

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 1st March, 2018

+ **BAIL APPLN. 334/2018**

AKSHAY CHADHA

..... Petitioner

Represented by: Mr. Ravi Bassi, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Represented by: Mr. Rahul Mehra, Standing Counsel and Mr. Hirein Sharma, APP for the State with DCP Vijay Kumar, West District, Inspector Keshav Mathur and SI Manoj Kumar, PS Rajouri Garden.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. By this petition, the petitioner seeks anticipatory bail in case FIR No. 690/2017 under Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'JJ Act') registered at PS Rajouri Garden, New Delhi.

2. The above noted FIR was registered when two Children in Conflict with Law (CCLs) were produced before the Juvenile Justice Board and stated that despite being juvenile they were being permitted smoking hukka at Keeva West Gate Mall. A raid was conducted at the premises and on inspection two hukkas and one packet of Alladin flavoured tobacco was found available in the restaurant which was seized and sealed. Based on this information received and the raid conducted wherein two hukkas and one

packet of flavoured tobacco were found FIR No. 690/2017 was registered under Section 77 of the JJ Act.

3. During the course investigation statements of the two CCLs have been recorded. As per the two CCLs the entry fee of the hukka bar was ₹100/- and for one time hukka they had to pay ₹100/-. Initially Dheeraj Singh @ Manny who was the Manager of the restaurant was arrested who disclosed that the restaurant was being run by present petitioner.

4. Learned counsel for the petitioner submits that merely on the disclosure statement of Dheeraj Singh, petitioner is being sought to be implicated in the above noted FIR. Further there is no material on record to show that there is violation of Section 77 of JJ Act or any notification thereunder. He further submits that a strict interpretation is required to be given to the words under Section 77 of the JJ ACT and an aromatic inhaler or a solution, thinner, sulochan etc. would not be covered under Section 77 of the JJ Act or the notification thereunder.

5. State has filed a Status report which notes the various actions taken against the bar-cum-lounge which was earlier known as Keeva Bar and is now known as Toast Restaurant West Gate Lounge. The actions itself reveal that petitioner was running the said lounge.

6. Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015 reads as under:

77. Penalty for giving intoxicating liquor or narcotic drug or psychotropic substance to a child.—Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term

which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

7. Pursuant to Section 77 of JJ Act a notification has also been issued by the Government of National Capital Territory of Delhi in respect of violations being conducted in respect of vulcanised solution/sulochan etc. for the reason they also have stupefying affect. Notification No. F. No. 7(15)/2012/Misc/DHS/SHS/Pt.file-III/1229-1239, dated 31st July, 2017 of the Government of National Territory of Delhi reads as under:

F. No. 7(15)/2012/Misc/DHS/SHS/Pt.file-III/1229-1239.—1. Whereas Ministry of Health and Family Welfare, Govt of India vide Notification F. No. X. 11029/6/2010-DDAP Dated 17th July, 2012 has imposed certain ban with regards to production and sale of Bottled Correction Fluids as well as Bottled Thinners, of any chemical composition, both for erasing purposes as well as for use as Nail Polish removers and similar other purposes for retail sale which are chemical substances generally used in offices but reportedly being widely misused by children/street children as intoxicating substance/drug by inhaling them to get stimulating effects like drugs;

2. Whereas as per Orders of Hon'ble Juvenile Justice Board in FIR No 422/16 U/s 379/411 IPC, Government of NCT of Delhi has been directed to issue appropriate instructions by way of Notification, circular or otherwise, banning the sale of correction fluids/whiteners, thinners/diluters and vulcanized solution/sulochans to children below the age of 18 years unless the child is accompanied by parent guardian or has a letter from the school authorities signifying their assent to purchase the same;

3. Now, therefore, Government of NCT of Delhi hereby orders the implementation of the following measure with immediate effect:-

- (i) *Banning of production of Bottled Correction Fluids as well as Bottled Thinners, of any chemical composition, both for erasing purposes as well as for use as Nail Polish removers and similar other purposes for retail sale.*
 - (ii) *Banning of sale of Bottled Correction Fluids as well as Bottled Thinners, of any chemical composition, both for ink erasing purposes as well as for use as Nail Polish removers and similar other purposes.*
 - (iii) *Permitting sale of Correction Fluids as well as Thinners, of any chemical composition, both for ink erasing purposes as well as for use as Nail Polish removers and similar other purposes in the form of pens or similar devices which allow limited amounts of the chemicals to come out of those devices when used.*
 - (iv) *Mandatory warning should be made on the application devices (pens or otherwise) of correcting fluids'/thinners and vulcanized solution/sulochans regarding the effects on health on inhalation of vapor/consumption of the chemicals contained therein.*
 - (v) *Ban on the sale of correction fluids/whiteners, thinners/diluters and vulcanized solution/ sulochans to children below the age of 18 years unless the child is accompanied by parent guardian or has a letter from the school authorities signifying their assent to purchase the same.*
4. *Ordered that these measures are to be enforced by the revenue department and police. The measures shall be monitored by District Task Force comprising of the Deputy Commissioner (Revenue) and Deputy Commissioner of Police in their respective districts in their respective jurisdictions on a monthly basis.*

