IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 2.2.2022

Delivered on : 29.4.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Revision Case No.877 of 2021

Ajithkumar **(Please refer para 53 of the order)**
rep. by by mother and
natural guardian Rekha Petitioner

vs.

The State rep. by
The Inspector of Police,
W29, All Women Police Station,
Avadi, Chennai 600 054.
Crime No.9/2019 Respondent

Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure read with Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015, to set aside the conviction and sentence passed in J.C.No.21 of 2020 dated 17.3.2021 by the Juvenile Justice Board, Thiruvallur.

For Petitioner : Mr.C.Venkatesan

For Respondent : Mr.S.Sugendran
Government Advocate (Crl.Side)
Mr.R.Vivekananthan appointed as
Amicus Curiae for assisting the court

ORDER

The Criminal Revision Case has been filed by the Petitioner/child in conflict with law represented by his mother, seeking to set aside the order of detention rendered by the learned Juvenile Justice Board, Thiruvallur in J.C.No.21 of 2020 dated 17.3.2021.

2. By the impugned order of detention, the Juvenile Justice Board, Thiruvallur had directed for detention of the petitioner/child in conflict with law in Government Special Home, Chingleput for a period of three years for the offences alleged against him punishable under Sections 5(j)(ii) read with Section 6 of Prevention of Children from Sexual Offences (POCSO) Act, 2012 merely by observing that the child had confessed.

3. Brief facts of the case are as under:-

(i) The petitioner/child in conflict with law and the victim girl were aged about 15 and 17 respectively at the relevant point of time and they were employed in the Exhibition Hall at Pattabiram and during such time, they had developed intimacy with each other and the petitioner had been in contact with the victim girl constantly.

(ii) On being warned by her mother, the victim girl had moved to her aunt's house after quarrelling with her mother.

(iii) Whileso, on 12.3.2019, the petitioner had unauthorisedly entered into the house where the victim girl was staying when nobody else was there and had penetrative sex with the victim girl by apprising her that her mother would consent for their marriage if they had sexual relationship and subsequently, on several occasions, he had repeated such sexual relationship with the victim girl as a result, the victim girl had become pregnant during August 2019.

(iv) Subsequently, on 15.8.2019, PW1, the mother of the victim girl, on coming to know through her elder daughter that the petitioner had picked up quarrel with the victim girl with regard to the paternity of the child, had lodged the complaint with the police, which ended in a case registered against the petitioner in Crime No.9/2019 on the file of the respondent police for the offences punishable under Section 5(j)(ii) read with Section 6 of POCSO Act, 2012.

(v) The case was taken up by the Juvenile Justice Board, Thiruvallur in J.C.No.21 of 2020. Totally, thirteen witnesses have been cited by the respondent police in the final report. Whileso, the Juvenile Justice Board, on the pleading of guilt by the petitioner, had ordered

for his detention in Government Special Home, Chingleput for a period of three years under Section 18(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015, aggrieved against which, the present Criminal Revision Case has been filed by the petitioner.

4. The sum and substance of the arguments of the learned counsel Mr.C.Venkatesan appearing for the petitioner is as under:-

i) The order passed by the Juvenile Justice Board is a non-speaking, cryptic order passed in a mechanical manner without following the procedure laid down by the Apex Court and various High Courts to be followed in the matter of juvenile cases.

ii) The Juvenie Justice Act being a gender neutral Act and the victim child is older than the petitioner/child in conflict with law viz., the petitioner was only 15 years old and the victim girl was 17 years old at the relevant time, the Juvenile Justice Board ought to have taken into consideration the factual aspects and analysed the mental health status of the petitioner/child in conflict with law and that of the victim girl to arrive at a conclusion as to who the aggressor is.

iii) When the alleged occurrence is said to have taken place on 12.3.2019, the complaint has been lodged only on 15.8.2019 at 11.45 pm with a long delay which has not been explained by the prosecution

and it has not been considered at all by the Juvenile Justice Board.

iv) The long delay in filing the complaint and the 164 statement given by the victim girl herself prove that it is a consensual affair between the petitioner and the victim girl, however, it has been twisted as a sexual assault on the part of the petitioner and the Juvenile Justice Board, treating the statement of the petitioner about the incident as confession, without initiating for a fair trial, had convicted the petitioner/child in conflict with law for the offences alleged against him and directed him to be detained in the Government Special Home, Chingleput for a period of three years.

v) The age of the alleged victim child has not been conclusively proved and no finding has been given by the respondent police as to who is responsible for the pregnancy.

vi) Though the respondent police had cited 13 witnesses in the final report, none of them has been examined to prove the case of the prosecution in a fair manner and thereby, indulgence of this court is prayed for.

5. Mr.S.Sugendran, learned Government Advocate (Criminal Side) would submit that the prosecution has got ample evidence to prove the guilt of the petitioner in trespassing into the house of the

victim girl and committing penetrative sexual assault on her beyond all reasonable doubts, however, he would fairly submit that the age of the victim girl was not proved in the manner known to law.

6. Heard the learned counsel appearing for the parties and Mr.R.Vivekananthan, the *Amicus Curiae* and perused the materials availabe on record.

7. The petitioner stands convicted under Section 5(j)(ii) read with Section 6 of the POCSO Act 2012 and considering the fact that the petitioner is a minor, the Juvenile Justice Board had ordered to detain him in the Osbservation Home for a period of three years under Section 18(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015. The relevant provisions are extracted hereunder for ready reference. Section 5(j)(ii) of POCSO Act 2012 reads as under:-

> *"(j) whoever commits penetrative sexual assault on a child, which --*
>
> *(ii) in the case of a female child, makes the child pregnant as a consequence of sexual assault."*

Section 6 of POCSO Act 2012 reads as under:-

> *"Whoever, commits aggravated penetrative sexual assault, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but, which may extend to imprisonment for life and shall also be liable to fine."*

Section 18(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under:-

> *"18. (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,—*

....

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

8. In this regard, an understanding of the scope of Juvenile Justice (Care and Protection of Children) Act, 2015 is very much essential and it could be gained from the legal provisions of the said Act. Section 1(4) of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under:-

"(4) 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."

