

**Saveetha Vs The Superintendent of Prison**

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**Court :** Chennai

**Decided On :** Apr-08-2026

**Judge :** Honourable Dr.Justice Anita Sumanth,Honourable Mr.Justice Sunder Mohan

**Appeal No. :** HCP/2743/2025

**Appellant :** Saveetha

**Respondent :** The Superintendent of Prison

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.04.2026

PRONOUNCED ON : 08.04.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH and THE  
HONOURABLE MR.JUSTICE SUNDER MOHAN

Saveetha F/43 W/o. Muthu, No.54, Kalaingar Colony, Mayilduthurai  
Taluk & District. .. Petitioner vs 1.The State of Tamil Nadu Rep. by its

Superintendent of Prison, Central Prison, Cuddalore, Cuddalore District.  
2.The Inspector of Police, Mayiladduthurai Police Station, Mailaduthurai District. .. Respondents Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus directing the 1 st respondents herein to produce the person of petitioners son namely Santhosh, S/o. Muthu, PID No. 727002 aged 19 years, at present confined in Central Prison, Cuddalore before this Court and set him at liberty. For Petitioner : Mr.P.Muthamizh Selvakumar For Respondents : Mr.R.Muniyapparaj Additional Public Prosecutor assisted by

Mr.M.Sylvester John Mr.E.V.Chandru Advocate - Amicus Curiae

## **ORDER**

Dr. ANITA SUMANTH, J Background S.C.No.23 of 2023 had been filed as against 22 accused, for various charges levelled against them concerning an incident that had taken place on 17.08.2022 (date of occurrence). The petitioner is the mother of A4 (detenu) in the aforesaid case. The date of birth of the detenu is 13.03.2005 and as on 17.08.2022, the detenu was aged 17 years 5 months and 3 days.

2. Since he was a juvenile as on the date of occurrence, his case

was referred to the Juvenile Justice Board, Nagapattinam (JJB/Board) under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act). The Board had conducted a preliminary assessment of the child under Section 15(1) of the JJ Act and passed an order on 18.11.2022 holding that the detenu could be tried as an adult.

3. The matter was thereafter taken up by the Protection of Children

from Sexual Offences Act, Nagapattinam (Pocso Court/Childrens Court) in line with Section 18(1) of the JJ Act to re-look into the assessment of whether the detenu, a child in conflict with the law (CCL), was to be treated as an adult for the

purposes of trial and, vide order dated 09.06.2023 confirmed the opinion that CCL/A4 was to be tried as an adult.

4. The order of the Board transferring the case records for trial as

an adult before the Childrens Court, Nagapattinam was thus reiterated by the Childrens Court on 09.06.2023. Both orders have attained finality and have not been challenged by the detenu. As a consequence, the case was split up and the trial of the detenu was commenced in SSC.No.11 of 2023, whereas the remaining accused were tried in Sessions case No.23 of 2023.

5. Somewhere along the way, there was a consolidation of both

matters and ultimately the trial of the detenu was conducted along with the other adult accused culminating in judgment dated 31.10.2025, delivered by the District and Sessions Judge, Mayiladuthurai, wherein several accused, including A4 were found guilty under Sections 302, 294(b) and 148 IPC.

6. Since we are not concerned with the other accused in this matter,

we do not elaborate on the convictions in their cases. We clarify and confirm that this HCP concerns only A4 and hence none of the observations herein relate to the other accused in SC.No.23 of 2023.

7. The Sessions Court, Mayiladuthurai has not lost sight of the fact

that the detenu was a CCL as on the date of occurrence, and, citing the decision of the Constitution Bench of this Court in N.Gowthaman @ Babu v. The Government of Tamil Nadu represented by its Home Secretary Fort St.George, Chennai 600 009 and others<sup>1</sup>, holds the detenu entitled to the benefit of Sections 8, 10 and 10A of the Tamil Nadu Borstals Schools Act, 1925. The prison authorities were directed to lodge the detenu in the Borstal School till he attained the age of 21 years.

8. The fact of the matter however, is that the Constitution Bench in

N.Gowthaman @ Babu2 has suggested the repeal of the Tamil Nadu Borstals Schools Act, 1925. In such circumstances, the prison authorities have, for lack of any other place to send the detenu, lodged him in regular prison. Submissions of the Petitioner

9. The grievance of the petitioner under this Habeas Corpus

Petition is three-fold. Firstly, that the detenu had been compelled to face trial before the regular Court of Sessions, that the sentence imposed was illegal and contrary to the provisions of the JJ Act and thirdly, that the detenu, a CCL at the time of occurrence, had been deprived of the benefits and privileges available under the JJ Act and the Tamil Nadu

HCP.No.1441 of 2007 etc. batch dated 29.08.2016 Foot Note Supra (1) (Care and Protection of Children) Rules, 2016 (in short Tamil Nadu Rules), particularly the provisions/Rules relating to rehabilitation and social re-integration of a CCL alleged to have committed a heinous offence.

