**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**BENCH AT AURANGABAD**

**CRIMINAL REVISION APPLICATION NO.90 OF 2021**

. The State of Maharashtra
Through : Office Incharge of Anti
Terrorism Squad, Aurangabad Unit,
Aurangabad. ..Petitioner
(Orig. Appellant)/
Applicant

VERSUS

. Shadab Tabarak Khan

..Respondent

...

Special Public Prosecutor for Applicant : Shri Mangesh R.Jadhav
Advocate for Respondent : Smt.S.Y.Firdose h/f.
Shri Md.Imran Khan M.Ismail Khan

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**CORAM : M.G.SEWLIKAR, J.**

**RESERVED ON : 17th January, 2022**
**PRONOUNCED ON : 16th March, 2022**

**JUDGMENT :-**

1. This revision is preferred by the State of Maharashtra through the Officer Incharge, Anti Terrorism Squad, Aurangabad Unit, Aurangabad, against the Judgment and order passed by the learned Additional Sessions Judge, Aurangabad on 25th May 2021 in Criminal Appeal No.2 of 2021 confirming the order of the learned Juvenile Justice Board, Aurangabad, dismissing application Exhibit 25 in J.C.No.160 of 2019 by its order dated 1st October 2019.

2. Facts leading to this application are that Vijayant Shankarlal Jaiswal, Officer in-charge of the Anti Terrorist Squad Unit, Aurangabad, received secret information in the last week of August 2018 that some persons had engaged themselves in terrorist activities in Mumbra and Aurangabad areas. He secretly obtained the name, addresses and cell phone numbers of the suspects. He put suspects under surveillance. From the information received, it revealed that one Mohsin Khan and his associates had established a group “Ummat E Mohammadia” and some trusted and like minded persons were made members of the group. It further revealed that some members of the said group were in contact with the handlers of foreign terrorist organizations. Vijayant Shankarlal Jaiswal obtained cell phones and CDR record of such suspects. On the basis of information collected by him, Shri Jaiswal was suspecting that there was strong possibility that suspects would carry out some terrorist activities in Mumbai. Accordingly, he formed four teams. These teams went to different locations and conducted the house search of suspects in the presence of Panchas, special experts and seized the articles like hand gloves, plastic bottles containing liquor bottle alongwith cards, mobile phones, mouse killing medicine of Commando Company, pesticides and sharp weapons etc.

3. On the arrest of accused No.1, it was revealed that one Zaman had made some poisonous substance which was to be added in food at a function or in the water so as to cause mass murder. This poisonous substance was handed over to Salman and Zaman. They were directed to use face mask and hand gloves while handling the said substance. Thus, according to the prosecution, accused Nos.1 to 9 were indoctrinated with the ideology of terrorist organization ISIS. They hatched a criminal conspiracy to carry out the terrorist attack with the use of poisonous substance and explosive substance in Mumbai, Aurangabad and other places. On these allegations, on 22nd January 2019, he lodged report with the Police Station Anti Terrorism Squad (ATS), Kala Ghoda Chowk, Mumbai and offence came to be registered vide Crime No.1 of 2019 under Section 120-B of the Indian Penal Code (IPC) read with Sections 18, 20, 38 of the Unlawful Activities (Prevention) Act, 1976 (hereinafter referred to as "the UAPA") read with Section 135 of the Maharashtra Police Act.

4. Respondent being a child in conflict with law (hereinafter referred to as "CCL") on his arrest on 18th December 2019, he was produced before the Juvenile Justice Board (hereinafter referred to as "JJB").

5. The applicant State filed application Exhibit 25 for preliminary assessment of CCL and the CCL be transferred to Children's Court for trial as an adult. Respondent CCL filed Say and resisted the application. The learned JJB, after hearing both the sides, rejected the application vide its order dated 1st October 2019.

6. Being aggrieved by the order dated 1st October 2019, applicant State preferred Criminal Appeal No.2 of 2021. Learned Additional Sessions Judge, Aurangabad by his order dated 25th May 2021 dismissed the appeal. Hence, this revision.

7. Shri M.R.Jadhav, learned Special Public Prosecutor for the applicant State submitted that the Unlawful Activities (Prevention) Act, 1976 is a special Act and a Scheduled Act. Investigation was done by the National Investigation Agency (N.I.A.). Therefore, respondent CCL ought to have been tried as an adult by the learned JJB and the learned Additional Sessions Judge.

8. Before adverting to the question involved in this revision, some relevant definitions will have to be looked into. Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act,

2015 (hereinafter referred to as “the J.J.Act”) defines “child” who has not completed eighteen years of age. In Section 2(13) of the J.J.Act “child in conflict with law” means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence. In Section 2(33) of the J.J.Act “heinous offence” is defined as the offence for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. In terms of Section 15 of the J.J.Act, JJB has to make assessment into heinous offences to determine whether CCL is to be tried as an adult. Section 15 of the J.J.Act reads thus :-

> *“**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:*
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> *Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.*
>
> *Explanation.—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to*

*assess the capacity of such child to commit and understand the consequences of the alleged offence.*

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

*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."*

9. Section 18 of the J.J.Act authorizes the Board to refer the child to Children's Court in terms of Sub-section (3) where the Board after preliminary assessment under Section 15 passes an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court to try such offences.

10. The crucial question to be determined is whether the CCL has committed a heinous offence.

11. As per Section 2(33) of the J.J.Act "heinous offences" means the offences in which minimum punishment is seven years or more. The learned JJB has held that none of the Sections 18, 20, 38 and 39 provides minimum punishment for seven years. The *sine qua non* for trying the CCL as an adult for

committing heinous offence is minimum punishment of seven years. This issue is no longer *res integra*. In the case of *Shilpa Mittal Vs. State (NCT of Delhi) and Another [(2020) 2 Supreme Court Cases 787]* the Hon'ble Supreme Court held as under :

> *"34. From the scheme of Sections 14, 15 and 19 referred to above it is clear that the Legislature felt that before the juvenile is tried as an adult a very detailed study must be done and the procedure laid down has to be followed. Even if a child commits a heinous crime, he is not automatically to be tried as an adult. This also clearly indicates that the meaning of the words "heinous offence" cannot be expanded by removing the word "minimum" from the definition.*
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> *35. Though we are of the view that the word "minimum" cannot be treated as surplusage, yet we are duty-bound to decide as to how the children who have committed an offence falling within the 4th category should be dealt with. We are conscious of the views expressed by us above that this Court cannot legislate. However, if we do not deal with this issue there would be no guidance to the Juvenile Justice Boards to deal with children who have committed such offences which definitely are serious, or may be more than serious offences, even if they are not heinous offences. Since two views are possible we would prefer to take a view which is in favour of children and, in our opinion, the Legislature should take the call in this matter, but till it does so, in exercise of powers conferred under Article 142 of the Constitution, we direct that from the date when the 2015 Act came into force, all children who have committed offences falling in the 4th category shall be dealt with in the same manner as children who have committed "serious offences".*

12. Having regard to this, it is clear that the learned JJB did not commit any error in rejecting the application Exhibit 25 in J.C.No.160 of 2019 and the learned Appellate Court did not commit any error in dismissing Criminal Appeal No.2 of 2021 . Hence, the revision application is devoid of any substance. Revision Application is accordingly dismissed.

( **M.G.SEWLIKAR** )
**JUDGE**

SPT