

Sagar
v.
The State of Haryana

(Criminal Appeal No. 2059 of 2026)

13 July 2026

[Aravind Kumar* and Prasanna B. Varale, JJ.]

Issue for Consideration

Issue arose whether the conviction and sentence imposed by the Children’s Court against the appellant-minor at the time of commission of offence, and affirmed by the High Court, can be sustained in the absence of an order u/s.19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

Headnotes[†]

Juvenile Justice (Care and Protection Of Children) Act, 2015 – ss.19(1), 18(3), 15, 2(13), 2(20) – Juvenile Justice (Care and Protection of Children) Model Rules, 2016 – Powers of Children’s Court – Orders regarding child found to be in conflict with law – FIR against appellant-minor at the time of commission of offence, and others for assaulting the victim, leading to his death – Appellant being child in conflict with the law, the Juvenile Justice Board conducted preliminary assessment u/s.15 and opined that the appellant was having capability, mental as well as physical, to found involve in the act against him and liable to be tried as an adult, and committed the matter to the ‘Children’s Court’ as per s.18(3), to be tried as adult – Thereafter, the Children’s Court proceeded with the trial and convicted the appellant u/s.302 IPC and sentenced him to undergo Rigorous Imprisonment for fourteen years and also ordered that the appellant should be kept in the place of safety till he attains the age of 21 years and thereafter, would be transferred to the jail – Said order upheld by the High Court – Correctness:

Held: Under s.19, after the receipt of preliminary assessment from the Board u/s.15, the Children’s Court may decide that there is a need for trial of the child as an adult or there is no need for trial of the child as an adult and may conduct an inquiry as a Board –

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Expression 'may' occurring in Sub-section 19(1) and s.19(1)(ii) will have to be necessarily read as 'shall' – Thus, passing of an order u/s.19(1) is mandatory in nature and without passing an order u/s.19(1), the Children's Court cannot proceed with the matter further – Furthermore, Rules, 2016, make it abundantly clear that s.19(1) is mandatory in nature – Sub rule (6) of r.13, by the use of the expression "shall", mandates that the Children's Court must record reasons for its decision as to whether the child in conflict with law is to be tried as a child or as an adult – Thus, it is clear that s.19(1) is not merely procedural in nature, but constitutes a substantive provision, obligating the Children's Court to pass a reasoned order upon due application of mind – In the absence of compliance with s.19(1), which is determinative of the procedure to be followed by the Court, whether a Sessions trial or a summons case, the entire trial stands vitiated – On facts, there was non-compliance with s.19(1) – After committal of the case u/s.18(3), the Children's Court took cognizance of the matter, and what the Children's Court at this stage ought to have done is pass an order as contemplated u/s.19(1) on the preliminary assessment, as to whether it will try the appellant as a child or as an adult – However, without passing such order, the appellant was tried as an adult and was convicted and sentenced for the offence – Appellant is now 24 years old, at this stage, it would not be feasible for the Children's Court to undertake a meaningful assessment of the mental capacity of the appellant that was prevailing at the time when crime occurred – Further, having regard to the fact that the trial has already been concluded and the appellant has undergone incarceration for a period exceeding six years, no useful purpose would be served by remitting the matter to the Children's Court – In view thereof, the conviction recorded by the Children's Court, having been rendered in non-compliance with the mandate of s.19(1), cannot be sustained – Judgment of conviction and the consequential sentence imposed by the Sessions Judge and affirmed by the High Court set aside – Issuance of direction to Children's Courts across the country that upon receipt of records pursuant to transfer/committal u/s.18(3) by the Juvenile Justice Board, the first duty of the Children's Court, after taking cognizance of the matter, to pass a reasoned order u/s.19(1) upon due assessment of the 'child in conflict with law' before it proceeds further in the matter. [Paras 10.2-10.4, 12-15]

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Case Law Cited

Thirumoorthy v. State represented by the Inspector of Police [2024] 3 SCR 1228 : (2024) 12 SCC 307 – **relied on.**

Sarla Goel and Others v. Kishan Chand [2009] 10 SCR 481 : (2009) 7 SCC 658; *Ajeet Gurjar v. State of Madhya Pradesh* (2023) 15 SCC 678; *Barun Chandra Thakur v. Master Bholu and Another* [2022] 10 SCR 595 : (2023) 12 SCC 401 – **referred to.**

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973; Juvenile Justice (Care and Protection of Children) Act, 2015; Juvenile Justice (Care and Protection of Children) Model Rules, 2016.

List of Keywords

Conviction and sentence imposed by the Children's Court; Absence of an order u/s.19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015; Powers of Children's Court; Orders regarding child found to be in conflict with law; Child in conflict with the law; Juvenile Justice Board conducted preliminary assessment; Tried as an adult; Committed the matter to the 'Children's Court'.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2059 of 2026

From the Judgment and Order dated 16.12.2023 of the High Court of Punjab and Haryana at Chandigarh in CRAD No. 649 of 2019

Appearances for Parties

Advs. for the Appellant(s):

Ranbir Singh Kundu, Ms. Kirti Aggarwal, Akash, Shitanshu Saklani, Shubham Mavi, Ashish Pandey, Lakshya Singh, Ali Mohammed Khan.

