

**HIGH COURT OF MADHYA PRADESH BENCH AT**

**GWALIOR**

**DIVISION BENCH**

**SHEEL NAGU & RAJEEV KUMAR SHRIVASTAVA, JJ.**

**Criminal Revision No. 2112/2020**

**Ankesh Gurjar @ Ankit Gurjar**

**Vs.**

**State of Madhya Pradesh**

**CONNECTED WITH**

**Misc. Cri. Case No. 41359/2020**

**Sohil Khan**

**Vs.**

**State of Madhya Pradesh**

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Shri Shailendra Singh Kushwaha, learned counsel for the petitioner in Criminal Revision No. 2112/2020.

Shri V.K.Saxena, learned senior counsel with Shri Ayush Saxena, counsel for the petitioner in Misc. Cri. Case No. 41359/2020.

Shri Ankur Mody, Additional Advocate General, for the respondent/State.

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**WHETHER REPORTABLE : (YES)**

**Law Laid Down:**

(1) The concept of arrest/apprehension in a police lockup/jail as contemplated by Chapter V of Cr.P.C. is not recognized in the Scheme of Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) The Juvenile as and when apprehended and detained is

immediately sent to Observation Home/Fit facility/One-stop Home or any of the Institutions contemplated under 2015 Act either for the period of 24 hrs between arrest and production before the Board and also thereafter during pendency of inquiry before the Board till final decision.

(3) Since juvenile is not lodged in any police lockup/jail, the Legislature has consciously and rightly so, omitted to make available benefit of anticipatory bail to a juvenile.

**Significant Paragraph Numbers:** 4.1 to 8. 9,10 & 11.

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**ORDER**

**(Passed on this 20<sup>th</sup> day of January, 2021)  
(through Video Conferencing)**

***Sheel Nagu, J.***

1. This bench has been constituted to resolve the controversy referred by Hon. the Chief Justice stemming from difference of opinions between two single benches of this court.

2. Noticing the cleavage of opinions between two single benches manifested by the order dated 22/10/2020 in ***Misc. Criminal Case 41359-2020 [CCL (Child In Conflict with Law) Vs. State of M.P.]*** and order dated 4/11/2020 in ***Criminal Revision 2112 of 2020 [Ankesh Gurjar @ Ankit Gurjar Vs. State of M.P.]*** the following questions have been framed in both cases :-

**Misc. Criminal Case 41359/2020**

**[CCL (Child In Conflict with Law) Vs. STATE OF M.P.]**

**Order dated 22/12/2020**

Accordingly, the Registry is directed to forward the case to the Principal Seat and for the sake of convenience, the following proposed questions are framed:

(i) *Whether the benefit of anticipatory bail u/s 438 Cr.P.C is available for a juvenile to be availed while invoking Section 12 of Juvenile Justice Act ?*

(ii) *Whether denial of remedy of anticipatory bail u/s 438 to a juvenile would be abhorrent to the beneficial and rehabilitatory object behind the Juvenile Justice Act ?*

(iii) *Assuming that remedy of anticipatory bail is not available to a juvenile, can Article 226 of Constitution or Section 482 of Cr.P.C be invoked seeking anticipatory bail to prevent the juvenile from being remedy-less ?*

(iv) *Which among the two conflicting views of coordinate Benches (both SB) i.e. in Kamlesh Gurjar (Supra) and Miss A (Supra) lay down the correct law ?*

### **Criminal Revision 2112/2020**

**[Ankesh Gurjar @ Ankit Gurjar Vs. State of M.P.]**

**Order dated 4/11/2020**

As the question of maintainability of application for anticipatory bail is already under reference in view of the difference of opinion, therefore, this Court is of the view that following additional questions also require adjudication :

- 1. When there is no concept of custody, as a child in conflict with law is neither arrested nor sent to jail, then whether an application for grant of anticipatory bail would be maintainable?*
- 2. In absence of provision for grant of anticipatory bail, whether the Court can legislate by providing for anticipatory bail?*
- 3. Whether the Legislature has intentionally omitted the provision of Section 438 of Cr.P.C. in view of Section 12(3), and 24(1) of Act, 2015?*

