



# Balancing Justice And Compassion: Bail For Juveniles In The Indian Legal Landscape

\*B P BASAVANAGOWDA

\* Assistant Professor, R L Law College, Davanagere, Karnataka

## Abstract

This article delves into the legal nuances and sociological factors that influence the bail process for minors who are in legal trouble, examining the complex landscape of this system in India. With a foundation in juvenile justice and rehabilitation, the conversation threads through the Juvenile Justice (Care and Protection of Children) Act, 2015's provisions, highlighting the idea that bail for young offenders ought to be the standard rather than the exception. The problems of social stigma, insufficient legal representation, and overcrowding in juvenile homes are examined, leading to a review of possible remedies. The article envisions a way forward that integrates holistic juvenile justice policies, community engagement, and robust rehabilitation programs. By striking a delicate balance between accountability and compassion, the article advocates for a legal framework that not only upholds the rights of children in conflict with the law but also facilitates their reintegration into society, ensuring a fair and empathetic pursuit of justice.

Key Words: Juvenile Justice, Rehabilitation, Bail, Juvenile Homes

## Introduction

Within the Indian legal framework pertaining to juvenile justice, the notion of bail<sup>1</sup> plays a crucial role in maintaining a careful equilibrium between the safeguarding of society and the rights of the juvenile offenders. The issue of bail is becoming more complex as the legal system changes to meet the special requirements and vulnerabilities of young people. This piece explores the complexities of juvenile bail under Indian law, illuminating the fundamental ideas, difficulties, and changing juvenile justice scenario. We seek to explore the legal nuances and sociological issues that impact the bail process for young people involved in the web of the justice system by examining the delicate balance between rehabilitation and accountability. In

<sup>1</sup> Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority. <https://districts.ecourts.gov.in/sites/default/files/6-Bail%20Anticipatory%20Bails%20-%20Sri%20M%20Sreenu.pdf>

doing so, we seek not only to understand the existing legal provisions but also to envision a future where the pursuit of justice for juveniles is synonymous with compassion, rehabilitation, and the safeguarding of their fundamental rights. The legislation in the Indian criminal justice system is unambiguous concerning anticipatory bail, however when discussing juveniles, it becomes unclear whether or not it applies. To this day, there is still change surrounding this problem.

### **The legal framework of the term “Bail”<sup>2</sup>**

Bail, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority.

**Black’s Dictionary** defines bail as “Procuring the release of a person from legal custody, by undertaking that he/she shall appear at the time and place designated and submit him/herself to the jurisdiction and judgment of the court”.<sup>3</sup>

At the moment, the **Code of Criminal Procedure, 1973** (henceforth referred to as the "Act") governs bail. Although the phrases "bailable offence" and "non-bailable offences" are defined under **Section 2(a)**, the Act does not define bail. The Act's bail requirements are governed by **Sections 436–450**.<sup>4</sup>

### **Anticipatory Bail**

It is the bail granted to a person in anticipation and apprehending arrest.

Under Section 438<sup>5</sup> of CrPC, any individual who discerns that he may be tried for a non-bailable offence can apply for anticipatory bail.

The application shall be made to the High Court or Sessions Court, where the crime is alleged to be committed.

When the court grants anticipatory bail, it prevents the police from making an arrest. Anticipatory bail is bail given prior to an arrest.

It is designed to protect someone who has been unfairly accused or charged, usually as a result of professional or personal animosity, by guaranteeing the wrongly accused person's release even before they are taken into custody.

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

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<sup>2</sup> Supra Note 1

<sup>3</sup> <https://thelawdictionary.org/bail-v/>

<sup>4</sup> Criminal Procedure Code 1973

<sup>5</sup> Section 438 of Cr. P. C 1973 provides that where a person has reason to believe, that he may be arrested on the accusation of committing a Non - Bailable Cognizable Offence, he can apply to the Court of Session or the High Court for the grant of bail in case of such arrest.