Advs. for the Respondent(s):

Keshav Mittal, Samar Vijay Singh, Ms. Sabarni Som, Gaj Singh, Anuj Sehrawat, Sahil Gandass, Gaurav Dhull, Aman Dev Sharma.

Sagar v. The State of Haryana**Judgment / Order of the Supreme Court****Judgment****Aravind Kumar, J.**

1. Heard. Leave Granted.

I. BRIEF FACTS:

2. Shorn of unnecessary details, the facts of the instant case are as follows:
 - 2.1. The prosecution alleges that on 21.10.2018, the police received information from Civil Lines Police Station, Kaithal, regarding the death of Mandeep Kumar, who had been admitted to Cygnus Hospital with injuries sustained in a quarrel. Inspector Rohtash Kumar and other police officials reached the hospital, where they found that Mandeep had been brought dead and recorded the statement of the complainant Mandeep Kumar (PW11), who had stated that himself, Aman (PW12), and the deceased Mandeep had gone to the Baba-Rajpuri fair on a motorcycle and while returning around 1:30 p.m., seven masked persons on two motorcycles intercepted them and one of the assailants, identified as accused '**S' - the Appellant herein**',¹ struck the deceased on the left temporal region with an iron pipe, after which the others attacked him with knives and a rod. When the complainant and Aman intervened and tried to stop, he was also attacked and suffered an injury to his right little finger. As passersby approached on hearing their cries, the accused fled towards village Garhi. The deceased was taken first to Government Hospital, Kaithal, then referred to PGI Chandigarh, and later admitted to Cygnus Hospital, where he died due to the injuries.
 - 2.2. The police carried out investigation following the incident by registering an FIR under Sections 148, 323, 341, 302 read with 149 Indian Penal Code (IPC for short), preserving the body for postmortem, preparing the site plan, photographing

¹ Hereinafter referred to as 'the Appellant'.

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the scene of crime, collecting blood samples, and recording witness statements under Section 161 Code of Criminal Procedure, 1973 (Cr.P.C for short). Postmortem was conducted on 22.10.2018, and deceased's clothes and shoes were seized. On 23.10.2018, four co-accused namely Pawan alias Pammu, Raman alias Kaka, Sandeep, and Vikash alias Babbu were arrested, and on the next day their disclosure statements were recorded, in which they confessed that they, along with the appellant had conspired to assault the deceased using an iron rod, knife, and danda. The conspiracy was hatched to teach a lesson to the deceased for hurling abuses upon the mother and sister of the appellant (child-in-conflict with law).

- 2.3. Pursuant to the disclosure statements, recoveries were made: an iron pipe from accused Vikash, a danda from accused Raman, a Honda Shine motorcycle from Sandeep, and a KTM Duke motorcycle and a knife from the Appellant. The police also prepared additional site plans, demarcation memos, collected photographs, and verified call detail records, which disclosed the Appellant and Vikash were in the vicinity of village Baba-Ladana around the relevant time, thereby corroborating parts of the prosecution case.
- 2.4. After investigation, the police filed chargesheet against the Appellant, alleging that the Accused has committed offences punishable under sections 302, 323 and 341 read with section 148, 149 of the Indian Penal Code, 1860.
- 2.5. As the Appellant was a minor at the time of commission of offence (16 and half years), he was produced before the learned Principal Magistrate, Juvenile Justice Board, Kaithal², who carried a preliminary assessment as prescribed under Section 15 of The Juvenile Justice (Care And Protection Of Children) Act, 2015³ and vide Order dated 24.01.2019 in Criminal Case No. 04 of 2019 the JJ Board opined that the Appellant 'was having capability, mental as well as physical, to found involve in the act against him and he is liable to be tried as an adult.' The JJ Board after recording its reasons,

² Hereinafter referred to as 'the JJ Board'.

³ Hereinafter referred to as 'the Act'.

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committed the matter to the Court of Additional Sessions Judge, Kaithal⁴ i.e., the 'Children's Court' as per Section 18(3) of the Act to conduct trial for the alleged offences and to try the Appellant herein as an adult.

- 2.6. The Children's Court proceeded with the Trial of the Case and vide Judgment and Order dated 13/14.03.2019 in CIS No. SC/11/2019 convicted the Appellant under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced him to undergo Rigorous Imprisonment for a period of fourteen years and also ordered that the Appellant should be kept in the Place of Safety till he attains the age of 21 years and thereafter, he shall be transferred to the jail.
- 2.7. The Appellant filed a Criminal Appeal challenging his conviction in Criminal Appeal-D-649-2019 (O&M) before the High Court of Punjab and Haryana at Chandigarh⁵. The High Court after re-appreciation of evidence available on record dismissed the Appeal filed by the Appellant. It is this order which is impugned before us.
3. At the time of hearing the matter, the Counsel appearing for the Appellant raised a plea that the Children's Court on committal of the case to it by the JJ Board has not passed any orders as prescribed under Section 19(1) of the Act. To examine the issue this Court, vide order dated: 22-04-2025 had passed the following order:

"During the course of hearing of this matter a question has been raised by the learned counsel for the petitioner that in this case there is an order by the Juvenile Justice Board (for short "the JJB") recommending the present petitioner to be tried as a juvenile. We have also perused the original school record as produced pursuant to our previous order dated 04.11.2024, which shows that the date of birth of the petitioner is 20.04.2002 and therefore, at the time of commission of offence i.e. 21.10.2018, he was a juvenile. On this aspect, there is no issue. The argument of the learned counsel for the petitioner

4 Herein after referred to as 'the Children's Court'.

5 Hereinafter referred to as the High Court.

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would be that the JJB has given an assessment report regarding the juvenility of the petitioner and then the matter went before the Children's Court. There is no order on record showing that there was an application of mind by the Court concerned under Section 19(1) of the Juvenile Justice (Care and Protection of Children) Act, inasmuch as there is no order saying that though the accused is a juvenile, he is liable to be tried as an adult.

For abundant caution, we direct the District & Sessions Judge, Kaithal, Haryana to submit a report on this and if there is a specific order, apprise this Court on this aspect, in relation to Sessions Case No.SC/11/2019 instituted on 18.01.2019/28.02.2019 by the Additional Sessions Judge, Kaithal, Haryana. The concerned Registrar (Judicial) of this Court is hereby directed to communicate this order to the concerned Court for onward compliance.

List on 23.05.2025."

4. Pursuant to the above order of this Court, the Learned District and Session Court, Kaithal has sent a Report dated 19.05.2025 stating that he is not in a position to verify the records and prepare a report as the entire Trial Court records have been sent to this Court and further, as per report of the concerned Ahlmad, the orders of the said case file are inaccessible on CIS/online also, as the case being of special category. Along with the report the Ld. Judge has enclosed an order/report passed by the Juvenile Justice Board (JJB in short) dated: 24.01.2019. On perusal of the report it is clear that the JJB had passed an order as per Section 15 after preliminary assessment that the Appellant has to be tried as an adult and therefore committed the matter to the Children's Court as per Section 18(3) of the Act.
5. After committal of the case under Section 18(3) of the Act, the Children's Court took cognizance of the matter. What the Children's Court at this stage ought to have done is pass an order as contemplated under Section 19(1) on the preliminary assessment, as to whether it will try the Appellant herein as a child or as an adult. Without passing such order, the Appellant was tried as an adult and was convicted of the offence of Section 302 and was awarded a sentence of rigorous imprisonment for a period of 14 years and

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also ordered that he shall be kept in place of safety till he attains the age of 21 years and thereafter he shall be transferred to jail.

II. POINT FOR CONSIDERATION:

6. We have perused the original Trial Court record. Upon such perusal, the primary question that arises for our consideration, before advertng to the merits of the case, is as follows:

I. Whether the conviction and sentence imposed by the Children's Court against the Appellant, and subsequently affirmed by the High Court, can be sustained in the absence of an order under Section 19(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015?

III. PROVISIONS OF THE ACT:

7. Before advertng to the question under consideration, we deem it appropriate to reproduce the relevant provisions of the Act necessary for adjudication of the dispute, which shall be referred to in the course of this judgment. The said provisions are as follows:

Section 2 (12): "child" means a person who has not completed eighteen years of age;

Section 2(13): "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;

Section 2(20): "Children's Court" means a court established under the Commissions for Protection of Child Rights Act, 2005 (4 of 2006) or a Special Court under the Protection of Children from Sexual Offences Act, 2012 (32 of 2012), wherever existing and where such courts have not been designated, the Court of Sessions having jurisdiction to try offences under the Act;

Section 2 (33): "heinous offences" includes the offences for which the minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;

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Section 2(35): “juvenile” means a child below the age of eighteen years;

Section 2(45): “petty offences” includes the offences for which the maximum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment up to three years;

Section 8: Powers, functions and responsibilities of the Board.—(1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children’s Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include—

.....

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

.....

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

Section 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

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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 organisations) 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

Section 14. Inquiry by Board regarding child in conflict with law.—(1) Where a child alleged to be in conflict with law is produced before Board, the Board shall hold an inquiry in accordance with the provisions of this Act and may pass such orders in relation to such child as it deems fit under sections 17 and 18 of this Act.

.....

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

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

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

.....

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(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 (2 of 1974);

(f) inquiry of heinous offences,— (i) for child below the age of sixteen years as on the date of commission of an offence shall be disposed of by the Board under clause (e);

(ii) for child above the age of sixteen years as on the date of commission of an offence shall be dealt with in the manner prescribed under section 15.

Section 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 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:

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

Section 18. Orders regarding child found to be in conflict with law.—

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, [or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter] then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

(a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian

(b) direct the child to participate in group counselling and similar activities

(c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board

(d) order the child or parents or the guardian of the child to pay fine: Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated.

(e) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, on such parent, guardian or fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and child's well-being for any period not exceeding three years

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(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behaviour and child's well-being for any period not exceeding three years;

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

Provided that if the conduct and behaviour of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of subsection (1), the Board may, in addition pass orders to—

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass 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 having jurisdiction to try such offences.