*4. Whether a social verification report can be submitted by Probation Officer, even in absence of detention/apprehension of a child in conflict with law?*

*5. Whether [Section 12\(1\)](#) of Act, 2015 would be a guiding factor for deciding the application for grant of anticipatory bail?*

*6. Whether the Juvenile Justice Board/Children's Court/High Court, can consider the nature of allegations to find out as to whether any prima facie case under Act, 1989 or any other statute like [NDPS Act](#) is made out or not?*

3. From perusal of the controversy delineated in the aforesaid questions framed, this court would like to dwell upon the cardinal and seminal issue as detailed below since the same shall provide the necessary platform to answer the aforesaid questions :-

#### **QUESTION FRAMED BY THIS COURT**

**Whether the legislature while promulgating Juvenile Justice (Care and Protection of Children) Act, 2015, in particular Sec. 12, consciously omitted to make available benefit of anticipatory bail to a juvenile or not ?.**

3.1 For answering this question, it is necessary to track the history behind the promulgation of 2015 Act:-

3.2 The Framers of our Constitution were conscious of the basic human rights of children which is evident from bare reading of Articles 15(3), 39(e) & (f), 45 and 47 of the Constitution, which are reproduced below for ready reference and convenience :-

**“Art. 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.-**

- (1)        xxxx                    xxxx                    xxxx
- (2)        xxxx                    xxxx                    xxxx

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

**Art.39. Certain principles of policy to be followed by the State:-**

- (a)        xxxx                    xxxx                    xxxx
- (b)        xxxx                    xxxx                    xxxx
- (c)        xxxx                                    xxxx                                    xxxx
- (d)        xxxx                    xxxx                    xxxx

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**Art. 45. Provision for free and compulsory education for children.-**

The State shall endeavor to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

**Art.47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-**

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

3.3 The United Nations conscious of deprivation of basic need, care, protection, reformation and rehabilitation of children in conflict with law and children in need of care and protection, prescribed certain basic standards in the Convention on the rights of the child in shape of United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (the Beijing Rules).

3.4 Accepting the aforesaid Resolution of United Nation of 1985 the Parliament promulgated Juvenile Justice Act, 1986.

3.5 The aforesaid Resolution of the United Nations was ratified and accepted by the Govt. of India on 11/12/1992 which paved the way for promulgated of Juvenile Justice (Care And Protection Of Children) Act, 2000.

3.6 Thereafter, the Union Nations framed Rules of juveniles for protection and deprived of their liberty in 1990 which were followed by Rules regarding protection of Children and cooperation in respect of Inter-country Adoption in 1993 Hague Convention. There were other ancillary and incidental international instruments also brought into force

by United Nations.

3.7 To plug the loopholes in 1986 Juvenile Justice Act and to make it more comprehensive and in line with the United Nations resolutions on the Rights of Child, the Parliament repealed 1986 Act and promulgated Juvenile Justice (Care And Protection Of Children) Act, 2000.

3.8 The Act, 2000 underwent amendment twice, in 2006 and in 2011.

3.9 Thereafter the Parliament to bring a more comprehensive law on the subject promulgated the Juvenile Justice (Care and Protection of Children) Act, 2015 keeping in mind the constitutional mandate and the principles of care, rehabilitation, reformation development etc. of children in conflict with law and in need of care and protection.

4. This court to avoid prolixity would not reproduce all sections of 2015 Act but shall selectively do so by quoting the relevant provisions as and when need arises during adjudication.

