioner no. 1 before the Court after charges were framed and during trial. The claim was not raised before the Magistrate. The petitioner no. 1 was not produced before the Board under Section 10(1). The case of petitioner no. 1 is covered by Section 9(2). There is nothing on record to show as to whether the trial court has passed any order under Section 9(2) determining the age of petitioner no.1. The trial court has not determined the age of petitioner no. 1 as required under Section 9(2) but has, mechanically and in a routine manner, through letter dated 18.7.2024 remitted the matter to the Board after referring to the claim of petitioner no. 1. There is no finding by the trial court regarding the age of petitioner no. 1. The letter dated 18.7.2024 of the trial court and its contents cannot be considered an order.

In light of the observations made before, the order dated 15.5.2025 passed by the Board determining the age of petitioner no. 1 is without jurisdiction and a nullity. The order of the Board confers no right on the petitioner no. 1. We cannot issue any writ which would amount to enforcement of the order of the Board.

A perusal of Section 10 show that in no case can a child in conflict with law be placed in a police lock up or lodged in a jail. A person who claims himself to be a child under the Act, 2015 can not be lodged in a jail or police lockup even during inquiry regarding his age either by the Court or the Board. A child in conflict with law can be lodged in jail only when he has committed a heinous offence and is also above the age of sixteen years on the date of the commission of offence and the Board after preliminary assessment under Section 15 of the Act, 2015 and the Children's Court under Section 19(1)(i) decide that there is need for trial

of the child as an adult and further, the child found to be in conflict with law has attained the age of twenty one years but is yet to complete the term of stay at a place of safety. By virtue of Section 9(4), in case a person claims before a Court that he was a child on the date the offence was committed and the person is required to be kept in protective custody during the process of inquiry, the Court while inquiring into his claim may place him in a place of safety.

In short, a child in conflict with law or alleged to be in conflict with law cannot be lodged in a jail till he attains twenty one years of age either during the inquiry regarding determination of his age or when he is found to be a child in conflict with law.

No claim that he was a child / juvenile at the time the offence was committed was raised by petitioner no. 1 when he was initially produced before the Magistrate after being apprehended. The records brought before this Court show that the claim was, for the first time, raised by the petitioner no. 1 before the trial court after charges were framed. In the circumstances, the initial detention of petitioner no. 1 as a consequence of a judicial order may not have been illegal. But, in light of Section 9(4) of the Act, the detention of petitioner no. 1 in jail became illegal after he raised a claim that he was a child at the time the offence was committed.

At this stage, it would also be apt to consider the contention of the Additional Government Advocate that the petitioner no. 1 is entitled to seek bail under the relevant statute. The said contention is also not acceptable. The petitioner no. 1, if he is a child in conflict with law, cannot be put on trial before the criminal courts. The petitioner no. 1 would have been entitled to apply for bail under Section 12 of the Act, 2015.

Section 12 of the Act, 2015 provides for bail to a child alleged to be in conflict with law. Section 12 is reproduced below : -

“12. Bail to a person who is apparently a child alleged to be in conflict with law. (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding

anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

A reading of Section 12 shows that a child in conflict with law would be entitled to bail if he is detained by the police or is produced before the Board. The petitioner no. 1 has still not been produced or forwarded to the Board.

In view of the aforesaid, the petitioner no. 1 cannot apply for bail before the Board under Section 12 of the Act, 2015. At this stage when the inquiry regarding the age of petitioner no. 1 is still pending, it is only the trial court which is empowered to decide whether the petitioner no. 1 is entitled to be kept in any preventive custody and in a place of safety.

Apparently, the present detention of petitioner no. 1 in Naini Central Jail, Prayagraj is illegal. Thus, a writ of habeas corpus is to be issued for release of petitioner no. 1 from Naini Central Jail.

In view of the aforesaid, we direct as follows : -

1. The Jail Superintendent, Naini Central Jail, Prayagraj is directed to set at liberty the petitioner no. 1, i.e., Pawan Kumar.

2. The respondent no. 3, i.e., the Commissioner of Police, Prayagraj shall ensure that the petitioner no. 1 is produced before the trial court which shall determine the age of the petitioner at the time of the commission of offence in accordance with Section 9(2) of the Act, 2015.

3. In case, the trial court is of the opinion that during the process of inquiry regarding his age the petitioner no. 1 is required to be kept in preventive custody, he may be placed by the trial court during the intervening period in a place of safety as defined in Section 2(46) of the Act, 2015.

4. If the trial court records a finding that on the date of the commission of offence, the petitioner no. 1 was a child in conflict with law, the petitioner no. 1 shall be forwarded to the Board which shall take appropriate action in accordance with Sections 14, 15 and 18 of the Act, 2015 depending on whether the age of petitioner no. 1 as determined by the trial court was below or above 16 years of age on the date of commission of offence. Needless to say that in case, the trial court records a finding that the petitioner no. 1 was not a child on the date the crime was committed, the trial court shall proceed with the trial in accordance with law.

With the aforesaid directions, the writ petition is ***partly allowed***.

A copy of this order shall be sent by the Registrar (Compliance) to the Commissioner of Police, Prayagraj and the Jail Superintendent, Naini Central Jail, Prayagraj within 24 hours.

(Sandeep Jain) (Salil Kumar Rai)

September 25, 2025

Satyam