9. The scope of the Act as revealed from the above provision can not only be for prosecuting the offenders, but, also mainly for rehabilitation and social re-integration of such persons, who require care and attention from all quarters. To achieve it, the Act itself provides for fundamental principles to be followed in administration of the Act. The relevant provisions of the the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under:-

"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 upto 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.*

....

(vii) ***Positive measures****: All resources are to be mobilised 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."

10. Sub Clause (xii) of Section 3 which deals with institutionalisation, specifies it as a last resort, which reads as under:-

"(xii) ***Principle of institutionalisation 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****."*

11. Section 14 of the Act deals with the **inquiry** to be conducted by the Board, which reads as under:-

"14. (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) The inquiry under this section shall be

completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension.

(3) A preliminary assessment in case of heinous offences under section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

(4) If inquiry by the Board under sub-section (2) for petty offences remains inconclusive even after the extended period, the proceedings shall stand terminated:

Provided that for serious or heinous offences, in case the Board requires further extension of time for completion of inquiry, the same shall be granted by the Chief Judicial

Magistrate or, as the case may be, the Chief Metropolitan Magistrate, for reasons to be recorded in writing.

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

(a) at the time of initiating the inquiry, the Board shall satisfy itself that the child in conflict with law has not been subjected to any ill-treatment by the police or by any other person, including a lawyer or probation officer and take corrective steps in case of such ill-treatment;

(b) in all cases under the Act, the proceedings shall be conducted in simple manner as possible and care shall be taken to ensure that the child, against whom the proceedings have been instituted, is given child-friendly atmosphere during the proceedings;

(c) every child brought before the Board shall be given the opportunity of being heard and participate in the inquiry;

(d) cases of petty offences, shall be disposed of by the Board through summary proceedings, as per the procedure prescribed under the Code of Criminal Procedure, 1973;

(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; Information to parents, guardian or probation officer. Inquiry by Board regarding child in conflict with law. 2 of 1974. 2 of 1974. SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY 13

(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."

12. It is also relevant to note here that Sub clause (xvi) of Section 3 deals with the opportunity to be afforded to the person facing charges for the offence under the Act and it reads as under:-

> *"(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."*

13. Rule 19 (14) of the Juvenile Justice(Care and Protection of Children) Model Rules, 2016, mandates that at least 3 members including a Chairperson has to be present at the final disposal of the case, in case, if the Chairperson remains absent, the Member so nominated by the Chairperson has to act accordingly. However, in the case on hand, the Board was not constituted in accordance with Rule 19(14) of the Juvenile Justice(Care and Protection of Children) Model Rules, 2016 and at the time final disposal of the case, only one member i.e., the learned Principal Magistrate, Juvenile Justice Board, Thiruvallur had delivered the order.

14. Rule 19 (14) of the Juvenile Justice(Care and Protection of Children) Model Rules, 2016 as follows:

19. Procedure for inquiry:

(14) At the time of final disposal of a case, there shall be at least three members present including the Chairperson, and in the absence of Chairperson, a member so nominated by the Chairperson to act as such.

The Relevant extract of ***sec 4 of Juvenile Justice Act, 2015:***

Sec 4 -Juvenile Justice Board

(2) A Board shall consist of a Metropolitan Magistrate or a Judicial Magistrate of First Class not being Chief Metropolitan Magistrate or Chief Judicial Magistrate (hereinafter referred to as Principal Magistrate) with ***at least three years experience*** *and two social workers selected in such manner as may be prescribed, of whom at least one shall be a woman, forming a Bench and every such Bench shall have the powers conferred by the Code of Criminal Procedure, 1973 on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class."*

15. Such being the relevant legal provisions with regard to POCSO and juvenile justice cases, before going into the merits of the case, it would be relevant to be apprised of the views expressed by various High Courts and the Apex Court on the issue of sexual abuse of minor children. Some of such decisions are quoted hereunder:-

i) In ***Sabari @ Sabarinathan v. The Inspector Of Police, reported in 2019 SCC Online Mad 18850 = (2019) 3 MLJ (Crl.) 110***, this Hon'ble Court held as under:-

> *"27.When the girl below 18 years is involved in a relationship with the teen age boy or little over the teen age, it is always a question mark as to how such relationship could be defined, though such relationship would be the result of mutual innocence and biological attraction. Such relationship cannot be construed as an unnatural one or alien to between relationship of opposite sexes. But in such cases where the age of the girl is below 18 years, even though she was capable of giving consent for relationship, being mentally matured, unfortunately, the provisions of the*

POCSO Act get attracted if such relationship transcends beyond platonic limits, attracting strong arm of law sanctioned by the provisions of POCSO Act, catching up with the so called offender of sexual assault, warranting a severe imprisonment of 7/10 years.

28.Therefore, on a profound consideration of the ground realities, the definition of 'Child' under Section 2(d) of the POCSO Act can be redefined as 16 instead of 18. Any consensual sex after the age of 16 or bodily contact or allied acts can be excluded from the rigorous provisions of the POCSO Act and such sexual assault, if it is so defined can be tried under more liberal provision, which can be introduced in the Act itself and in order to distinguish the cases of teen age relationship after 16 years, from the cases of sexual assault on children below 16 years. The Act can be amended to the effect that the age of the offender ought not to be more than five years or

so than the consensual victim girl of 16 years or more. So that the impressionable age of the victim girl cannot be taken advantage of by a person who is much older and crossed the age of presumable infatuation or innocence."

ii) In ***xxxxx v. State Rep by Inspector of Police in Crl.O.P.(MD)No.18064 of 2019*** dated 15.12.2019, this Hon'ble Court, Madurai Bench, held as follows:

"13. Now taking into consideration the facts of the case it is seen that it is a unfortunate case where two classmates, a girl and boy without understanding the rigors of the provisions of the POCSO Act and without understanding the consequences have caught up in a legal wrangle. The girl was few months above 18 years and the boy was few months below 18 years. If it had been otherwise the boy would have become an accused and the girl would have become victim. It is an unfortunate case were based on few months difference in the age, the girl has been made as

accused.

14. Taking into consideration the facts of the case it is the victim who has gone all the way to Chennai and brought her back to Madurai and while they were in sleeper bus they had consensual sex. As stated earlier the parents of the petitioner have abandoned her and now is being taken care by the parents of the victim.