Section 19: Powers of Children's Court.—

(1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that—

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure,

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1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the provisions of section 18.

(2) The Children's Court shall ensure that the final order, with regard to a child in conflict with law, shall include an individual care plan for the rehabilitation of child, including follow up by the probation officer or the District Child Protection Unit or a social worker.

(3) The Children's Court shall ensure that the child who is found to be in conflict with law is sent to a place of safety till he attains the age of twenty-one years and thereafter, the person shall be transferred to a jail:

Provided that the reformatory services including educational services, skill development, alternative therapy such as counselling, behaviour modification therapy, and psychiatric support shall be provided to the child during the period of his stay in the place of safety.

(4) The Children's Court shall ensure that there is a periodic follow up report every year by the probation officer or the District Child Protection Unit or a social worker, as required, to evaluate the progress of the child in the place of safety and to ensure that there is no ill-treatment to the child in any form.

(5) The reports under sub-section (4) shall be forwarded to the Children's Court for record and follow up, as may be required.

Section 21. Order that may not be passed against a child in conflict with law. —No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the

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provisions of the Indian Penal Code (45 of 1860) or any other law for the time being in force.”

IV. ANALYSIS:

8. Before we go into the merits of the present case, it will have to be examined as to whether Section 19 (1) of the Act is mandatory for the Children’s Court to comply, and the consequence flowing if not being followed and the need for passing order in compliance thereof.
9. The Juvenile Justice (Care and Protection of Children) Act, 2015 mandates a calibrated and sequential procedure when a ‘child in conflict with law’, aged between 16 and 18 years, is alleged to have committed a heinous offence.
 - 9.1. A person is said to be a child under Section 2 (1) of the Act, who has not completed 18 years of age. Section 2 (13) would also indicate that a child who has not completed 18 years of age on the date of commission of such offence, who is alleged or found to have committed an offence to be **‘a child in conflict with law’**. Section 2 (35) defines a child below the age of 18 years as “juvenile”. Upon apprehension of a ‘child in conflict with law’ for the commission of an offence, the procedure prescribed under Section 10 of the Act comes into operation. Section 10 stipulates that, immediately upon such apprehension, the ‘child in conflict with law’ has to be placed under the charge of the Special Juvenile Police Unit or a designated Child Welfare Police Officer. Thereafter, the ‘child in conflict with law’ shall be produced before the Board. Section 2 (10) defines the “Board” means a Juvenile Justice Board constituted under Section 4 of the Act. The composition of such Juvenile Justice Board is defined under Section 4 of the Act.
 - 9.2. The procedure to be followed by the Board is set out in Section 14 of the Act. In cases where the ‘child in conflict with law’ is above the age of 16 years, and who is said to have committed heinous offence, the manner in which the Board is required to proceed is prescribed under Section 15 of the Act. Upon production of such ‘child in conflict with law’ before it, the Board is required to conduct a preliminary assessment with regard to the child’s mental and physical capacity to commit

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the alleged offence, the ability to understand the consequences thereof, and the circumstances in which the offence is alleged to have been committed. For undertaking the assessment, the Board would be empowered to take assistance of experienced psychologists or psycho social worker or other experts. Such preliminary assessment conducted by the Board is not in the nature of a trial, but is only an assessment. Upon completion of the said assessment, the Board has two options. If the Board concludes that the 'child in conflict with law' ought to be tried as an adult, it shall pass an order in terms of Section 18(3) of the Act and commit/transfer the matter to the Children's Court having jurisdiction to try such offences. On the other hand, if the Board concludes that the 'child in conflict with law' is to be tried as a child and not as an adult, then the Board shall proceed to try the matter in accordance with the procedure prescribed for summons cases under the Code of Criminal Procedure, 1973. Thereafter, the Board shall pass appropriate orders in terms of Sections 18(1) and 18(2) of the Act.

10. Upon receipt of the preliminary assessment report under Section 15 transferred by the Board in terms of Section 18(3) of the Act, the procedure to be followed by the Children's Court is governed by the provisions of the Act itself.
 - 10.1. Upon receipt of the report from the Board, the procedure to be followed by the Children's Court is prescribed under the Act and the *Juvenile Justice (Care and Protection of Children) Model Rules, 2016*⁶. The first step to be undertaken by the Children's Court, upon receipt of the report, is to take cognizance thereof. **After taking cognizance of the matter, the Children's Court is required to pass an order in terms of Section 19(1) of the Act.** The question that now arises for consideration is whether the passing of an order under Section 19(1) of the Act is mandatory in nature, and the consequence of non-passing of such an order?
 - 10.2. In our opinion, there is no doubt in our mind that passing of an order under Section 19(1) of the Act is mandatory in nature and without passing an order under Section 19(1), the

6 Hereinafter referred to as 'the Rules' or 'the Model Rules'

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Children's Court cannot proceed with the matter further. We say so for the reasons more than one.