The Act defines a child as a person who is below the age of 18 years. It also defines different categories of children. This includes children in need of care and protection, children in conflict with the law, and children in institutional care.

The word juvenile originated from a Latin word 'juvenis', which means young.<sup>6</sup>

**In India, The term 'juvenile' has been defined in clause (h) of Section 2 of the Juvenile Justice Act, 1986:**

(h) 'Juvenile' means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years;<sup>7</sup>

**The term 'delinquency' has been defined in clause (e) of section 2 of the Juvenile Justice Act, 1986:**

(e) 'Delinquent juvenile' means a juvenile who has been found to have committed an offence.<sup>8</sup>

**Section 12 states as follow,**

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 persons 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.<sup>9</sup>

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home 1[or a place of safety, as the case may be] in such manner as may be prescribed until the person can be brought before a Board.<sup>10</sup>

<sup>6</sup> <https://dictionary.cambridge.org/dictionary/english/juvenile>

<sup>7</sup> Section 2(h) The Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>8</sup> Section 2(e) The Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>9</sup> Section 12 The Juvenile Justice (Care and Protection of Children) Act, 2015

<sup>10</sup> Ibid

(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.<sup>11</sup>

(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.<sup>12</sup>

Children are vital to society's future because they can foster leadership, social transformation, economic growth, and peace. They have a significant influence on how the globe will behave in the future. Children have all the same rights as adults and are regarded as equal members of society. Taking this into account, legislators have created particular legislation over time to address situations involving youngsters who find themselves in legal trouble. One such law that addresses the investigation, prosecution, and rehabilitation of young offenders is the Juvenile Justice (Care and Protection of Children) Act of 2015. Having stated that, one of the most significant issues that arises throughout the entire procedure is that of a juvenile's bond. This is a crucial topic because, although it is true that an offender must be kept in jail to safeguard society, it is also true that, given a child's young age, custody may actually cause more harm than good. This study examined the regulations pertaining to juvenile bail and the comparison of high courts in cases involving anticipatory bail, all while keeping this paradox in mind.

## ANTICIPATORY BAIL TO JUVENILE

The law has a well-established stance on anticipatory bail in general, but it is less certain about whether it applies to minors or kids who are in legal trouble. Different benches of the Hon'ble High Courts have taken opposing positions and backed them with their own arguments because the Apex Court has not issued an authoritative statement on the matter.

These views can be broadly divided into two categories:

### (i) Literal approach

### (ii) Purposive approach

A Division Bench of the Madras High Court had the opportunity to review the breadth and reach of the bail provisions in the aforementioned Act and to decide whether an application for anticipatory bail at the request of a minor in violation of the law may be maintained in **K. Vignesh v. State rep by The Inspector of Police**.<sup>13</sup> Therefore, the Court held that it is evidently clear that an application seeking anticipatory bail under Section 438 of the Cr.P.C. at the instance of a child in conflict with the law is not maintainable at all because the Legislature intentionally did not give the police the authority to arrest a child in conflict with the law.

<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> 2017 SCC Online Mad 28442

The Court further emphasised that a kid in dispute with the law may be apprehended by the police under Section 10 of the Juvenile Justice Act, 2015, rather than being arrested. The JJ Act does not permit the police to detain a minor who is in violation of the law, according to the court's ruling, and in the event that no arrest is made, there is no need to use Section 438 of the Cr.P.C. As a result, the Court decided that the juvenile did not need to request anticipatory bail because a minor who is in legal trouble cannot be arrested.

In the case of **Kamlesh Gurjar v. State of Madhya Pradesh**,<sup>14</sup> the Madhya Pradesh High Court held that the juvenile does not have the right to file an application for anticipatory bail under Section 438 of the Code of Criminal Procedure. The JJ Board is the only body with the authority to handle matters pertaining to juveniles under the Code of Criminal Procedure, thereby excluding the jurisdiction of the Sessions Court and the High Court. Based on three main grounds, the bench in the aforementioned instance refused anticipatory bail to a juvenile accused of violating Sections 307<sup>15</sup> and 34<sup>16</sup> of the IPC.