10. Mr.Muthamizh Selvakumar, learned counsel appearing for the

petitioner submits that the procedure followed by the Sessions Court in consolidating the trial and conducting a joint trial of the CCL with accused adults, is directly contrary to Section 18(3) of the JJ Act, that requires trial of a CCL to be conducted by the Childrens Court only.

11. The sentenced imposed upon the CCL also denotes total non-

application of mind, in that, as on date of the sentence, there were no Borstal Schools in the State of Tamil Nadu, hence necessitating the illegal detention of the detenu in the jail. It is, in the above circumstances that the present HCP has been filed. Learned counsel relies on the following cases: 1.S.Madheswaran v. State of Tamil Nadu rep. by Secretary to Government, Home Department, Fort St.George, Chennai-9

and others<sup>3</sup> 2.Dhanalakshmi v. The State of Tamil Nadu rep. by its Superintendent of Central Prison, Cuddalore, Cuddalore District and another<sup>4</sup> 3.CCL K v. The State (NCT of Delhi)<sup>5</sup> Submissions of the State

HCP.No.133 of 2012 dated 31.07.2012 HCP.No.2098 of 2023 dated 06.11.2023  
Crl.Rev.P.No.436 of 2022 dated 03.03.2025

12. Mr.Muniyapparaj, learned Additional Public Prosecutor

appearing for the State and Inspector of Police, Mayiladuthurai Police Station/R1 and R2, raises a preliminary objection to the maintainability of this HCP. His objection is mainly that no appeal has been filed by the detenu as against judgment dated 31.10.2025 and hence no HCP would lie in such circumstances. He relies on the following decisions in support of his submissions. 1.N.Gowthaman @ Babu v. The Government of Tamil Nadu represented by its Home Secretary Fort St.George, Chennai 600 009 and others<sup>6</sup> 2.Dhanam v. State of Tamil Nadu represented by its S.C.Joint Secretary to Government Public (SC) Department Secretariat, Chennai 600 009 and others<sup>7</sup> 3.Barun Chandra Thakur v. Master Bholu and another<sup>8</sup> Submissions of the Amicus

13. Mr.E.V.Chandru, learned counsel who was appointed as

Amicus Curiae to assist this Court, takes us in extenso through the scheme of the JJ Act and the Tamil Nadu Rules to set out the contours of protection afforded to a CCL. Elaborating on the amendment to Juvenile Justice Act after the judgment of Supreme Court in Nirbhayas case, he points out that the Juvenile Justice Act was also amended, to introduce specific provisions relating to the mode and manner of trial of offenders between the ages of 16 and 18. HCP.No.1441 of 2007 etc. batch dated 29.08.2016 HCP.No.2399 of 2020 dated 08.10.2021 2022 LiveLaw (SC) 593

14. Hence, an individual falling within the ages of 16 to 18, who

allegedly commits an offence, is to be tried bearing in mind the special scheme set out under the JJ Act to provide for his/her trial, sentencing and reformation. The perspective with which the law addresses the juvenile between 16 and 18 years is thus different.

15. On the question of maintainability of the plea for Habeas

Corpus, learned counsel relies on the judgements in Willie (William) Slaney Vs. The State of Madhya Pradesh,<sup>9</sup> Pulukuri Kotayya v. King-Emperor<sup>10</sup> and State of Madhya Pradesh vs Bhooraji & Ors <sup>11</sup> for the proposition that every error or omission in trial will not vitiate the trial. He would urge that the Court thus assess whether the errors are illegal, which would have the consequence of vitiating the trial or whether they are mere irregularities, which would be curable, thus saving the proceedings.

16. He concludes with a suggestion that a Writ of Habeas Corpus

would lie only in the case of an illegal detention which is preventive by the State or an illegal detention by a private person and cannot, as in the present case, be used as an avenue to challenge a conviction and sentence returned by the Court of law.

(1955) 2 SCR 1140

(1947) LR 74 IA 65 2001 (7) SCC 679

17. To sum up his submissions, while agreeing with the learned

counsel for the petitioner that the trial and sentence, and the very approach of the Sessions Court is contrary to the provisions of the JJ Act, he would align with the State on the lack of maintainability of the Habeas Corpus Petition. He relies on the following decisions to buttress his arguments.