4.1 Going straightway to Sec. 12 which is the centre of controversy it would be appropriate to reproduce the same in toto :-

***“Sec. 12 Bail to a person who is apparently a child alleged to be in conflict with law.***

***(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a***

*probation officer or under the care of any fit person:*

*Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the 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.*

**(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 in such manner as may be prescribed until the person can be brought before a Board.*

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

**(4)** *When a child in conflict with law is unable to fulfill 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.”*

4.2 On undertaking microscopic scrutiny of Section 12 of 2015 Act which extends benefit of bail to a juvenile, the following prominent features are palpable :-

- (i) Sec. 12(1) contains non-obstinate clause to the extent of excluding application of Cr.P.C. and any other law for the time being in force.
- (ii) Sec. 12(1) after excluding application of Cr.P.C. makes available the benefit of bail with or without surety to a juvenile

who is alleged to have committed bailable or non-bailable offence and is apprehended or detained by the police or appears or is brought before Juvenile Justice Board (Board for brevity). It further provides that in case juvenile is not released on bail then he shall be placed under supervision of Probation Officer or under the care of any "Fit" Persons as defined in Sec. 2(28) of 2015 Act..

(iii) Section 12(1) is circumscribed by proviso conferring power to the Board of denial of bail for reasons to be recorded in writing which have been exhaustively provided as follows:-

(a) if release brings juvenile into association with known criminal,

(b) Expose juvenile to moral, physical or psychological danger and defeats the ends of justice.

(iv) Section 12(2) lays down that if juvenile is not released on bail u/Sec. 12(1) by the officer-in-charge of police station then such officer shall cause juvenile to be kept in Observation Home as defined in Sec. 2(40) till juvenile is brought before the Board.

(v) Sec. 12(3) caters to the eventuality of non-release of juvenile by the Board, providing in mandatory terms that the Board shall pass an order sending juvenile to Observation Home or a Place of Safety as defined in Sec. 2(46) for period during pendency of

inquiry initiated by the Board.

(vi) Sec. 12(4) furthering the rehabilitative and welfare object of 2015 Act provides that if juvenile is unable to fulfill condition of bail order within seven days of the bail order, then the juvenile shall be produced before the Board for modification of condition of bail.

5. Rehabilitatory, reformatory, beneficial and benevolent object behind 2015 Act to ensure care and safety of juvenile is further manifested by certain other provisions of 2015 Act which are enumerated below:-

5.1 Section 14 provides that on juvenile being brought before Board, the inquiry as prescribed in Secs. 17 & 18 of the Act shall be conducted and concluded within a period of 4 months extendable by further 2 months.

5.2 Section 14 also stipulates that in case of petty offences (attracting punishment of 2-3 years imprisonment) if the inquiry is not completed within a period of 6 months (4 months + extended period of 2 months) then proceedings before the Board shall stand terminated. Whereas in regard to heinous offences, inquiry can be concluded beyond 6 months subject to approval of Chief Judicial Magistrate.

5.3 Section 22 stipulates that notwithstanding anything to the contrary

contained in Cr.P.C., or in any law relating to preventive detention, juvenile shall not be subjected to proceedings in Chapter VIII of CrPC pertaining to security for keeping piece & good behaviour.

6. To reiterate and emphasis the rehabilitatory, reformatory and beneficial characteristics of 2015 Act it is imperative to mention about contents of Sec. 3 laying down the general principles followed in administration of 2015 Act which are as under:-

- (a) *Presumption of innocence*
- (b) *Treating juvenile with equality, dignity and worth,*
- (c) *Principle of participation to be followed,*
- (d) *Best interest of juvenile to be paramount to enable juvenile to develop to full potential.*
- (e) *Family of a juvenile to be given preferential responsibility for care, nurture and protection of the child/juvenile.*
- (f) *Safety of juvenile to be paramount.*
- (g) *Reduction of vulnerabilities of juvenile.*
- (h) *Adversarial/accusatory words to be eschewed.*
- (i) *In-applicability of principle of waiver for juvenile.*
- (j) *Non-discriminatory attitude towards juvenile.*
- (k) *Privacy and confidentiality to be maintained.*
- (l) *Entrusting juvenile to an institute as a matter of*

*last resort.*

*(m) Principle of repatriation and restoration for juvenile to reunite with family to be paramount.*

*(n) Past records to be erased to enable a fresh start to juvenile.*

*(o) Adoption of judicial process as a last resort.*

*(p) Principle of natural justice to be followed.*

6.1 The contents of Sec. 12 of 2015 Act disclose the intention of Law Makers that benefit of bail which is manifestation of right of personal liberty in Art. 21 of Constitution is available to a juvenile as of right. The denial of this right can occasion only for 3 reasons to be recorded in writing:-

- (a) if release brings juvenile into association with known criminal,
- (b) Exposes juvenile to moral, physical or psychological danger; or
- (c) Defeats the ends of justice.