- I. When a juvenile is arrested, held by the police, or appears in court, only the Juvenile Justice Board has the authority to consider their bail application under Section 12<sup>17</sup>; neither the High Court nor the Court of Sessions may consider it.
- II. In accordance with the Juvenile Justice Act, the High Court and the Court of Sessions may only use the authority granted to the Juvenile Justice Board in cases involving appeals, revisions, or other legal matters; they may not do so in accordance with Section 438<sup>18</sup> of the Code of Criminal Procedure, which addresses anticipatory bail.
- III. The only provision dealing with the bail to juveniles is Section 12 of the Juvenile Justice Act, 2015, which does not provide for anticipatory bail to the Juveniles and thereafter, the Legislature does not intend to provide for anticipatory bail to the Juveniles. Moreover, no provision in the Code of Criminal Procedure enables the Juvenile to move an application for anticipatory bail either before the Court of Sessions or High Court or even before the JJ Board.

### **Purposive approach**

#### **X (Prashob) v. the State of Kerala<sup>19</sup>**

The Kerala High Court ruled that Section 438<sup>20</sup> of the Criminal Procedure Code, which authorises the granting of anticipatory bail, was not applicable because there was no provision in the Juvenile Justice Act, 2015 that did so, either explicitly or through necessary implication. There is no particular provision in the

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<sup>14</sup> CRR 2112/20 & MCRC 41359/20

<sup>15</sup> Section 307 of the IPC prescribes punishment for attempt to murder.

<sup>16</sup> Section 34 IPC states the acts done by several persons in furtherance of common intention. The section explains that "When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons shall be liable for that act in the same manner as if it were done by him alone."

<sup>17</sup> Supra Note 7

<sup>18</sup> Supra Note 3

<sup>19</sup> SC 356/2021

<sup>20</sup> Supra Note 16

Juvenile Justice Act, 2015 regarding the granting of anticipatory bail to a minor who is in legal trouble. The provisions of the Code shall apply in the event that no special provision established under the Act is made regarding any given topic. There is no clause in the Juvenile Justice Act, 2015 that restricts the general application of the Cr.P.C.'s provisions. Wherever the legislation intended to give overriding effect to the statutory scheme of the Juvenile Justice Act, 2015 over the provisions of the general application contained in the Cr.P.C., it has been specifically provided so. Application for anticipatory bail at the instance of a child in conflict with law is maintainable before the High Court or Court of Session.

It was a well-established legal principle that, in the event of a conflict or inconsistency between the general and special legislation, the provisions of the special law would take precedence to the degree of that inconsistency when it came to the interpretation of the Juvenile Justice Act, 2015 generally and Section 12 of the JJ Act. The general legislation's provisions would take precedence in cases where there was no inconsistency and they provided something not specified by the special legislation.

### **Important rulings related to Juveniles:**

#### **Re Exploitation of Children in Orphanages in The State of Tamil Nadu vs. The Union of India<sup>21</sup>**

The amicus curiae in the case **Re Exploitation of Children in Orphanages in The State of Tamil Nadu vs. The Union of India<sup>22</sup>** cited two incidents in Delhi and Uttar Pradesh when police personnel abused children while they were being held in custody. "No child should be kept in jail," ruled a panel made up of Justice Deepak Gupta and Aniruddha Bose. Therefore, even in cases when the court denies bail, the police are not allowed to hold a minor in custody. The cause is the instances of police abuse of minors while they are in custody.

#### **Vishvas v. State of Punjab<sup>23</sup>**

The Punjab and Haryana High Court heard the matter. The FIR was filed in this instance. Based on IPC sections 307, 376, 457, and 511. The petitioner's plea was denied by the lower courts solely on the grounds that the complainant/prosecutor claimed she was attacked by the juvenile and that he tried to rape her; if he was released on bond, he would be in close contact with her and could face moral and psychological risks; his release would also be against the goals of justice.