- 10.3. **Firstly**, Upon a holistic reading of the Act, it furnishes several indications that compliance with Section 19(1) is mandatory for the Children's Court. The first such indication is found in Section 19(1)(i) and (ii) itself. Section 19(1) commences with the expression, "*After the receipt of preliminary assessment from the Board under Section 15, the Children's Court may decide that...*". Although the expression used is "may", a reading of sub-clauses (i) and (ii) indicates that the same ought to be construed as "shall". The expression 'may' occurring in Sub-section 19(1) and Section 19(1)(ii) will have to be necessarily read as 'shall', since consequences flowing therefrom namely, the trial of a child in conflict with law as an adult and trial as a juvenile would be different. Ordinarily, the word 'may' would indicate as a word not of compulsion. They are enabling words and they only confer capacity, power or authority and imply discretion. However, considering the nature of the statute as a whole and the provision in particular, the word 'may' has to be read as 'shall' in some circumstances to give the provision its full value. The reason for the same has been propounded in the case of **Sarla Goel and Others Vs. Kishan Chand**⁷, wherein this Court held as follow:

In Crawford on the Construction of Statutes at p.516, it is stated that:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other"

The reasons for the interpretation of the word 'may' in Section 19 (1) as 'shall' are as under:

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- 10.3.1. Unless the Children's Court arrives at a decision as to whether the child in conflict with law is to be tried as an adult or not, it cannot proceed further with the matter. In a case where the Children's Court decides that the child in conflict with law is to be tried as an adult, it is required to follow the procedure of a Sessions trial in terms of Section 19(1)(i). This statutory obligation is substantive in nature and not merely procedural, and the Children's Court assumes jurisdiction to try the child in conflict with law as an adult **only** upon recording satisfaction on the parameters laid down therein.
- 10.3.2. Conversely, where upon such evaluation the Children's Court concludes that the child in conflict with law ought not to be tried as an adult, the legal consequence is unequivocal. The Children's Court is divested of jurisdiction to proceed with the trial as a Children's Court and is required to deal with the matter as a Board in terms of Section 19(1)(ii) of the Act and the procedure to be followed is that of a Summons Case as per the Code of Criminal Procedure.
- 10.3.3. The Children's Court cannot, in the above-mentioned circumstances, undertake its own 'child inquiry' or modify the procedure contemplated under the Act. The statutory design draws a sharp distinction between an adult criminal trial before the Children's Court and a child-centric inquiry before the Board. Consequently, once the Children's Court holds that the child should not be subjected to an adult trial, it will try the matter as a Board as contemplated under Section 19(1)(ii).
- 10.4. **Secondly**, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, make it abundantly clear that Section 19(1) is mandatory in nature. Rule 13 of the said Rules elucidates the rationale behind such reasoning and reinforces the mandatory character of Section 19(1). The relevant provisions of the Rules are as follows:

“Rule 13. Procedure in relation to Children's Court and Monitoring Authorities. - (1) Upon receipt of preliminary assessment from the Board

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the Children's Court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders.

(2 to 5) x x x x x x x

(6) The Children's Court shall record its reasons while arriving at a conclusion whether the child is to be treated as an adult or as a child.

(7) Where the Children's Court decides that there is no need for trial of the child as an adult, and that it shall decide the matter itself:

(i) It may conduct the inquiry as if it were functioning as a Board and dispose of the matter in accordance with the provisions of the Act and these rules.

(ii) The Children's Court, while conducting the inquiry shall follow the procedure for trial in summons case under the Code of Criminal Procedure, 1973.

(iii) The proceedings shall be conducted in camera and in a child friendly atmosphere, and there shall be no joint trial of a child alleged to be in conflict with law, with a person who is not a child.

(iv) When witnesses are produced for examination the Children's Court shall ensure that the inquiry is not conducted in the spirit of strict adversarial proceedings and it shall use the powers conferred by section 165 of the Indian Evidence Act, 1872 (1 of 1872).

(v) While examining a child in conflict with law and recording his statement, the Children's Court shall address the child in a child-friendly manner in order to put the child at ease and to encourage him to state the facts and circumstances without any fear, not only in respect of the offence which is alleged against the child, but also in respect of the

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home and social surroundings and the influence to which the child might have been subjected.

(vi) The dispositional order passed by the Children's Court shall necessarily include an individual care plan in Form 7 for the child in conflict with law concerned, prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(vii) The Children's Court, in such cases, may pass any orders as provided in sub-sections (1) and (2) of section 18 of the Act.

(8) Where the Children's Court decides that there is a need for trial of the child as an adult:

(i) It shall follow the procedure prescribed by the Code of Criminal Procedure, 1973 of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Children's Court shall necessarily include an individual care plan for the child as per Form 7 prepared by a Probation Officer or Child Welfare Officer or recognized voluntary organisation on the basis of interaction with the child and his family, where possible.

(iii) Where the child has been found to be involved in the offence, the child may be sent to a place of safety till the age of twenty-one years.

(iv) While the child remains at the place of safety, there shall be yearly review by the Probation Officer or the District Child Protection Unit or a social worker in Form 13 to evaluate the progress of the child and the reports shall be forwarded to the Children's Court.

(v) The Children's Court may also direct the child to be produced before it periodically and at

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least once every three months for the purpose of assessing the progress made by the child and the facilities provided by the institution for the implementation of the individual care plan.”

