

Reserved on :- 07.04.2026
Delivered on :- 17.04.2026
A.F.R.



2026:AHC:85624

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 6123 of 2025

Urvesh

.....Revisionist(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Revisionist(s) : Raghuvansh Misra
Counsel for Opposite Party(s) : Arvind Kumar Sahu, G.A.,
Praveen Kumar Srivastava

Court No. - 81

HON'BLE ACHAL SACHDEV, J.

1. Heard Sri Raghuvansh Misra, learned counsel for the revisionist, learned A.G.A. for the State and Sri Praveen Kumar Srivastava, learned counsel for the opposite party no. 2.
2. The present criminal revision has been preferred, being aggrieved by the order dated 13.10.2023 passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 (Victim A Vs. State of U.P. and Anr.)
3. Facts giving rise to present revision are that an appeal was preferred by the revisionist, Urvesh @ Pravesh Kumar before the Children's Court pursuant to direction given in the order dated 14.09.2021 passed by this Court in Criminal Revision No. 163 of 2019

[Urvesh @ Pravesh Kumar (Minor) Vs. State of U.P. and Another]. wherein, vide order dated 14.09.2021, this Court quashed the order dated 04.08.2018 passed by the learned 8th Additional Sessions Judge/POCSO Court, Budaun in Misc. Case No. 95 of 2018 and had directed the Sessions Court to pass a fresh order after considering the entire evidence and material. After consideration, a fresh order dated 13.10.2023 was passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 [Victim "A" v. State of U.P. and Anr.] wherein the Special Judge has passed an order whereby the revisionist was ordered to be treated a major during the trial. The revisionist is working as worker at sweet shop and earns merely Rs. 7000/- per month to earn his bread and butter. In the present matter, an F.I.R. bearing Case Crime No. 15 of 2018 was lodged on 23.01.2018 by the informant, the victim, under Section 376 I.P.C. at Police Station- Kadar Chowk, District- Budaun against the revisionist wherein it has been alleged that the revisionist had sexually assaulted the victim. In the matter, investigation was conducted and a charge-sheet dated 10.03.2018 was submitted by the Investigating Officer under Section 376 I.P.C. and 3/4 POCSO Act whereupon cognizance of the matter was taken by the 8th Additional Sessions Judge/POCSO Court, Budaun on 25.04.2018. The date on which the alleged sexual harassment was committed, the age of the revisionist was 17 years 11 months and 19 days, and hence a minor. The date of birth of the minor is 03.02.2000 which is clearly stated in the School Leaving Certificate of the revisionist dated 28.01.2018. Subsequent to the cognizance being taken by the 8th Additional Sessions Judge/POCSO Court, Budaun, an application was preferred by the revisionist on 12.02.2018 through his father before the trial court/POCSO and his plea for being treated as a juvenile was initially rejected by the trial court on 04.08.2018, but the High Court, on 14.09.2021, set aside the order dated 04.08.2018 and directed reconsideration, pursuant to which the trial court on 25.11.2021 declared him a juvenile. Following a mental assessment under the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice Board on 12.12.2022 directed that he be

tried as a juvenile; however, on an appeal by the victim, the Special Judge (POCSO Court), Budaun, vide order dated 13.10.2023, set aside the decision of the Juvenile Justice Board and held that the revisionist should be treated as a major during trial.

4. Learned counsel for the revisionist argues that the order dated 13.10.2023 passed by the Children Court/Special Judge (POCSO Act), Budaun, in Criminal Appeal No. 21/2023, Victim 'A', resident of village Gangpur, Police Station- Kadarchowk, District- Budaun Vs. State of UP and Another violates express provisions contained in Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 and has also placed reliance on the guidelines of Hon'ble Supreme Court in the case of **Barun Chandra Thakur Vs. Master Bholu & Anr. 2022 SCC Online SC 870**. Learned counsel for the revisionist submits that the judgment highlights the tension between the victim's right to justice and juvenile's right to rehabilitation and reinforces that children in conflict with law cannot be automatically treated as adults; due process must be followed and sets a benchmark for future cases involving heinous offences by juveniles, ensuring that transfer to adult courts is not routine but based on rigorous assessment. The **Barun Chandra Thakur (supra)** case is a landmark ruling that underscores the importance of scientific, expert-driven assessment before treating juveniles as adults in heinous crimes. It strengthens procedural safeguards while acknowledging the gravity of offences, ensuring justice remains both fair and humane.