The Supreme Court consequently ruled that the JJB is required to ensure that all minors obtain bail. However, it was held by the High Court that there was no material on the record to show that there were reasonable grounds for believing the petitioner was likely to come into the association of criminals if released on bail or his release would put him in danger—either physically, morally, or psychologically. The juvenile was granted bail despite the order being deemed to be mechanical and not following section 12(1) of

<sup>21</sup> WRIT PETITION (CRL.) NO. 102 OF 2007

<sup>22</sup> Ibid

<sup>23</sup> CRR No. 53 of 2021 (O & M) decided on 08.02.2021

the JJ Act. The JJ Act's section 12 requires the order to be published throughout the states of Punjab, Haryana, and Chandigarh, along with further instructions to provide justifications for refusing juveniles' bail.

### **Mohammad Zaid v. State of U.P. and Another<sup>24</sup>**

Juveniles may apply for release under Section 438 of the CrPC, and while they are out on bail, they may be questioned in accordance with Sections 14 and 15 of the Juvenile Justice Act, according to a bench of the Allahabad High Court made up of **Chief Justice Pritinker Diwaker and Justice Samit Gopal**.

### **Sumanta Bindhani v. the State of Orissa<sup>25</sup>**

The recovery of "Ganja" occurred in the aforementioned case; the Honourable Orissa High Court ruled that, The provisions listed under Section 37 of the JJ Act, 2015 are superseded by Section 12 of the JJ Act, 2015. In the case of a juvenile who is granted bail, noting that the juvenile has been granted extended special care, treatment, development, and rehabilitation by the Legislature and that there is no evidence to suggest that the petitioner will likely associate with any known criminal while on bail or that they will be in danger physically, morally, or psychologically, or that the juvenile's release would be against the interests of justice.

### **Challenges and Considerations:**

Even with the new legislative structure, there are still issues with actually putting juvenile offender bail rules into practice. The fine line between rehabilitation and accountability must be carefully balanced, taking into account factors including recidivism risk, societal stigma, and reintegration into society.

#### **1. Stigma and Social Perception:**

- a. **Challenge:** Young people who run afoul of the law frequently encounter social stigma, which makes it more difficult for them to get bail.
- b. **Way Ahead:** By debunking falsehoods, educational programmes and public awareness campaigns can promote compassion and understanding.

#### **2. Inadequate Legal Representation:**

- a. **Challenge:** Many juvenile offenders lack adequate legal representation, impacting the fair consideration of bail applications.
- b. **Way Ahead:** Legal aid programs and training for lawyers specializing in juvenile justice can ensure effective representation for these vulnerable individuals.

#### **3. Overcrowded Juvenile Homes:**

- a. **Challenge:** Overcrowded and under-resourced juvenile homes can limit the options for alternative custody, affecting bail decisions.

<sup>24</sup> A BAIL No. 8361 of 2020 & 31 others

<sup>25</sup> Sumanta Bindhani vs State Of Orissa decided on 2 March, 2017

- b. **Way Ahead:** Investments in infrastructure, increased staff, and the promotion of community-based rehabilitation programs can alleviate this challenge.

#### 4. **Inconsistent Implementation:**

- a. **Challenge:** Inconsistencies in the implementation of bail provisions across different regions and jurisdictions.
- b. **Way Ahead:** Standardized guidelines, regular training for judicial officers, and the promotion of best practices can enhance consistency.

#### 5. **Lack of Rehabilitation Programs:**

- a. **Challenge:** The absence of comprehensive rehabilitation programs can impede the court's confidence in granting bail.
- b. **Way Ahead:** Collaborative efforts between government agencies, NGOs, and educational institutions can develop and implement effective rehabilitation programs tailored to individual needs.