15. This Court is also reminded of the suggestions made by this Court in the case of Sabari @ Sabarinathan @ Sabarivasan -vs- The Inspector of Police, Belukurichi Police Station, Namakkal District and other reported in (2019)3 MLJ(Crl).110, wherein recommendations are made in dealing cases of love affair between teenagers above 16 years."

iii) In ***Vijayalakshmi and Another vs State Rep. By The Inspector of Police and Another reported*** in **2021 SCC OnLine Mad 317,** this Hon'ble Court held as follows:

"13. This Court, therefore, deems it fit and necessary to take a moment to delve into an important aspect,

the awareness of which is crucial in understanding and dealing with cases of this nature. It is crucial to be aware of the science and psychology of adolescence and young adulthood at this juncture. 'This is because social and biological phenomena are widely recognized as determinants of human development, health, and socioeconomic attainments across the life course, but our understanding of the underlying pathways and processes remains limited. Therefore, a "biosocial approach" i.e. one that conceptualizes the biological and social as mutually constituting, and draws on models and methods from the biomedical and social/behavioral sciences, is required.' (McDade, T.W., & Harris, K.M. (2018). The Biosocial Approach to Human Development, Behavior, and Health Across the Life Course. The Russell Sage Foundation journal of the social sciences: RSF, 4(4), 2-26.)

15. …. It is now well evidenced that adolescent romance is an important developmental

marker for adolescents' self-identity, functioning and capacity for intimacy. Developmental-contextual theories of adolescent romantic stages also provide a framework for how romantic relationships assist young adults with addressing their identity and intimacy needs. Therefore, the age of adolescence as can be seen evidently, is one associated with an amassing change in the neurological, cognitive and psychological systems of a person and one of the most important aspect is that the individual tries to establish their identity, develops emotional and biological needs during this period as a result of which the individual tends to look for new relationships, bonding and partnership. It is also important to acknowledge in addition to this, the vast exposure that is available to adolescents and youth in the form of digital content that play a major role in influencing their growth and identity.

16. In light of the above, it is only natural that there are cases of the abovementioned nature that

are on the rise at present and it does not help matters to avoid acknowledging that the society is changing and influencing people's identity and cognition, constantly. Therefore, painting a criminal colour to this aspect would only serve counter-productively to understanding biosocial dynamics and the need to regulate the same through the process of law.

17. This Court is not turning a blind eye to cases where the victim or survivor may, under the effect of trauma that they have undergone, studies on which show that they might tend to reconcile with the same by blaming themselves or convincing themselves that the element of consent was in fact present. Nor is this Court scientifically justifying in to, the genuineness or predicament of the accused in every case where it appears that the accused and victim child have been in a romantic relationship. That will depend on the facts and circumstances of each and every case.

18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions

of the POCSO Act, as it stands today, will surely make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. ***Punishing an adolescent boy who enters into a relationship with a minor girl by treating him as an offender, was never the objective of the POCSO Act.*** *An adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult's point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will be persecuted throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationships*

and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act."

iv) In ***Marimuthu vs The Inspector of Police reported in 2016 SCC OnLine Mad 10175,*** the Madurai Bench of this Court had observed that:

"27. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act), defines a 'child' to mean 'any person below the age of eighteen years' and raised the age of consent from 16 years under the Penal Code, 1860 (IPC) to 18 years. The Act adopted a protectionist approach under the assumption that a uniform age of consent would be in accordance with the UN Convention on the Rights of the Child, 1989.

28. In the UK, the age of consent is 16 years. In the US, it varies from 16 to 18 across states. It is 14 years in Germany and Italy, and 15 in France.

29. The National Law School team examined

judgments, court proceedings and spoke to the lawyers and the victims. In absolute numbers, 555 cases ended in acquittals and only 112 led to convictions.

29.1. The National Commission for Protection of Child Rights had in 2010 proposed that any consensual sexual act should not be an offence when it involves two persons who are both above 14 and are either of the same age or the age difference is not more than three years.

30. In Teddy Bear Clinic for Abused Children v. Minister of Justice and Constitutional Development, [2013] ZACC 35, the Constitutional Court of South Africa confirmed that provisions of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, which criminalised consensual sexual conduct of adolescents above 12 years and below 16 years, were unconstitutional. The imposition of criminal liability on adolescents engaging in consensual sexual conduct was opposed to the right to dignity,

right to privacy, and contrary to the best-interests principle. It observed that the provisions '…criminalise a wide range of consensual sexual conduct between children: the categories of prohibited activity are so broad that they include much of what constitutes activity undertaken in the course of adolescents' normal development…. the existence of a statutory provision that punishes forms of sexual expression that are developmentally normal degrades and inflicts a state of disgrace on adolescents."

v) In ***Arhant Janardan Sunatkari v. The State of Maharashtra*** in Crl.A.No.332 / 2020 dated 04.02.2021, the Hon'ble Bombay High Court had held as under:

"11. I am conscious of the fact that the passing of POCSO has been significant and progressive step in securing children's rights and furthering the cause of protecting children against sexual abuse. The letter and spirit of the law, which defines a child as anyone less than 18 years of age, is to protect children from sexual abuse.

12. I am also conscious of the fact that consensual sex between minors has been in a legal grey area because the consent given by minor is not considered to be a valid consent in eyes of law."

vi) In ***Vikramsinh Champaksinh Parmar v. State of Gujarat*** in Crl.App.No.765/2020 dated 29.06.2020, the Hon'ble High Court of Gujarat had observed as under:

"7. We notice that the respondent no.5 is himself a minor and is yet to be found. We are also at pain to learn that though himself is a minor, has chosen to take away the corpus who is a minor, lending himself in the net of law, particularly of the Protection of Children from Sexual Offences Act (POCSO Act).

7.1 This Act is brought on the statute book with laudable objectives, with a view to protect the girl child in the society, with more and more offences affecting the girl children.

7.2 We also notice that young boys who themselves are not major, many a times without realizing the consequences of their act, or many a

times actuated by frenzy of youth, with careless approach towards stringent laws eventually label themselves as offenders in the matters of POCSO, and face serious consequences of rigorous punishment prescribed under the law.