- 10.4.1. Upon a perusal of Rule 13(1) and Rule 13(6) of the Rules, it becomes evident that immediately upon receipt of the report under Section 15, the Children’s Court is required to pass an order under Section 19(1) of the Act. Further, sub-rule (6) of Rule 13, by the use of the expression “shall”, mandates that the Children’s Court must record reasons for its decision as to whether the child in conflict with law is to be tried as a child or as an adult. Thus, it is clear that Section 19(1) is not merely procedural in nature, but constitutes a substantive provision, obligating the Children’s Court to pass a reasoned order upon due application of mind.
- 10.4.2. If the Children’s Court concludes that the child in conflict with law is to be tried as an adult, it is required to follow the procedure of a Sessions case as prescribed under the Code of Criminal Procedure. The procedure and the manner in which such trial is to be conducted are elaborately provided under the Act as well as Rule 13(8) of Model Rules. The scheme of the Act and the Rules ensures that no child is subjected to an adult trial without due compliance with the statutory safeguards. It is in this context that Section 19(1) assumes critical significance and must be regarded as mandatory in nature. Conversely, if the Children’s Court determines that the child in conflict with law is not to be tried as an adult, it is required to follow the procedure applicable to summons cases as given in Rule 13(7) of the Model Rules. Therefore, in the absence of an order under Section 19(1), the Children’s Court may inadvertently bypass its jurisdiction akin to that of a Board and assume the jurisdiction of a Sessions Court/ Children’s Court, which, in our considered opinion, is impermissible.

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10.4.3. Upon a perusal of Section 8 of the Act, which respectively delineate the powers and functions of the Board and the course to be adopted by the Children's Court, the statutory scheme becomes evident. Sub-section (2) of Section 8 specifically provides that the Children's Court shall also exercise the jurisdiction of the Board in situations contemplated under Section 19(1) of the Act. The Act and the Rules thus make it clear that the Children's Court is vested with the jurisdiction of the Board including in terms of Section 19(1)(ii) which stands attracted when the Children's Court arrives at the conclusion that the child in conflict with law is not to be tried as an adult.

10.4.4. The procedure to be followed by the Board and the Children's Court, while trying a 'child in conflict with law' as a child or as an adult pursuant to a determination under Section 19(1) of the Act, is fundamentally distinct. The Children's Court can proceed to try a 'child in conflict with law' as an adult only upon making a determination to that effect in terms of Section 19(1) of the Act. In such a case, the procedure to be adopted is that of a Sessions trial, and not that of a summons case. Conversely, where the determination is that the 'child in conflict with law' is to be tried as a child and not as an adult, the procedure applicable is that of a summons case, to be followed by the Board or by the Children's Court exercising the jurisdiction of the Board. Thus, the determination under Section 19(1) assumes crucial significance. Non-compliance of the same, may result in, firstly, Children's Court not exercising the jurisdiction vested upon to try the matter as a Children's Court or to conduct an inquiry as a 'Board' ; secondly, it would lead such 'child in conflict with law' being tried as an adult and being subjected in sessions trial though there is no need of being tried as an adult, thirdly, the inquiry to be conducted by such Court, in appropriate cases as a Board would not take place.

10.5. **Thirdly**, the aspect of punishment also assumes significance. Where a child in conflict with law is tried as a child and not

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an adult and after completion of the inquiry, the Board is empowered to pass orders in terms of Sections 18(1) and 18(2) of the Act, including measures relating to the care, protection and rehabilitation of the child and it may also direct the child to be sent to a Special Home for a period not exceeding three years. In contrast, where a 'child in conflict with law' is tried as an adult, the Children's Court, subject to the prohibitions contained in Sections 19 and 21 of the Act (including the bar on death penalty and life imprisonment without the possibility of release), is empowered to impose other punishments. It is for this reason that a determination under Section 19(1) assumes critical importance. In the absence of such determination, if a child in conflict with law who ought to be tried as a child is instead tried as an adult, there exists a real possibility of the child being subjected to a sentence exceeding three years, which, in our considered view is contrary to the law, and therefore impermissible. While it may be argued that, in certain cases, even in the absence of a formal determination under Section 19(1), the punishment imposed may ultimately align with what would have been awarded had the child been tried as an adult, such instances cannot justify non-compliance with the statutory mandate. Even a remote possibility that a child in conflict with law, who ought to be tried as a child, is subjected to an adult trial, such adult trial is wholly impermissible and it strikes at the very root of the protective framework envisaged under the Act.

- 10.6. The above view expressed by us has also been briefly summarized in the case of **Ajeet Gurjar v. State of Madhya Pradesh**⁹ wherein it was held as follows:

"9. There are two parts to sub-section 1 of Section 19. The first part requires the children's Court to decide whether there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973. If the Court is satisfied that the child needs to be tried as an adult as per the provisions of Cr.P.C., the Children's Court

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can proceed with the trial and thereafter pass an appropriate order subject to the provisions of sections 19 and 21 of the JJ Act.