6.2 However, even on the occasion of apprehension/detention or denial of bail, the juvenile cannot be placed in a lockup or jail, which is obvious by the contents of Sec. 10 which is reproduced below:-

***“Sec. 10. Apprehension of child alleged to be in conflict with law:-***

***(1) As soon as a child alleged to be in conflict with law is apprehended by the police, such child shall be placed***

*under the charge of the special juvenile police unit or the designated child welfare police officer, who shall produce the child before the Board without any loss of time but within a period of twenty-four hours of apprehending the child excluding the time necessary for the journey, from the place where such child was apprehended:*

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

*(2) The State Government shall make rules consistent with this Act,-*

*(i) to provide for persons through whom (including registered voluntary or non-governmental organizations) any child alleged to be in conflict with law may be produced before the Board;*

*(ii) to provide for the manner in which the child alleged to be in conflict with law may be sent to an observation home or place of safety, as the case may be.”*

6.3 Sub-section (1) of Sec. 10 stipulates in mandatory terms that on apprehension by police, the juvenile shall be placed in charge of Special Juvenile Police Unit as defined in Sec.2(55) r/w Sec. 101 or designated child welfare police officer as defined n Sec. 2(18) r/w 107 who in turn shall produce the juvenile before the Board without any loss of time but within 24 hours of apprehending the juvenile.

6.4 Section 10 (1) is circumscribed by proviso which has overriding effect by providing that in no case, juvenile would be placed in a police lockup or lodged in a jail and to regulate the manner and procedure of

producing the juvenile and sending him/her to Observation Home/Place of Safety, the State Govt. has framed rules in exercise of power conferred under Sec. 110 of 2015 Act which are known as Juvenile Justice (Care and Protection of Children) Model Rules, 2016 (2016 Rules for brevity) which came into force on their publication in gazette w.e.f. 21/9/2016.

6.5 The 2016 Rules *inter alia* provide for the procedure to be adopted from the stage of apprehending/detaining juvenile till conclusion of inquiry to be conducted by the Board.

6.6 Rule 8 provides that FIR shall be registered only when heinous offences attracting penalty of more than seven years imprisonment are alleged. Such registration of FIR shall be done only by Special Juvenile Police Unit as defined in Sec. 2(55) r/w Sec. 107 or Child Welfare Police Officer as defined in Sec. 2(18) r/w 107. The proviso to Rule 8(1) lays down that power of apprehending juvenile shall be exercised only in regard to heinous offences. Rule 8(2) however lays down that as soon as juvenile is apprehended he/she shall be placed in charge of Special Juvenile Police Unit or Child Welfare Police Officer, who shall immediately inform parents/guardians of child, the Probation Officer and Child Welfare Officer or Case worker.

6.7 Rule 8(3) stipulates in mandatory terms that during period of 24 hrs between apprehending/detaining of juvenile and production of

juvenile before the Board, the Child Welfare Officer shall not send juvenile to police lockup but only to Observation Home.