7.3 It became expedient for us to make a specific reference of this aspect, having noticed this in many Petitions of Habeas Corpus. It is therefore, expressed that right kind of understanding needs to be given, in the form of legal awareness amongst the children and the college students so that the society can simultaneously protect very young minor boys, who due to their lack of understanding of law, turn into the offenders in serious matters."

16. The above decisions would make it clear that consensual sex between minors has been in a legal grey area as the consent given by a minor is not considered to be a valid consent in the eyes of law.

17. The views of various High Courts and the Apex Court of our

country on the issue being so, **'adolescence'** is defined by the World Health Organization as the period in someone's life between the beginning of their 10th year and the end of their 19th year. This period covers a great physical, mental and emotional change, stretching, as it does, from pre-puberty through puberty to young adulthood. (*Ethics and Adolescent care: an international perspective*).

18. Because of the inquisitive nature of an minor child which develops due to the inherent hormonal changes taking place in their body instigates them to grasp any piece of information available in their circumambience regarding sexual behaviour, which may include social media, movies, web series, family surroundings, peer knowledge etc. This causes a gush of fondness towards the opposite/same sex. When they sense a similar feeling reciprocating, both tend to enter ecstasy which is a very natural act called "love".

19. Now, coming to the international scenario In South Africa, the age of the consent is 17 for both male and female child. In ***CKW v Attorney General & Others (2014) eKLR*,** the High Court of Kenya decided that criminalization of consensual conduct between minors was in the child's best interest to protect children from harmful acts of sexual activity. In making its determination, the Court considered the

decision of the South African Constitutional Court in the **Teddy Bear Clinic v Minister for Justice and Constitutional Development.** The issue before the Constitutional Court was whether sections 15 and 16 of the Criminal Law (Sexual Offences Act and Related Matters) Amendment Act was unconstitutional for criminalizing sexual conduct between adolescents in the age group of 12 to 16 years. The Court found that imposing criminal culpability for otherwise appropriate adolescent sexual behavior has the consequence of harming the adolescents they are supposed to protect, in a way **that violates the child's rights to dignity and privacy and goes against the best interest concept**. In arriving at these diametrically opposed positions, both the South African and Kenyan courts claimed to be advancing the best interest of the child. The ***Teddy Bear Clinic case*** resulted to amend the Sexual Offences Act and further the Sexual offences Amendment Act, 2015 made a significant change in the Sections 15 and 16 of the said Act. Firstly the amendment had decriminalized the consensual sexual activity between adolescents who are 12 years older but under 16 years. Secondly , it had decriminalized the consensual sexual activity, where the adolescent is 12 years or older but below the age of 16 years and the other is above the age of 16 years but

below the age of 18 years, if the age difference between the adolescents is less than 2 years.

20. In ***P.O.O. (A minor) v. Director of Public Prosecutions & the SRM, Mbita Law Courts (2017)***, the Kenyan Court, in considering whether children had the capacity to consent to sex as well as what crime was committed when such an act occurred and who ought to be charged, opined: "**I think these are children who need guidance and counselling rather than criminal penal sanctions**.

21. In U.S.A, the law called " ***The Romeo and Juliet Clause"*** was enacted to govern and regulate the consensual sex with minors. Under the Romeo and Juliet Clause, the Law will allow a person to have consensual sex with a minor provided they do not have more than a certain number of years in age difference.

22. Under ***Canada's Criminal Code S.150.1,*** an adolescent of 14 years old has the capacity to give his/her consent to have a sexual relations with an adult and a 12 years old adolescent can give his/her consent to the sexual conduct with the other adolescents provided that he/she is not more than 2 years old. In ***Walker v. Region 2 Corporation Hospital***, it is observed that Canadian provinces have a " Mature Minor rule" which allows an adolescent, who is capable of

understanding the nature and consequences of a proposed treatment to consent to it, without the parents being informed.

23. In United Kingdom, the statutory age of consent for the heterosexual sex is 16 years. Under ***Sexual Offences Act, 2003***, if a person engages in any sexual activity with the child under the age of 16, it is an offence. If both the persons were child in accordance to the Sexual Offences Act, 2003 and both the children engage in a consensual sexual activity having knowledge that they are under the age of giving consent to the act, then both the children were found guilty of an offence carrying a maximum penalty of 5 years imprisonment.

24. The views of international courts on the issue has a broad perspective on the aspect of **"adolescence"** and the age of consent in different countries varies from 14 to 18. In fact, a slight variation is considered as insignificant in some countries.

25. Keeping all the above principles in mind, coming to the case on hand, as per the version of the prosecution, it has got three dimensions. One is that unlike a normal juvenile case, in the instant case, both petitioner and the victim girl are minors/adolescents. Secondly, the victim girl is about two years older than the the

petitioner. The third one is that though it is a case of juvenile issue, the Juvenile Justice Board, by merely relying on the statement of the petitioner/minor alleged to have been given by him on his own volition, had proceeded in passing the order of detention without following any procedure contemplated for dealing with such cases.

26. A perusal of the materials available on record reveals that the Juvenile Justice Board has not chosen to go into the merits of the case to find out whether the victim girl was a minor child at the time of the occurrence and whether the petitioner had committed any offence as alleged by the prosecution especially when the witnesses speak about a consensual relationship between the petitioner and the victim girl. Further, the Juvenile Justice Board has not considered the fact that the prosecution has not even filed any document to prove that the alleged victim was a minor on the date of occurrence.

27. The offences alleged against the petitioner/child in conflict with law being serious in nature, the trial ought to have been conducted like in Summons Cases, as contemplated under Section 14(5)(e) of the Juvenile Justice (Care and Protection of Children) Act, 2015, which reads as under:-

"(5) The Board shall take the following steps to

ensure fair and speedy inquiry, namely:—

....

(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."

28. Chapter XX of Cr.P.C. deals with trial of Summons Cases by Magistrates. Sections 251 and 252 under the said Chapter read as under:-

*"**251. Substance of accusation to be stated**.-- When in a summons-case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.*

***252. Conviction on plea of guilty**.-- If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him*

thereon."