### **REMEDY ON THE REJECTION OF BAIL OF JUVENILE BY THE BOARD**

**Section 101<sup>26</sup>** addresses the provision of appeals and states that, subject to the provisions of the Juvenile Justice Act, 2015, any individual who feels wronged by an order made by the Committee or the Juvenile Justice Board under the Juvenile Justice Act, 2015 may file an appeal with the Children's Court within 30 days of the date of such an order, with the exception of Committee decisions pertaining to Foster Care and Sponsorship After Care, for which the District Magistrate shall hear the appeal. A caveat exists regarding the aforementioned circumstance: if the Court of Sessions, or the District Magistrate, as the case may be, determines that the appellant was prevented from filing the appeal in a timely manner by adequate cause, it may consider the appeal beyond the 30-day mark and render a decision within that time frame.

After then, no further appeals from orders of the Court of Session made pursuant to the aforementioned Section shall be allowed, and anyone who feels wronged by a Children's Court order may submit an appeal with the Honourable High Court in accordance with the Cr.P.C.

The Revision is covered in Section 102, which also states that the Hon'ble High Court may request the record of any proceedings in which a Committee, Board, Children's Court, or the Court has passed an order at any time<sup>27</sup>. This is done solely to satisfy itself as to the legality or propriety of any such order, and may

<sup>26</sup> (1) Subject to the provisions of this Act, any person aggrieved by an order made by the Committee or the Board under this Act may, within thirty days from the date of such order, prefer an appeal to the Children's Court, except for decisions by the Committee related to Foster Care and Sponsorship After Care for which the appeal shall lie with the District Magistrate. Juvenile Justice Act, 2015

<sup>27</sup> Section 102 of JJ Act 2015



then make any subsequent orders it deems appropriate in relation thereto. Additionally, it stipulates an exemption that prohibits the High Court from making decisions under the aforementioned Section that would be detrimental to any individual without first providing them with a fair chance to be heard or by adhering to the idea of Audi alteram partem<sup>28</sup>.

### **Way Forward.**

#### **Comprehensive Juvenile Justice Guidelines:**

Create and reinforce all-encompassing juvenile justice policies that give rehabilitation first priority and deal with the underlying causes of criminality.

#### **Building Capacity:**

To improve their comprehension of juvenile matters and the subtleties of bail considerations, law enforcement officers, attorneys, and judges should get training.

#### **Participation in the Community:**

Involve communities in the process of rehabilitation to help young offenders who are requesting bail by cultivating a sense of responsibility and support.

#### **Programmes for Reintegration:**

Create and support initiatives that help young offenders reintegrate into society more easily by addressing their educational and career needs.

#### **Frequent observation and assessment:**

Establish procedures for routinely observing and assessing juvenile justice systems in order to spot flaws and guarantee ongoing development.

### **Conclusion**

In conclusion, resolving the issues surrounding bail for minors who are in legal trouble in India necessitates a multifaceted strategy that includes community involvement, legislative reforms, and a strong dedication to the concepts of juvenile welfare and rehabilitation. The legal system can only change to better meet the special needs of these young people by working together, guaranteeing a just and caring course for them. A key component of a legal system that aims for a fair and compassionate approach is bail for minors who are in legal trouble under Indian law. As the country develops, it will be necessary to continually assess and improve these legal provisions in order to guarantee the protection of juvenile offenders' rights and well-being and to create a society that not only holds young people accountable but also offers them opportunities for rehabilitation and a better future. It is true, given the context of the previous discussion, that juveniles are entitled by law to both regular and anticipatory bail. JJ Act rules stipulate that a juvenile may only be denied

<sup>28</sup> Audi alteram partem (or audiatur et altera pars) is a Latin phrase meaning "listen to the other side", or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. Retrieved from [https://en.wikipedia.org/wiki/Audi\\_alteram\\_partem](https://en.wikipedia.org/wiki/Audi_alteram_partem)

bail if there are compelling reasons for doing so. The Juvenile Justice Law prioritises the best interests of the child and is founded on the idea of restorative justice.

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