6.8 Rule 8(3) also prohibits hand-cuffing, chaining or using any coercive force. For ready reference and convenience, Rule 8 of 2016

Rules in toto is reproduced below:-

**8. Pre-Production action of Police and other Agencies.-**

*(1) No First Information Report shall be registered except where a heinous offense is alleged to have been committed by the child, or when such offense is alleged to have been committed jointly with adults. In all other matters, the Special Juvenile Police Unit or the Child Welfare Police Officer shall record the information regarding the offense alleged to have been committed by the child in the general daily diary followed by a social background report of the child in **Form 1** and circumstances under which the child was apprehended, wherever applicable, and forward it to the Board before the first hearing:*

*Provided that the power to apprehend shall only be exercised with regard to heinous offenses, unless it is in the best interest of the child. For all other cases involving petty and serious offenses and cases where apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offense alleged to be committed by the child along with his social background report in Form 1 to the Board and intimate the parents or guardian of the child as to when the child is to be produced for hearing before the Board.*

*(2) When a child alleged to be in conflict with law is apprehended by the police, the police officer concerned shall place the child under the charge of the Special Juvenile Police Unit or the Child Welfare Police Officer, who shall immediately inform:*

*(i) the parents or guardian of the child that the child has been apprehended along with the address of the Board where the child will be produced and the date and time when the parents or guardian need to be present before the Board;*

*(ii) the Probation Officer concerned, that the child has been apprehended so as to enable him to obtain information regarding social background of the child and other material circumstances likely to be of assistance to the Board for conducting the inquiry; and*

*(iii) a Child Welfare Officer or a Case Worker, to accompany the Special Juvenile Police Unit or Child Welfare Police Officer while producing the child before the Board within twenty- four hours of his apprehension.*

*(3) The police officer apprehending a child alleged to be in conflict with law shall:*

*(i) not send the child to a police lock-up and not delay the child being transferred to the Child Welfare Police Officer from the nearest police station. The police officer may under sub-section (2) of section 12 of the Act send the person apprehended to an observation home only for such period till he is produced before the Board i.e. within twenty-four hours of his being apprehended and appropriate orders are obtained as per **rule 9** of these rules;*

*(ii) not hand-cuff, chain or otherwise fetter a child and shall not use any coercion or force on the child;*

*(iii) inform the child promptly and directly of the charges levelled against him through his parent or guardian and if a First Information Report is registered, copy of the same shall be made available to the child or copy of the police report shall be given to the parent or guardian;*

*(iv) provide appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require, as the case may be;*

*(v) not compel the child to confess his guilt and he shall be interviewed only at the Special Juvenile Police Unit*

*or at a child-friendly premises or at a child friendly corner in the police station, which does not give the feel of a police station or of being under custodial interrogation. The parent or guardian, may be present during the interview of the child by the police;*

*(vi) not ask the child to sign any statement; and*

*(vii) inform the District Legal Services Authority for providing free legal aid to the child.*

- |     |       |       |       |
|-----|-------|-------|-------|
| (4) | xxxxx | xxxxx | xxxxx |
| (5) | xxxxx | xxxxx | xxxxx |
| (6) | xxxxx | xxxxx | xxxxx |
| (7) | xxxxx | xxxxx | xxxxx |
| (8) | xxxxx | xxxxx | xxxxx |
| (9) | xxxxx | xxxxx | xxxxx |

6.9 Rule 10 thereafter relates to process to be followed on and after juvenile is produced before the Board. Pertinently Rule 10(4) refrains the Child Welfare Police Officer or any other stakeholders under 2015 Act from taking any coercive steps against absconding juvenile under the provision of Sec. 82 of Cr.P.C.

7. The attempt of this court to reproduce and explain the contents of various provisions as above is to point out the palpable difference of the procedure followed in case of a juvenile under 2015 Act and procedure followed in Cr.P.C. against person accused of commission of cognizable and non-bailable offences. Since the question posed before this court is about admissibility of benefit of anticipatory bail to a juvenile, this court

has reproduced only those provisions (s) which primarily relate to the arrest/detention of juvenile.

7.1 A conjoint reading of these provisions (s) reveals that legislature while promulgating 2015 Act was alive and conscious to the fact that if juvenile on his arrest/detention is sent to lockup/jail then the very object of rehabilitation/reformation behind 2015 Act would stand defeated.