29. This court, in ***Idukkan v. The Inspector of Police, reported in 2012(4) CTC 718*** has held as under:-

> "14. *A conjoint reading of Section 4, and Rules 4 & 5, would go a long way to show that the Board is a structure and the members are its components and irrespective of the fact that there are no members, the Board will survive. But, if there is no Board, the office of members will not survive as the term of office of the members is coterminous with the Board [vide Rule 21]. In the case on hand, so far as the Juvenile Justice Board, Chennai, is concerned, it was constituted by the Government by issuing an appropriate Notification. But, while making appointment of members to the Board, the Government has erred. Of course, the appointment of two Non-Judicial Members, viz. Mrs.Girija Kumarbabu and Selvi R. Isabel, the appointment cannot be found fault with. So far the designation of*

Principal Magistrate is concerned, there is no valid appointment. The Government Order, as I have already referred to states that the Chairperson of the Board shall be the XII Metropolitan Magistrate, Chennai. First of all, there is no post of Chair Person at all provided in the Act. There is only a Principal Magistrate to be designated by the Government. Assuming that the nomenclature used in the Government Order is only an error, even then, the Government Order will not satisfy the above specific provision of the Act and the Rules. For any reason, if the Magistrate presiding over the XII Metropolitan Magistrate Court, does not possess required qualification as provided in sub-section (3) of Section 4 the Act, then certainly, he cannot act as the Principal Magistrate. In the case on hand, probably, the XX Metropolitan Magistrate thought it fit to act as the Principal Magistrate, because, she was in charge of the XII Metropolitan Magistrate Court, Chennai. This confusion would not have surfaced at all,

provided the appointment has been made validly by designating a Metropolitan Magistrate who possesses the required qualification as the Principal Magistrate.

15. Incidentally, I have occasion to go through the Government Orders regarding Constitution of Juvenile Justice Boards and the appointment of members in all the Districts, throughout the State. To my surprise, I find that the very same error has occurred in the appointment of Principal Magistrates to each and every Juvenile Justice Board in the State. I only do hope that the Government and the High Court will take appropriate steps forthwith to obviate the said error and appoint qualified Magistrates as Principal Magistrates of the Juvenile Justice Boards through out the State.

16. Nextly, assuming that the learned XII Metropolitan Magistrate, Chennai can function as the designated Principal Magistrate of the Juvenile Justice Board, even then, it was not appropriate or legal for the XX Metropolitan Magistrate to act as the Principal

Magistrate of the Juvenile Justice Board. Admittedly, the XX Metropolitan Magistrate has not been appointed as the Principal Magistrate of the Board, Chennai. She was put in charge of only the Court of XII Metropolitan Magistrate, Chennai. That means, she was authorised to discharge the functions only of the XII Metropolitan Magistrate. In other words, she was empowered only to discharge the magisterial functions of the XII Metropolitan Magistrate and she was never empowered to act as the Principal Magistrate of the Juvenile Justice Board. Thus, the entire proceedings viz. taking cognizance, questioning the juvenile accused in respect of the accusations and the examination of the witnesses are all wholly without jurisdiction.

....

23. *Yet another serious illegality committed by the Juvenile Justice Board is that the sitting of the Juvenile Justice Board was held in the chamber of the XX Metropolitan Magistrate, situated in Ripon*

Buildings at Chennai. As per sub-rules (1) & (2) of Rule 9 of the Juvenile Justice [Care and Protection of Children] Rules, 2007, the sitting of the Juvenile Justice Board shall be child friendly and shall not look like a Court room. The said provision totally prohibits the sitting of the Juvenile Justice Board in the Court premises. Sub-rules (1) & (2) of Rule 9 read as follows:

> *"9. Sittings of the Board.— (1) The Board shall hold its sittings in the premises of an Observation Home or, at a place in proximity to the Observation Home or, at a suitable premise in any institution run under the Act, and in no circumstances shall the Board operate from within any Court premises. (2) The premises where the Board holds its sittings shall be child-friendly and shall not look like a Court room in any manner whatsoever; for example, the Board shall not sit on a raised platform and the sitting*

arrangement shall be uniform, and there shall be no witness boxes.

(3) … … … …

(4) … … … …

(5) … … … …" [Emphasis supplied]"

24. The object of the said rule is to provide child friendly atmosphere for the juvenile so that without any fear he can participate in the enquiry. Further, the object is only to rehabilitate the juvenile and not to punish him for the offence committed by him. Rule 7 of the Tamil Nadu Rules states that the Board shall hold its sitting in the premises of the Observation Home or at any place as may be specified by the State Government in this behalf. So far as Juvenile Justice Board, Chennai is concerned, the specified place of sitting is in a Government building at Kelly's, Chennai, which is not in a Court premises. But, curiously, the entire proceeding in this case was conducted by the Juvenile Justice Board only in the chamber of the learned XX Metropolitan

Magistrate, Ripon Buildings, Chennai. The learned Public Prosecutor would, on instructions from the Investigating Officer, who is present in Court, would also admit that the proceedings were conducted only in the chamber of the XX Metropolitan Magistrate. Thus, the proceedings conducted in the Chamber of the XX Metropolitan Magistrate cannot be stated to be child friendly. The Juvenile Justice Board ought not to have held its sitting in the Magistrate Court premises at all. When the Rule mandates that the place where the proceedings is conducted shall not look like a Court room in any manner, it is unfortunate that the entire proceedings were conducted in the Court premises itself. This is yet another illegality committed by the Juvenile Justice Board."