5. *This Notification issues in accordance to the provisions of section 188 of Indian Penal Code, read with section 77 of Juvenile Justice (Care and Protection of Children) Act, 2015.*

8. The order dated 20th March, 2016 passed by the Juvenile Justice Board III issuing directions to the Government of NCT Delhi pursuant whereto the above-noted notification was issued has been approved by the division bench of this Court in W.P. (CrI) 2401/2017.

9. To decide whether an aromatic inhaler, sulochan or thinner etc. would be covered under Section 77 of the JJ Act this Court is required to interpret the words 'any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance' incorporated in Section 77 of the JJ Act.

10. Word 'intoxicant' has not been defined either under the Indian Penal Code or the JJ Act. As per Oxford English Dictionary, 'intoxicant' is defined as an intoxicating substance or liquor and 'to intoxicate' means to stupefy, madden or deprive of the ordinary use of the senses or reason with a drug or alcoholic liquor; inebriate, make drunk and 'Intoxication' has been defined as the action of inebriating or making someone stupefy, insensible, or disordered in intellect, with a drug or alcoholic liquor.

11. Black's Law Dictionary defines "intoxicant" as a substance (esp. liquor) that deprives a person of the ordinary use of the senses or of reason. Intoxication is defined as a diminished ability to act with full mental and physical capabilities because of alcohol or drug consumption.

12. A perusal of Section 77 of the JJ Act itself reveals that it is an inclusive definition and the words used therein are not exhaustive, enacted to provide safeguard to the minor children from the abuse of any intoxicating or stupefying substance which has the effect of exhilarating a

child. The words ‘intoxicating liquor or narcotic drug or tobacco products or psychotropic substance’ would also include flavoured tobaccos/inhalers, vulcanised solution/sulochan etc. i.e. any substance which has the affect of stupefying a child/minor.

13. From the statement of the CCL recorded under Section 164 Cr.P.C., it is evident that at the premises owned and run by the petitioner tobacco products were provided to the children below the age of 18 years. Considering the nature of allegations, this Court finds no ground to grant anticipatory bail to the petitioner. However before closing the order there are certain important aspects which are required to be dealt with by this Court in view of the serious threat posed to the mental and physical health of the juveniles due to proliferation of drugs, tobacco etc. amongst children. Thus, this Court is constrained to delve into the matter, beyond the scope of anticipatory bail.

14. Before proceeding further, it would be apposite to reproduce Article 47 of the Constitution of India as under:-

“The State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

15. To give effect to this Directive Principle of State Policy, it is incumbent on the State to take certain measures. Apart from inhalants like Sulochans, whiteners, flavoured tobacco etc. as discussed above, there are myriad categories of substances to which the children fall pray. They fall in the categories of inter alia inhalants, cigarettes and tobacco products, alcohol, narcotic drugs, synthetic drugs and pharmaceutical drugs. There is a need to evolve a mechanism to tackle this menace on all the fronts. Till further

legislation is brought Sections 77 and 78 of JJ Act, 2015 and provisions under NDPS Act, 1985, Delhi Excise Act, 2009 and Drugs & Cosmetics Act, 1940 would serve as potent measures to contain this problem.

16. Different stakeholders have a role to play in curbing this menace from its inception. The duties that can be effectively discharged by various authorities are enumerated herein below:-

I. GOVERNMENT OF NCT

- (i) Vide Government notification dated 31.7.2017, the Delhi Government has banned the sale of inhalants like correction fluids, whiteners, thinners etc. to children below the age of 18 years and has directed a District Task Force to be constituted headed by the DCP concerned and the Deputy Commissioner (Revenue). The notification be enforced strictly.
- (ii) A Drug Enforcement directory be created containing Zone wise/District wise names and contact details of all stakeholders.
- (iii) In order to facilitate sharing of information and coordination, regular meetings and training programmes should be jointly held between officers of the DRI, Delhi Police, NCB, Excise Department, Customs Department etc. A common data base should also be created whereby dossiers of drug peddlers be regularly updated and shared amongst all agencies.
- (iv) Each school under the Government of NCT of Delhi should be provided with medical and para-medical staff as well as counselors duly trained to identify early detection of the children indulging in substance abuse.