5. Learned counsel for the revisionist further submits that as per the provisions contained in Section 15(1) of The Juvenile Justice (Care and Protection of Children) Act, 2015 and the rules enacted thereunder, the Juvenile Board was duty bound to conduct preliminary assessment of the child in conflict with law who is aged between 16 -18 years and has been accused of having committed a heinous offence in light of provisions contained therein. Learned counsel for the revisionist has drawn attention of the Court to the fact that the Juvenile Justice (Care and Protection) Act, 2015 or the Model Rules enacted in support thereof do not lay down any guidelines or framework to facilitate the Board in

making a proper preliminary assessment on the relevant aspects and only liberty that has been given to the Board is to obtain assistance of an experienced psychologist or a psycho social worker. The task of preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection) Act, 2015, has its own implications as regards the trial of the case.

6. Learned counsel for the revisionist has further submitted that Section 15(1) mandates that in the case of a heinous offence alleged to have been committed by a child who has completed or is above the age of sixteen years, the Juvenile Justice Board (JJB) shall conduct a preliminary assessment concerning :

- (a) His mental and physical capacity to commit such an offence,
- (b) His ability to understand the consequences of the offence, and
- (c) The circumstances in which he allegedly committed the offence.

And only then, the Board may pass an order in accordance with Section 18(3) and, in holding a preliminary assessment, it may take the assistance of experienced psychologists, psycho-social workers, or other experts. Crucially, the statute clarifies that a preliminary assessment is not a trial, but is only to assess the capacity of the child. Only juveniles committing heinous offences defined under Section 2(33) as offences carrying a minimum imprisonment of 7 years or more are eligible for preliminary assessment under Section 15. Learned counsel for the revisionist has drawn the attention of the Court to paragraphs 45 and 76 of the **Barun Chandra Thakur (supra)** that underscores the importance of scientific, expert-driven assessment before treating juveniles as adults in heinous crimes. It strengthens procedural safeguards while acknowledging the gravity of offences, ensuring justice remains both fair and humane.

7. Learned counsel for the revisionist has submitted further that vide order dated 13.10.2023 passed by the appellate court in criminal appeal preferred by the victim against the order declaring the revisionist as a juvenile, the appellate court directed the trial of the revisionist as an adult and the appellate court failed to consider the fact that the

preliminary assessment of the revisionist was conducted after four years from the date of the alleged offence and on the date of preliminary assessment of the accused/revisionist, the accused had become a major and belated preliminary assessment, in absence of a speaking order explaining the delay, has adversely affected valuable rights of the revisionist to a fair trial.

8. Learned counsel for the opposite party no. 2 has argued that the delay in preliminary assessment had been caused by acts of the accused. He further submits that an F.I.R. bearing Case Crime No. 15/2018, under Section 376 I.P.C. was lodged by the informant on 23.01.2018 against accused/revisionist and after investigation, a charge-sheet was preferred before the Children Court/POCSO Court, Budaun and cognizance of the offence was taken by the court on 25.04.2018. Subsequent to the cognizance, father of the accused preferred an application before the Juvenile Justice Board and the same was rejected in the absence of any reliable document. The accused/revisionist filed a Criminal Revision No.3163/2019 before the Allahabad High Court and vide order dated 14.09.2021, the revision was allowed, and the trial court was directed to decide the matter afresh after considering the entire evidence and materials available on record. In pursuance of the order dated 14.09.2021 passed in the revision, the Juvenile Justice Board, Budaun, passed a fresh order holding the accused/revisionist to be a Juvenile after conducting a preliminary assessment of the accused/revisionist in terms of Section 15 of J.J. Act and decided to proceed with the trial. Aggrieved by the order dated 12.12.2022, the victim preferred an appeal under Section 101 of J.J. Act. The appellate court, vide order dated 13.10.2023, modified the order of Juvenile Justice Board, Budaun, owing to gravity of offence and preliminary assessment report. The order under challenge does not suffer from any irregularity.