30. In ***Gopal v. State Rep by The Inspector of Police (Crl.R.C.No.853/2016 dated 15.06.2016),*** this court**,** observing the inability of a common man, has made a stress that before acting solely on the plea of guilty, the court should be fully satisfied that the

accused had understood the nature of the charge levelled against him. The relevant portion of the decision reads as under:-

> *"15. In our considered view, in this scenario, before acting solely on the plea of guilty, essentially, the court should be fully satisfied that the accused had understood the nature of the charge levelled against him. A common man, more particularly, an illiterate poor man hailing from a remote corner of this country, may not know what the offence of murder in the context of the Penal Code, 1860 is. It is the common man's understanding that killing of a human being by another is a murder. The vast majority of people of this country do not know as to when a homicide amounts to a culpable homicide; when culpable homicide amounts to a murder and when the special exceptions appended to Section 300 of IPC would reduce the offence again into a culpable homicide. Similarly, the accused may not know as to whether his act would fall under any one of the*

general exceptions. He may not know whether the death was directly due to the violence caused by him or due to some other natural cause. Whether the offence committed by the accused is a mere culpable homicide or murder requires a deep analysis of the back-ground of the entire occurrence. The accused may not know those back-grounds which actually may make out the difference between culpable homicide not amounting to murder and murder. Going by his common understanding that killing a person is a murder, when he is questioned under Section 228 of the new Code, he may plead guilty. When an accused, without knowing these nuances, pleads guilty, there is a danger of conviction for him for an offence that he has not committed."

31. The petitioner/child in fonflict with law has been charged with serious offences. While the Code insists for compliance of the procedure in conducting the inquiry of serious offences by following the procedure for trial in Summons Cases, the Juvenile Justice Board has

not complied with the same as contemplated under the Act and it appears that it has not taken care to make the petitioner/child in conflict with law to understand the accusation levelled against him before passing the said order as against the petitioner/minor merely on the basis of his pleading guilty. The Juvenile Justice Board, in the circumstances, taking into consideration the facts of the case, should have proceeded with the trial to find out whether the prosecution was able to prove the charges beyond reasonable doubt. In this context, it is useful to refer the decision of the Apex Court in ***State of Maharashtra vs. Sukhdeo Singh ((1992) 3 SCC 700),*** wherein it has been held as under:-

> *"Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea*

and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clean, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial

Judge accepts and acts on that plea he must administer the same caution unto himself. This plea of guilt may also be put forward by the accused in his statement recorded under Section 313 of the Code."

32. As per Section 14(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, 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. As per Section 14(2) of the Act, such inquiry shall be completed within a period of four months from the date of first production of the child before the Board, unless the period is extended, for a maximum period of two more months by the Board, having regard to the circumstances of the case and after recording the reasons in writing for such extension. However, in the case on hand, though the confession of the petitioner/child in conflict with law was recorded on 15.8.2019, the charge sheet was made ready only on 3.8.2020 and the order of detention came to be passed on 17.3.2021 which reveals that time limit specified under the Act has not been complied with in its strict sense in conclusion of the enquiry.

33. Further, once again coming to the facts of this case, no doubt, the complaint lodged in the case and the witnesses cited by the prosecution speak about an occurrence said to have taken place. But, the statements of the witnesses, especially the statement of the victim girl reveal that there had been a love affair between the victim girl and the petitioner from the year 2018 when they were working together. The allegation levelled against the petitioner is that he had trespassed into the house of the victim girl on 12.3.2019 and had committed penetrative sexual assault on her. However, the statement of the victim girl reveals that the petitioner made her to believe that they both could marry only if they indulge in sexual affair and by making such misconception, he had committed sexual assault on her. By such allegation, the prosecution intends to make out a case that the petitioner, by giving misconception and false hope to the victim girl, had forcible sexual relationship with the victim girl.

34. It is unusual and highly unbelievable that a girl about 17 years old, who must certainly have a higher level of maturity than a boy of 15 years, believes his words, gets misconceived, surrenders to him and have sexual relationship with him so as to marry him. Even for a moment, if it is accepted, the victim girl or her mother had not

chosen to lodge the complaint instantly and they have chosen to wait for such a long period till 15.8.2019 and that too only when a quarrel had bursted out in the relationship of the petitioner and the victim girl which probabilises the theory of consensual relationship pointed out by the petitioner.

35. On such complaint, the police had enquired one Kanchana, the complainant and the mother of the victim girl, the victim girl, her sister Saraswathi and her aunt Parvathi and recorded their statements which are nothing but parrotlike statements. Apart from enquiring the observation witnesses and confession witnesses, the respondent police had also enquired the Headmistress of the School where the victim girl studied, the Doctors, who had medically examined the victim girl and the petitioner and recorded their statements. However, none of the witnesses has been put to test by conducting a full-fledged trial before the Juvenile Justice Board and the petitioner was convicted merely on his plea of guilty.

36. The facts and circumstances of the case lead to a conclusion that an infatuation of two adolescents had been given criminal colour and one of them has been penalized. Had there not been a quarrel between the immature couple on the relevant date, the issue would

not at all have come out. A perusal of the statements of the witnesses would reveal that the petitioner/minor had picked up the quarrel with the victim girl in an inebriated condition with regard to the paternity of the unborn child and that was the root cause for the entire issue to come to light. Therefore, it is clear that an infatuation in the adolescent age of a minor boy and a girl, who had just crossed such stage has turned into an unwanted physical relationship like a child's play.

37. Every child, who comes in contact with the juvenile justice system, is a child in difficult circumstances, who has fallen out of the protective net at some point and has been robbed of an opportunity of a safe and secure childhood. Children in conflict with law should be treated as children in difficult circumstances and the approach of the juvenile justice system should be aimed at addressing the vulnerabilities of children and ensuring their rehabilitation. In fact, reform and rehabilitation and not punishment are the guiding principle of the Juvenile Justice (Care and Protection of Children) Act, 2015.

38. While dealing with the juvenile justice cases, the view expressed by **Justice Krishnaiyer** in **Sattoo and Others v. State of Uttar Pradesh reported in (1979)2 SCC 628** cannot be overlooked

wherein it has been held that quackery in criminology is a deficiency in forensic justicing-especially disastrous is sensitive areas like juvenile sentencing when unlettered punishment becomes unwitting crime and the theory that 'Justice and the Child' is a distinct jurisprudential-criminological branch of socio-legal specialty which is still in its infant status in India and many other countries and a deep feeling has been expressed therein to the effect that the Children Act is a preliminary exercise, the Borstal School is an experiment in reformation and correction informed by compassion, not incarceration leading to degeneration, is the primary aim of this field of criminal justice.