7.2 Thus, the treatment meted out to a juvenile under 2015 Act is palpably distinct than the treatment meted out to an accused under Cr.PC. who is alleged with committed cognizable and non-bailable offence, Under Cr.P.C., if arrested and if not protected by any order of anticipatory bail then such an accused is sent to police lockup/jail. However, police on apprehending/detaining a juvenile under 2015 Act has to inform the Child Welfare Police Officer who in turn is obliged to send juvenile to "Observation Home" or "Place of Safety" awaiting production of juvenile before the Board. Even after production before the Board if juvenile is not granted bail the Juvenile stays in Observation Home till completion of inquiry before the Board. Pertinently, this can happen to a juvenile only in cases involving heinous offence but not in petty or serious offences in which grant of bail is a matter of right.

7.3 Observation Home/Stay Home/Children Home and Fit Facility as defined in R. 2, 47, 48, 49, 50 & 51 respectively cannot be equated with

police lock-up or jail. These institutions have been described in detail in Chapter VI of 2016 Rules perusal of which reveals that various institutions established in 2015 Act and 2016 Rules are akin to hostels of educational schools where basic necessities and comfort of juvenile e.g. hygiene, nutritional diet, medical care, clothing, mental help, education, recreational facility etc. are available to a juvenile to foster atmosphere of care, protection, development, equal treatment social rehabilitation by adopting child friendly attitude.

8. Section 12 of 2015 Act is a complete Code in itself qua the subject of bail. Interpreting the said provision to include the benefit of anticipatory bail would lead to stretching the limits laid down by the legislature. This Court cannot legislate and therefore Sec.12 by implication excludes the benefit of anticipatory bail. The legislature cannot be imputed to provide for a benefit which it did not intend to provide unless the provision textually reveals otherwise. More so, a fair reading of the provision of Sec.12 discloses the mind of the law makers that they were conscious of the absence of the concept of “custody” in police lock-up/jail and therefore did not intentionally provide for anticipatory bail. This Court cannot go beyond the parameters of Sec.12 laid down by the legislature. The view of this court is bolstered by decision of Apex Court in *A.N. Roy, Commissioner of Police & Another*

***Vs. Suresh Sham Singh (2006)5 SCC 745***, relevant para of which is reproduced below:-

*“23 It is now well settled principle of law that the Court cannot enlarge the scope of legislation or intention when the language of the statute is plain and unambiguous. Narrow and pedantic construction may not always be given effect to. Courts should avoid a construction, which would reduce the legislation to futility. It is also well settled that every statute is to be interpreted without any violence to its language. It is also trite that when an expression is capable of more than one meaning, the court would attempt to resolve the ambiguity in a manner consistent with the purpose of the provision, having regard to the great consequences of the alternative constructions.”*

9. Thus, by the very nature of amenities made available to a juvenile in various institutions where he/she is kept from the stage of apprehension/detention up to conclusion of inquiry by the Board, it is evident as daylight that same are similar if not identical to the atmosphere and facility a child enjoys in parental home.

10. In the conspectus of above discussion, it is crystal clear that the concept of sending arrested/detained juvenile to police lockup or jail is foreign to the Scheme of 2015 Act and the Rules framed therein. As such there is no concept of “Arrest” as contemplated by Chapter V of Cr.P.C.

containing procedure from Secs 41 to 60-A, in particular Sec. 46 which is reproduced below for ready reference and convenience:-

**“46. Arrest how made (1)** *In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.*

*[Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.]*

*(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.*

*(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.*

*(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”*

11. From the aforesaid textual and contextual reading of various provisions in 2015 Act and Rules framed thereunder, this court is compelled to hold that concept of “Arrest” is foreign to the Scheme of 2015 Act and 2016 Rules and therefore this court proceeds to answer the re-framed question reproduced in preceding para in following terms:-

**Question.** Whether the legislation while promulgating

Juvenile Justice (Care and Protection of Children) Act, 2015 in particular Sec. 12 consciously omitted to make available benefit of anticipatory bail to a juvenile ?.

**Answer.** The Legislature while promulgating 2015 Act and the Rules framed therein has consciously not provided the benefit of anticipatory bail to a juvenile since juvenile is not subjected to “Arrest” as contemplated in Cr.P.C. Thus when there is no arrest followed by custody in police lockup or jail, then providing the benefit of an anticipatory bail would have been futile.