(v) Wide publicity be given of the hospitals where beds are specifically demarcated for detoxification and cure of children into drug and substance abuse.

II. CHILD WELFARE COMMITTEES

(i) Identification of vulnerable children:

According to Section 2 (14) (ix) of the JJ Act a child in need of care & protection is a child “*who is found vulnerable and is likely to be inducted into drug abuse and trafficking.*” It is incumbent upon the CWCs to conduct a preliminary inquiry to find out whether a child produced before it is into drug, substance, alcohol, tobacco, inhalant etc. abuse or not. Upon finding so, the CWC should ensure that the child in need of care & protection is sent to the nearest drug de-addiction centre. A list of such centres should be mandatorily supplied by the Department of Women and Child Development to the CWCs. For the transfer of children to the drug de-addiction centres, requisite infrastructure viz. man power, vehicle etc. should also be provided to the CWCs.

(ii) The role of CWC would not be limited to treatment of the CNCP but also in ascertaining the source of supply of drugs. The CWC may devise their own methods of ascertaining such sources. Thereafter, the CWC should ensure that procedure under Rule 56 (1), Rule 56 (2) of JJ Model Rules, 2016 is adhered to, ensuring that police takes necessary action thereunder.

Further, the CWCs should be vigilant to ensure that the mandate of Rule 56 (10) JJ Rules is given effect to. Upon identification of suspected drug peddlers or the persons who supply contrabands to the children, the CWC shall forward a complaint in this regard to the concerned JJB, who shall order the police to register an FIR against suspected drug peddlers for the commission of offence u/s. 77/78 of JJ Act.

(iii) U/s 29 (1) of Juvenile Justice (Care & Protection of Children) Model Rules, 2016, the CWC is empowered to take requisite steps for *inter alia* treatment and rehabilitation of CNCP. Further, u/s 51 (1) r/w. Sec. 2 (27), the CWC should endeavour to recognize “fit facilities” being run by the government or other NGOs for reception and treatment of children. Further u/s 30 (xii) the CWC is empowered to take *suo motu* cognizance of cases and reaching out to children in need of care & protection who have not been produced before the committee. In this regard, the CWC may make a schedule of spot visits within their area for the purposes of identifying such vulnerable children.

III. DELHI POLICE

(i) The Child Welfare Police Officers. (CWPOs), who prepare the Social Background Reports (SBRs) of the CCLs, should be instructed to identify children into contraband abuse and to record the source of procurement of the contraband by the children in the SBRs.

(ii) In order to protect the identity of the minor complainants, instructions should be issued to the concerned police officers to abstain from uploading the FIRs u/s 77 and 78 JJ Act on the concerned websites.

(iii) The Beat staff should also be instructed to keep stringent checks especially on Chemists, at the time of unloading of supply of medicines and syringes so as to prevent violation of license conditions.

(iv) Various hot spots have been identified after a detailed study by the Government of NCT of Delhi along with AIIMS, and it is imperative that the police initiates necessary action on supply of contrabands especially in these areas.

(v) Standard operating procedures be framed to curb the menace of contraband abuse and actions to be taken thereon by the Commissioner of Police to be circulated to all police officers of Delhi Police.

IV. OFFICE OF DRUG CONTROLLER

(i) At present there are only 18 Drug Inspectors for the entire territorial area of NCT of Delhi under whose jurisdiction there are more than 20,000 licensed Chemists. There is thus an urgent need to strengthen the cadre of Drug Inspectors.

(ii) Traditionally the Drug Inspectors have confined their role in suspending or cancelling licenses of Chemists under Rule 65 and Rule 66 of the Drugs and Cosmetics Rules. However, since the chemists are selling drugs, including Schedule H-1 Drugs, which are also falling in the category of

psychotropic substances under Schedule 1 of NDPS Act, 1985, to children, the Drug Inspectors should take action under Section 18 r/w. Section 27 of Drugs and Cosmetics Act against the erring chemists, so as to deter the sale of such substances to minors.

17. A copy of this order shall be sent to the Chief Secretary, Government of NCT of Delhi and the Commissioner of Police to be circulated to all concerned departments and districts and to the Director of Prosecution, Delhi to Sensitize the Public Prosecutors.

18. Copy of this order shall also be circulated amongst all Judicial Officers through respective Ld. District & Sessions Judges.

19. Petition is disposed of.

MARCH 01, 2018

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**(MUKTA GUPTA)
JUDGE**

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