39. The relevant portion of the decision in **Sattoo and Others v. State of Uttar Pradesh (1979)2 SCC 628,** reads as under: -

> *"Quackery in criminology is a deficiency in forensic justicing-especially disastrous is sensitive areas like juvenile sentencing when unlettered punishment becomes unwitting crime.*
>
> *Current Indian ethos and standards of punitive deterrence make rape a heinous offence. The offenders, however, are children and the dilemmatic issue is to fix the sentencing guidelines when juvenile delinquents*

come before the court. 'Justice and the Child' is a distinct jurisprudential-criminological branch of socio-legal specialty which is still in its infant status in India and many other countries. the Children Act is a preliminary exercise, the Borstal School is an experiment in reformation and even s.360 Cr. P.C. tends in the same direction. Correction informed by compassion, not incarceration leading to degeneration, is the primary aim of this field of criminal justice. Juvenile justice has constitutional roots in Articles 15(3) and 39(e) and the pervasive humanism which bespeaks the superparental concern of the State for its child-citizens including juvenile delinquents. The penal pharmacopeia of India, in tune with the reformatory strategy currently prevalent in civilised criminology, has to approach the child offender not as a target of harsh punishment but of humane nourishment. This is the central problem of sentencing policy when juveniles are found guilty of delinquency. A scientific approach may insist on a search for fuller material sufficient to

individuate the therapy to suit the criminal malady. As the United States Supreme Court stated in Williams v. New York,(1) present the reports:" have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guess-work and inadequate information. To deprive sentencing judges of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation after careful consideration and experimentation."

Judge F. Rayan Duffy has written:

"If the judge has before him a complete and accurate presentence investigation report which sets forth the conditions, circumstances, background, and surroundings of the defendant, and the circumstances underlying the offence which has been committed, the judge can then impose sentence with greater assurance that he has adopted the proper course. He can do so with much greater peace of mind."

"Regrettably, our juvenile justice system still thinks in terms of terror, not cure, of wounding, not healing, and a sort of blind man's buff is the result. This negative approach converts even the culture of juvenile homes into junior jails. From the reformatory angle, the detainees are left to drift, there being no constructive programmes for the detainees nor correctional orientation and training for the institutional staff. I highlight these drawbacks largely because the State's response to punitive issues relating to juveniles has been stricken with 'illiteracy' and must awaken to a new 'enlightenment', at least prompted by the international year of the Child. Patricia M. Wald has strengthened this perspective in a recent book on "Pursuing Justice for the Child".(1).

"Juvenile detention needs a new focus and a new rationale. The detention period ought to be used to begin to draw together resources necessary for constructive change, whether or not the juvenile is adjudicated. There is abundant evidence that detention

has failed as an isolated interlude between those more dramatic parts of the juvenile justice system-arrest and trial or disposition.

The Juvenile judge still has a vital function to fulfil in detention. The judge is charged with the solemn determination whether to deprive juveniles of liberty or whether they can be released in their parents' custody or to a third party and, if so, what conditions should apply to the release. In making such a decision the judge should follow due process hearing procedures and the legal presumption should favour release. If the decision is to detain, the judge must make a record to support that decision. The legality of preventive detention in the juvenile court needs to be tested. If the power is upheld, the procedural safeguards should be as precise as they are for adults. We should abandon the notion that secure detention is good for the child.

Some legal absolutes seem imperative; jail for juveniles should be outlawed; status offenders should not be put into secure detention; finite limits should be set on how

long a child can be detained before or after adjudication; minimum standards for physical structure, staff, and program should be enforced by the courts. Even then, we should not cease inquiring whether there are yet better and more enlightened ways to use the interlude after arrest to help juveniles so that, unless they are innocent, or so blighted that removal from the community before or after trial is an almost indisputable necessity, there may be no need for the rest of the progress at all."

40. The idea behind rehabilitation is that people are not born criminals, thus, they should be given a chance to be restored back into the society. It also prevents them from becoming recidivists. Rather than punishing them as a criminal, rehabilitation seeks, by means of education or therapy, to make the juvenile in conflict with law a healthy citizen of the society. The Juvenile Justice (Care and Protection of Children) Act, 2015 adopted by Government of India takes a holistic approach towards protecting the rights of the children by providing for proper care, protection, development, treatment and social re-integration of children in difficult circumstances.

41. Children are born innocent; however, due to multiple factors, many children adopt behaviours which are defined as delinquent and sometimes being "in conflict with law". These behaviours range from emotional outburst, petty thefts, substance abuse, violent or aggressive behaviour to more serious types of crimes. These behaviours are often learned early in life. However, parents, family members, and others who care for children can help them learn to deal with emotions without using violence. Studies show that children internalize norms of society through strong bonds with parents and others, which protect against delinquent impulses.

42. Children in conflict with the law (CCL) are called by many names: criminal, thief, murderer, rapist. When people look at them, if they look at all, all they see are the faces of young criminals - fierce, vicious, and rough. When people speak of them, their voices are often full of contempt, scorn and even condemnation. These children are given names that speak only of their crimes and not of their intrinsic humanity. Society often wishes to be rid of such useless, hopeless creatures thinking that these children will always lead a life of crime throughout their lives. What many do not know, or do not care to know, is that these wicked faces are, sadly, often only masks that the

children have put on themselves to hide their pain, anger, and fear, or masks that we, in our indifference and even revulsion, have actually put on them. Because we mistake their masks for their faces, we forget who, these children are. We forget that they are children, who have much to learn, much to do, and much to hope for. In believing the masks to be real, we undermine children's capacity for growth and change.

43. The Juvenile Justice System assumes that a child offender is a product of unfavorable environment and is entitled to a fresh chance to begin his life. The offences may have been committed without any criminal intent on certain occasions. The child probably lacks foresight on the repercussions/consequences of his actions. It is accepted that a child offender should not be given punishment based on the kind of offence he/she has committed but should be given an individual treatment which is reformative in nature and which is based on his/her need, psychological and social background.

44. In this regard, parents, teachers, schools, community and law enforcement agencies need to understand, prevent and reduce risk factors which may push children towards adopting behaviours that may harm them. With the right kind of prevention and rehabilitation most

children could adjust, reform, and return to the maturity of adulthood.