10. Clause (ii) of sub-section 1 of Section 19 is very crucial which indicates that though the word 'may' have been used in the opening part of sub-section 1 of Section 19, the same will have to be read as 'shall'. Clause (ii) provides that after examining whether there is a need for a trial of the child as an adult, if the children's Court comes to the conclusion that there is no need for the trial of the child as an adult, instead of sending back the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Juvenile Justice Board has different consequences.

11. Therefore, holding an inquiry in terms of clause (i) of sub-section (1) of Section 19 is not an empty formality. The reason is that if the Children's Court comes to the conclusion that there is no need to try the child as an adult, he will be entitled to be treated differently in the sense that action can be taken against him only in terms of Section 18 of the JJ Act."

10.7. This Court in the case of **Barun Chandra Thakur v. Master Bholu and Another**⁹ has also discussed the nature of Section 15 and 19 of the Act, which might be some relevance for the discussion. This Court has held:

"47. The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be tried as an adult by the Children's Court or by the Board itself, treating him

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to be a child. There are two major consequences provided in the Act, 2015, if the child is tried as an adult by the Children's Court. First, that the sentence or the punishment can go up to life imprisonment if the child is tried as an adult by the Children's Court, whereas if the child is tried by the Board as a child, the maximum sentence that can be awarded is 3 years. The second major consequence is that where the child is tried as a child by the Board, then under section 24(1), he would not suffer any disqualification attached to the conviction of an offence, whereas the said removal of disqualification would not be available to a child who is tried as an adult by the Children's Court, as per the proviso to section 24(1). Another consequence, which may also have serious repercussions, is that as per section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to section 24(2).

48. These consequences are serious in nature and have a lasting effect for the entire life of the child. It is well settled that any order that has serious civil consequences, reasonable opportunity must be afforded. The question is of what would be a reasonable opportunity in a case where a preliminary assessment is to be made by the Board under section 15.

.....

85. We are conscious of the fact that the power to make the preliminary assessment is vested in the Board and also the Children's Court under sections 15 and 19 respectively. The Children's Court, on its own, upon a matter being referred to

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under section 18(3), would still examine whether the child is to be tried as an adult or not, and if it would come to the conclusion that the child was not to be tried as an adult then it would itself conduct an inquiry as a Board and pass appropriate orders under section 18. Thus, the power to carry out the preliminary assessment rests with the Board and the Children's Court. This Court cannot delve upon the exercise of preliminary assessment. This Court will only examine as to whether the preliminary assessment has been carried out as required under law or not. Even the High Court, exercising revisionary power under section 102, would test the decision of the Board or the Children's Court with respect to its legality or propriety only. In the present case, the High Court has, after considering limited material on record, arrived at a conclusion that the matter required reconsideration and for which, it has remanded the matter to the Board with further directions to take additional evidence and also to afford adequate opportunity to the child before taking a fresh decision."

- 10.8. From the above discussion it becomes abundantly clear and evident that the intention of the Act is to have Section 19(1) as mandatory.
11. Now advertent to the consequence of non-compliance with Section 19 of the Act, the same has already been considered by this Court in ***Thirumoorthy v. State represented by the Inspector of Police***¹⁰. In the said case, the 'child in conflict with law' was apprehended and subsequently tried by the Children's Court without adhering to the mandatory requirements of Sections 9, 15, 18 and 19 of the Act, and was convicted and sentenced to a maximum term of ten years under Section 302 of the Indian Penal Code, along with sentences under other provisions. This Court, upon a detailed analysis of the scheme and provisions of the Act, held that non-compliance with the mandatory provisions thereof vitiates the entire trial, and accordingly

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proceeded to quash and set aside the judgment of conviction and sentence. This Court held as follows:

“33. Section 18(3) provides that where the Board after preliminary assessment under Section 15 opines that there is a need for the said child to be tried as an adult, then the Board may order transfer of the trial of the case to the Children’s Court having jurisdiction to try such offences.

34. By virtue of Section 19(1), the Children’s Court, upon receiving such report of preliminary assessment undertaken by the Board under Section 15 may further decide as to whether there is a need for trial of the child as an adult or not.

35. The procedure provided under Sections 15 and 19 has been held to be mandatory by this Court in the case of *Ajeet Gujar v. State of Madhya Pradesh*. In the said case, this Court considered the import of Section 19(1) of the JJ Act and held that the word ‘may’ used in the said provision be read as ‘shall’. It was also held that holding of an inquiry under 19(1)(i) is not an empty formality. Section 19(1)(ii) provides that after examining the matter, if the Children’s Court comes to the conclusion that there is no need for trial of the child as an adult, instead of sending back 2023 SCC Online SC 1255 the matter to the Board, the Court itself is empowered to conduct an inquiry and pass appropriate orders in accordance with provisions of Section 18 of the JJ Act. The trial of a child as an adult and his trial as a juvenile by the Children’s Court have different consequences.

36. It was further held that the Children’s Court cannot brush aside the requirement of holding an inquiry under Section 19(1)(i) of the JJ Act. Thus, all actions provided under Section 19 are mandatorily required to be undertaken by the Children’s Court.