12. As regards the questions raised in **Misc. Cri. Case No. 41359/2020 [CCL (Child in Conflict with Law) Vs. State of MP]**, vide order dated 22/10/2020 the answers in tabular form are given below, either in negative or affirmative with or without comments:-

Questions	Answers
(i) Whether the benefit of anticipatory bail u/s 438 Cr.P.C is available for a juvenile to be availed while invoking Section 12 of Juvenile Justice Act ?	Negative.
(ii) Whether denial of remedy of anticipatory bail u/s 438 to a juvenile would be abhorrent to the beneficial and rehabilitatory object behind the Juvenile Justice Act ?	Negative.
(iii) Assuming that remedy of anticipatory bail is not available to a juvenile, can Article 226 of Constitution or Section 482 of Cr.P.C be invoked seeking anticipatory bail to prevent the	This question is inconsequential since in view of absence of any arrest in it's true sense question of juvenile being remedy-less for want of anticipatory bail provision, does not arise leaving no occasion

juvenile from being remedy-less ?	to avail remedy in Sec. 482 Cr.PC. Or Art. 226 of the Constitution.
(iv) Which among the two conflicting views of coordinate Benches (both SB) i.e. in Kamlesh Gurjar (Supra) and Miss A (Supra) lay down the correct law ?	The order dated 20/3/2019 in <b><i>M.Cr.C. No.10345/2019 (Kamlesh Gurjar Vs. State of M.P.)</i></b> , lays down correct law though for different reason as enumerated herein above. Consequently, order dated 4/11/2020 in <b><i>Cri. Revision No. 2112/2020 [Ankesh Gurjar @ Ankit Gurjar Vs. State of MP]</i></b> stands overruled.

13. In regard to questions raised in ***Cri. Revision No. 2112/2020 [Ankesh Gurjar @ Ankit Gurjar Vs. State of MP]*** vide order dated 4/11/2020 answers in tabular form are given below, either in negative or affirmative with or without comments:-

Questions	Answers
1. When there is no concept of custody, as a child in conflict with law is neither arrested nor sent to jail, then whether an application for grant of anticipatory bail would be maintainable?	Negative.
2. In absence of provision for grant of anticipatory bail, whether the Court can legislate by providing for anticipatory bail?	This question is inconsequential in view of above discussions (s) and thus need not be answered.
3. Whether the Legislature has intentionally omitted the provision of Section 438 of Cr.P.C. in view of Section 12(3), and 24(1) of Act, 2015?	Affirmative.
4. Whether a social verification report can be submitted by	Affirmative for the reason that in the absence of any concept of

Probation Officer, even in absence of detention/apprehension of a child in conflict with law?	“Arrest” as contemplated by Chapter V of Cr.P.C. the Probation Officer is obliged to submit social verification report of a juvenile who is either with the Special Juvenile Police Unit or with the Child Welfare Police Officer/his/her guardian or is lodged in any of the institutions established in the 2015 Act/2016 Rules.
5. Whether Section 12(1) of Act, 2015 would be a guiding factor for deciding the application for grant of anticipatory bail?	The question is inconsequential and thus need not be answered for reasons aforesaid.
6. Whether the Juvenile Justice Board/Children's Court/High Court, can consider the nature of allegations to find out as to whether any prima facie case under Act, 1989 or any other statute like NDPS Act is made out or not?	This question is left un-answered since similar controversy is under consideration before larger bench constituted at the Principal seat at Jabalpur in Cr.A.5189/2020 (Pramod Kumar Vs. State of M.P. & Another) as per administrative order dated 6/1/2021.

14. In view of above questions having been answered including the question especially framed for convenience by this special bench, the Registry is directed to list matters before appropriate single bench for their adjudication in accordance with law.

**(Sheel Nagu)**  
Judge

**(Rajeev Kumar Shrivastava)**  
Judge

**(Bu)**