45. The individual factors that cause Juvenile delinquency are personality traits like submissiveness, defiance, hostility, impulsiveness, feeling of insecurity, fear, lack of self-control and emotional conflicts and situational factors that cause Juvenile delinquency are family, companions, movies, school environment, work environment, extra pocket money etc. Commonly, children need support, love, affection, keen parenting support and involvement of family members is required to every child to become healthy. When these basic needs are missing, it may affect the child's personality. Further the probable causes of juvenile delinquency are broken homes, lack of love, lack of parental affection, gang subculture, poverty, negative influence of movie and media, urbanization, adolescent instability, lack of recreation, negative environment, low-socio economic, parental violence, availability of weapons, association with deviant peers, peer pressure, television violence, parental anti social behaviour, poor academic performance, large family size, low educational attainment, drug or alcohol use by the child, poor monitoring of children in school and criminal behaviour of siblings.

46. Juveniles involved in crimes are not criminals; in fact, they are victims of society in some cases. Juvenile delinquency can be stopped at an early stage, provided special care is taken both at home and in school. Parents and teachers play a major role in fostering the mind of a child. Instead of labeling them as criminals or delinquents, importance is to be given on understanding the needs of children and give them a scope for modification. The problem of child crime like many other social problems is linked up with the imperfections and maladjustment of our society.

47. Children are always cherished everywhere as embodiment of innocence, virtue, sheer beauty perhaps the only closer embodiment of him/her. They are the future citizens of the world, the true torch-bearer of a nation and entitled to the equitable principles of intergenerational equity, a rightful candidate of the peaceful world, pollution-free ambience and righteous society. Along with other laws, the Criminal Law is often employed to protect the innocent mind from the attack of the depraved mind. Therefore, punishing the minor boy who enters into a relationship with a minor girl who were in the grips of their hormones and biological changes which is otherwise normative development in the children, is against the principles of the best

interest of the child. Hence, rather than imposing stringent punitive approach upon the child, it is just and necessary to apply a liberal approach to reform and rehabilitate him which needs special legislation and to consider him as a Child- not conflict with law under the scheme of Juvenile Justice Act, 2015.

48. The sense of "love" is not a new one to the society and it has got a long history in human life even from epics. However, of late, it is being misunderstood with infatuation. As meant by the proverb, "idle mind is the devil's playground", it is painful to note that during the pandemic frozen period, the children were left with the option of either "idiot box" or "smart phone" making them less proximate to their parents and care takers and thereby susceptible to infection of their minds with much more impact than the pandemic illness.

49. This court feels that it may not be out of context to express here that the pandemic situation had created a fickleness in the minds of people and it totally changed the human life and their attitude towards even the neighbourhood. It had not only had much impact on the financial status of the public, but, also their morality. For about two years, they had to be detained themselves inside four walls or within a short circle and after they come out of such rigid period, people with

mature minds could cope up with their regular world, whereas, it appears that the teenagers face great difficulties to travel in the distorted path to achieve their goals especially, when the mature world is trying to cope up with the financial loss they faced during the pandemic period resulting in a slackness in taking care of the mental health of the teenagers. This could be visualized from the recent videos that had become viral in the social medias exposing severe and irresponsible behaviour of students in schools and outside. It is really heartbreaking to see that the students go to the extent of severely misbehaving with teachers who are to be revered. Following this, the advice given by the Director General of Police of the State Mr.C.Sylendra Babu in social media sensitizing not only the students but also the law enforcers comes as a solace at this hour. Such events rings alarm that the State and the society should wake up to the situation. The State should involve the Education Department and the Social Welfare Department in an effective manner so that things do not go beyond our hands. The parents as well as the society has a responsibility in this issue.

50. In the case on hand, the irresponsible behaviour on the part of the petitioner/minor and the victim girl, who hail from the lower

strata of the society, is nothing but, a mirror image of the lacuna of the society in taking sufficient care for others. The age of the victim girl, which is the basis for attracting the offence punishable under the provisions of POCSO Act, has not been properly proved. The inquiry contemplated under the Juvenile Justice Act has not been concluded within the time stipulated and in all justice has been denied to the petitioner/child in conflict in law. Therefore, it would be unsafe to concur with the Juvenile Justice Board on its finding that the petitioner has committed an offence punishable under the provisions of POCSO Act.

51. Unfortunately, the suspicion surrounding the age of the victim girl has not been probed into by the Juvenile Justice Board in a manner known to law and had it been proved that she was above 18 on the date of occurrence, the scenario would have been vice versa. Even if she was below the age of 18 years on the date of occurrence, the petitioner being a minor boy/child in conflict with law, the procedures contemplated under the Juvenile Justice Act ought to have been adopted before passing any order of detention and that too is supposed to be the last resort after making a reasonable inquiry, as specifically mentioned in subclause (xii) of Section 3 of Juvenile

Justice (Care and Protection of Children) Act, 2015. However, in the case on hand, no such procedure appears to have been followed properly and merely by relying on the statement of the petitioner/minor alleged to have been given on his own volition and without going into its genuineness, a hazy order of detention came to be passed by the Juvenile Justice Board in a hasty manner, which certainly warrants interference.

52. In the result, the order of detention dated 17.3.2020 passed by the Juvenile Justice Board, Thiruvallur in J.C.No.21 of 2020 is set aside. The petitioner is set at liberty forthwith. Bail bond executed, if any, shall stand cancelled.

53. **With a view to maintain secrecy of the identity of the petitioner, it is directed that the law journals, press and media shall refer the name of the petitioner as "Agavai" and not by real name, making a mention that name has been changed [including in the cause title].**

54. Before parting with, this court intends to record its deep appreciation for the valuable assistance rendered by Mr.R.Vivekananthan, learned counsel, who had readily accepted the request of the court to act as A*micus Curiae* in the matter to assist the

court and took earnest efforts in furnishing the compilation of judgments and the views of international courts on the issue.

29.4.2022.

Index: Yes/No.
Internet: Yes/No.
ssk.

To

1. Principal Magistrate,
   Juvenile Justice Board,
   Thiruvallur.

2. The Inspector of Police,
   W29, All Women Police Station,
   Avadi, Chennai 600 054.

3. The Public Prosecutor,
   High Court, Madras.

A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. ORDER IN
Crl. Revision Case No.877 of 2021

Delivered on
29.4.2022.