9. Learned counsel for the opposite party no. 2 further submits that the time frame for completion of preliminary assessment is merely directory and where the delay in conducting the preliminary assessment arises due to judicial intervention, the delay won't result in lapse of

proceeding. In essence, a 4-year delay due to High Court pendency does not automatically invalidate the preliminary assessment, but significantly strengthens a juvenile's argument that any psychological evaluation now conducted is unreliable and that the assessment order if it goes against him, deserves heightened judicial scrutiny.

10. Heard learned counsel for the parties and perused the record.

11. At the very outset, it would be pertinent to mention here that the present revision is directed to the modification of the order of the Juvenile Justice Board in a criminal appeal preferred by the victim, whereunder, the appellate court had directed the trial of the child in conflict with law as an adult.

12. Section 15 of The Juvenile Justice (Care and Protection of Children) Act, 2015, is being reproduced below for the sake of convenience :-

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

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

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

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

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of section 101 :

Provided further that the assessment under this section shall be completed within the period specified in section 14.

13. Section 14 of Juvenile Justice (Care and Protection) Act, 2015 is also being reproduced below for the sake of convenience :-

14. Inquiry by Board regarding child in conflict with law. - (1) Where a child alleged to be in conflict with the law is produced before the 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 an 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 the 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 the 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 a 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;

(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 a 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.

14. It is laid down in Section 15(1) of the aforesaid Act that the Board is assisted by a practicing professional with a degree in child psychology or psychiatry. A legal-aid counsel must be provided through the District Legal Aid Service Authority, who must be present with the child during the assessment. Rule 10A (1) of the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, provides further guidance with respect to the implementation of Section 15 of the JJ Act. The rule states as under :-

"10A. Preliminary assessment into heinous offences by Board. -

(1) The Board shall in the first instance, determine whether the child is of sixteen years of age or above; if not, it shall proceed as per the provisions of section 14 of the Act.

(2) For the purpose of conducting a preliminary assessment in case of heinous offences, the Board may take the assistance of psychologists or psycho-social workers or other experts who have experience of working with children in difficult circumstances. A panel of such experts may be made available by the District Child Protection Unit, whose assistance can be taken by the Board or could be accessed independently.

(3) While making the preliminary assessment, the child shall be presumed to be innocent unless proved otherwise.

(4) Where the Board, after preliminary assessment under section 15 of the Act, passes an order that there is a need for trial of the said child as an adult, it shall assign reasons for the same and the copy of the order shall be provided to the child forthwith.

15. Section 15(2) provides that where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, it shall follow the procedure for trial in summons cases under the CrPC. This order is appealable under Section 101(2).

16. If the Board finds that the child needs to be tried as an adult, it transfers the trial to a Children's Court. The Children's Court then conducts a trial and passes an appropriate order considering the special

needs of the child and principles of justice but it cannot award death sentence or life imprisonment without possibility of release.

17. A preliminary assessment in case of heinous offences under Section 15 is to be disposed of by the Board within a period of three months from the date of first production of the child before the Board.

18. However, the critical legal question is whether this timeline is mandatory or directory. The Supreme Court, in the case **Child in Conflict with Law through his Mother Vs. State of Karnataka & Another, 2024 SCC Online SC 798**, has authoritatively settled this :

“The provision of Section 14(3) of the Act, providing three months for completion of a preliminary assessment under Section 15, is not mandatory, and is directory. The period can be extended, for reasons to be recorded in writing, by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate.”

19. In summary, Section 15 creates a two-tier gateway, the JJB first assesses whether the child should be treated as a juvenile or referred to a Children's Court for adult trial. It is a delicate balancing act between accountability for serious crime and the juvenile justice system's core philosophy of rehabilitation over punishment.