37. As can be seen from the facts of the present case, there has been a flagrant violation of the mandatory requirements of Sections 15 and 19 of the JJ Act. Neither was the charge sheet against the accused appellants filed

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before the Board nor was any preliminary assessment conducted under Section 15, so as to find out whether the accused appellant was required to be tried as an adult.

38. In absence of a preliminary assessment being conducted by the Board under Section 15, and without an order being passed by the Board under Section 15(1) read with Section 18(3), it was impermissible for the trial Court to have accepted the charge sheet and to have proceeded with the trial of the accused.

39. Thus, it is evident that the procedure adopted by the Sessions Court in conducting the trial of the accused appellant is de hors the mandatory requirements of JJ Act.

40. Thus, on the face of the record, the proceedings undertaken by the Sessions Court in conducting trial of the CICL, convicting and sentencing him as above are in gross violation of the mandate of the Act and thus, the entire proceedings stand vitiated.

41. It seems that pursuant to the trial being concluded, the trial Court realized the gross illegality in the proceedings and thus, in an attempt to give a vestige of validity to the grossly illegal proceedings conducted earlier, an exercise was undertaken to deal with the accused appellant as per the provisions of the JJ Act on the aspect of sentencing. However, ex facie, the said action which seems to be taken by way of providing an ex post facto imprimatur to the grossly illegal trial does not stand to scrutiny because the very foundation of the prosecution case is illegal to the core.

.....

46. In the case of *Ajeet Gurjar*(supra), this Court remitted back the matter to the Sessions Court for complying with the requirements of Section 19(1) of the JJ Act. However, in the present case, there is yet another hurdle which convinces us that it is not a fit case warranting de novo proceedings against the accused appellant by taking recourse to the provisions of the JJ Act. At the cost of repetition, it may be reiterated that the charge sheet

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was filed against the accused appellant directly before the Sessions Court (statedly designated as a Children's Court) and he was never presented before the Juvenile Justice Board as per the mandate of the JJ Act.

47. The accused appellant being a CICL was never subjected to preliminary assessment by the Board so as to find out whether he should be tried as an adult. Directing such an exercise at this stage would be sheer futility because now the appellant is nearly 23 years of age.

48. At this stage, there remains no realistic possibility of finding out the mental and physical capacity of the accused appellant to commit the offence or to assess his ability to understand the consequences of the offence and circumstances in which he committed the offence in the year 2016.

49. Since we have held that the entire proceedings taken against the appellant right from the stage of investigation and the completion of trial stand vitiated as having been undertaken in gross violation of the mandatory requirements of the JJ Act, we need not dwell into the merits of the matter or to reappraise the evidence available on record for finding out whether the prosecution has been able to prove the guilt of the appellant by reliable circumstantial evidence.

50. Thus, we are left with no option but to quash and set aside the impugned judgment and direct that the appellant who is presently lodged in jail shall be released forthwith, if not required in any other case."

IV. CONCLUSION:

12. Though in *Thirumoorthy* (*supra*) there was non-compliance with both Sections 15 and 19 of the Act, in the present case there is compliance with Section 15, but there is non-compliance with Section 19(1) of the Act. We had, for some time, considered the possibility of reducing the sentence to the period already undergone, or of limiting the sentence to a maximum of three years. However, we are unable to adopt such a course. In the absence of compliance with Section 19(1), which is determinative of the procedure to be

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followed by the Court, whether a Sessions trial or a summons case, the entire trial stands vitiated. We are, therefore, left with no option but to follow the course adopted in **Thirumoorthy**.

13. In **Thirumoorthy** (*supra*), the appellant was about 23 years of age at the time of the judgment. In the present case, the appellant is now 24 years old. At this stage, it would not be feasible for the Children's Court to undertake a meaningful assessment of the mental capacity of the appellant that was prevailing at the time when crime occurred. Further, having regard to the fact that the trial has already been concluded and the appellant has undergone incarceration for a period exceeding six years, we are of the considered view that no useful purpose would be served by remitting the matter to the Children's Court.
14. In view of the foregoing, the conviction recorded by the Children's Court, having been rendered in non-compliance with the mandate of Section 19(1) of the Act, cannot be sustained. Accordingly, the judgment of conviction and the consequential sentence imposed in CIS No. SC/11/2019 passed by the Court of Additional Sessions Judge, Kaithal dated 13/14.03.2019 and affirmed by the High Court of Punjab and Haryana in CRA-D-649-2019(O&M) dated 16.12.2023 are hereby set aside for non-compliance with Section 19(1) of the Act.
15. Before parting, we deem it appropriate to issue a word of caution and a direction to Children's Courts across the country that upon receipt of records pursuant to transfer/committal under Section 18(3) of the Act by the Juvenile Justice Board, the first duty of the Children's Court, after taking cognizance of the matter, is to pass a reasoned order under Section 19(1) of the Act upon due assessment of the 'child in conflict with law' before it proceeds further in the matter.
16. Consequently, the Appeal is allowed. The Appellant is acquitted. The Appellant is on bail, the bail bonds executed by the Appellants stands discharged. Pending applications, if any stands disposed of.

Result of the case: Appeal allowed.