20. In **Mumtaz Ahmed Nasir Khan and Ors. Vs The State of Maharashtra & Ors., MANU/MH/1902/2019**, the Bombay High Court has stated and reiterated that the preliminary assessment is not a trial. The relevant excerpts are produced below :

33. As Section 15 permits, the Board may, during the preliminary assessment, take the assistance of experienced psychologists, psycho-social workers or other experts. First, the preliminary assessment is "not a trial." Second, it is, instead, an inquiry to assess the child's capacity to commit the alleged offence and to understand its consequences. On inquiry, the Board must satisfy itself in its preliminary assessment about the juvenile's mental and physical capacity, his ability to understand the consequences of the offence, and so on. Then, if the Board is "satisfied on preliminary assessment that the matter should be disposed of", it will follow "the procedure, as far as may be, for trial in summons case under CrPC. " The Board's order is appealable under sub-section (2) of Section 101.

21. The question that arises for consideration is whether the delay in the preliminary assessment would amount to a miscarriage of justice, as alleged by the learned counsel for the revisionist.

22. Where the delay was not attributable to the Board or the State, but arose because the matter was pending before the High Court (e.g., the juvenile or another party had approached the High Court and proceedings were stayed), several important legal consequences follow :

(a) The delay is legally excused. Courts have consistently held that delay caused by judicial proceedings particularly High Court or Supreme Court orders cannot be attributed to either party as culpable delay. The period during which a stay or pendency operates is effectively excluded from consideration.

(b) The assessment is of the child's capacity at the time of the offence. This is a crucial point: the preliminary assessment is not a trial, but is to assess the capacity of the child to commit and understand the consequences of the alleged offence i.e., the assessment is backwards-looking to the time the offence was committed, not the current age or capacity of the child.

(c) The child turning 18 or even older during pendency does not bar the assessment. As per Section 5 of the Act, the inquiry can be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child. If such person is not released on bail, he shall be placed in a Place of Safety during the process of inquiry.

23. Even where the delay is excused legally, courts will scrutinize the assessment very carefully on account of the time gap. The following consequences arise in practice :

(a) Reliability of psychological evaluation is compromised. From a neurobiological perspective, the development of cognitive behavioural attributes like decision-making, risk-taking, impulsivity, and judgement continues until the early 20s. If the child was, say, 17 at the time of the offence but is now 21, a psychological evaluation conducted today will not accurately reflect his mental and emotional maturity at the time of the offence. This is a major ground of challenge.

(b) The assessment must still be meticulous. The evaluation of mental capacity and ability to understand the consequences of the offence cannot be relegated to the status of a perfunctory and routine task, as the fate of the child precariously rests on it. After a 4-year gap, the Board must be even more careful in reconstructing the developmental state of the child at the time of the alleged offence.

(c) Prejudice to the juvenile is a ground for challenge. The juvenile can argue before the Children's Court or High Court that the delay even if caused by the High Court proceedings has resulted in practical prejudice: witnesses may have become unavailable, records may be stale, and the psychological baseline of the child at the time of the offence can no longer be reliably assessed.

24. At this juncture, provisions of Section 20 of the Juvenile Justice (Care and Protection) Act, 2015 assume importance and are being reproduced below :-

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

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

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

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

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

25. Section 20 of the JJ Act addresses the specific scenario where a child has attained 21 years but is yet to complete the prescribed term at a place of safety. At that stage, the Children's Court undertakes a fresh

evaluation to determine whether the person has reformed or rehabilitated sufficiently to be released, or must serve the remaining term in an adult prison. A 4-year delay could therefore push the case into the ambit of Section 20.

26. In essence, a 4-year delay due to High Court pendency does not automatically invalidate the preliminary assessment, but significantly strengthens a juvenile's argument that any psychological evaluation now conducted is unreliable and that the assessment order if it goes against him deserves heightened judicial scrutiny.

27. In light of the above analysis, order dated 13.10.2023 was passed by the Special Judge, POCSO Court, Budaun in Criminal Appeal No. 21/2013 (Victim A Vs. State of U.P. and Anr.), keeping in sight the procedural as well as societal impact of crime, does not suffer from any infirmity and is liable to be upheld.

28. The present criminal revision has been preferred with an oblique purpose of hindering the trial and is devoid of merit.

29. It is accordingly **dismissed**.

(Achal Sachdev,J.)

April 17, 2026

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