(i) Janardan Reddy and others v. The State of Hyderabad and others<sup>12</sup>

(ii) The Home Secretary (Prison) & Others v. H.Nilofeer Nisha<sup>13</sup>

(iii) Rajkumar v. State through The Inspector of Police, Vadamadurai Police Station, Dindigul District.<sup>14</sup>

(iv) Karan @ Fatiya v. The State of Madhya Pradesh<sup>15</sup> (v) State represented by Inspector of Police, Chennai v. N.S.Gnaneswaran<sup>16</sup>

(vi) Lalita Kumari v. Government of U.P. and others<sup>17</sup>

(vii) M/s.SCG Contracts India Pvt. Ltd. v. K.S.Chamankar Infrastructure Pvt. Ltd. and others<sup>18</sup> Discussion

18. We have heard the rival contentions, perused the material

papers and cases cited, and devoted our anxious consideration to the pleadings and the questions that arise therefrom. We have also had the benefit of the records of the case in S.C.No.23 of 2023 and Special Case 212 of 2024 that we have called for from Mayiladuthurai and 1951 AIR 217 : 1951 SCR 344 Criminal Appeal No(s).144 of 2020 dated 23.01.2020 CrI.A(MD)No.106 of 2021 dated 06.01.2023 2023 LiveLaw (SC) 159 Criminal Appeal No.456 of 2008 dated 09.01.2013 Writ Petition (Criminal)No.68 of 2008 dated 12.11.2013 Civil Appeal No.1638 of 2019 dated 12.02.2019

Nagapattinam respectively.

19. The terms Childrens Court and Pocso Court connote the same Court, and hence, the terms Childrens Court and Pocso Court wherever used in this order, have been used interchangeably.

20. The admitted facts are that, on 20.11.2021, there was an

incident which led the way to a wordy altercation, fist fight and thereafter, a fight with deadly weapons between two groups of persons. A case in Crime No.1837 of 2021 had been lodged and charges framed under

Sections 147, 148, 341, 294(b), 323, 324, 307 and 506(ii) IPC read with various Sections of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

21. Matters did not stop there, and on 17.08.2022, the date of

occurrence for the purposes of this matter, there were further attacks by members of one group on the other, leading to the death of one Kannan. A case was registered in Crime No.636 of 2022 for the offences under Sections 147, 148, 341, 294(b), 342, 324, 307, 302, 506(ii), 120B of IPC and 25(1B) of Arms Act, 1959.

22. The detenu was arrayed as A4 in Crime No.636 of 2022. The

Judicial Magistrate, Mayiladuthurai, on receipt of the case records, found that the matter was triable by the Court of Sessions and hence committed the case to the District and Sessions Court, Nagapattinam assigning the number as S.C.No.23 of 2023.

23. Prior thereto, as A4 was a juvenile as on the date of occurrence,

the matter had been referred to the Board for preliminary assessment of the age and maturity of the juvenile. The Board, vide order dated 18.11.2022, found that the juvenile had the necessary maturity and capacity to be aware of the act committed by him, and the consequences thereof.

24. The case was thereafter taken up by the Sessions Judge, Special

Court for Pocso Act, Nagapattinam under Section 18(1) of the Act and Cr.M.P.No.181 of 2023 decided on 09.06.2023 reiterating the opinion of the Board under the JJ Act that A4, though a child in conflict with law, was to be tried as an adult as per the provisions of the Cr.PC.

25. Applying the provisions of Section 18(3), the case records were

transferred for trial before the Childrens Court and assigned the number, SSC No.11 of 2023. The final Report u/s 173 of Cr.P.C dated 23.09.2022 is by the JJB Nagapattinam and there is an observation that the detenu is not in the juvenile

home.

26. The Annexure to the Final Report contains the school Transfer

Certificate and photo of the detenu. The Report refers to SSC No.11 of 2023, wherein the first date is 28.03.2023, and a total of 37 hearings were conducted before the Childrens Court spanning 28.03.2023 to

08.07.2025. The dates are as follows: 28.03.2023, 12.04.2023, 28.04.2023, 18.05.2023, 09.06.2023, 23.06.2023, 13.07.2023, 02.08.2023, 08.08.2023, 07.09.2023, 21.09.2023, 10.10.2023, 27.10.2023, 22.11.2023, 08.12.2023, 28.12.2023, 22.01.2024, 08.02.2024, 26.02.2024, 12.03.2024, 01.04.2024, 22.04.2024, 13.05.2024, 05.06.2024, 26.06.2024, 15.07.2024, 05.08.2024, 29.08.2024, 25.09.2024, 30.09.2024, 24.10.2024, 16.12.2024, 10.02.2025, 17.03.2025, 21.04.2025, 04.07.2025 and 08.07.2025.

27. In the interim, vide docket sheet noting dated 30.09.2024, the

Sessions Judge, Special Court under Pocso Act, Nagapattinam notes thus: Suo-Moto Hearing advanced today. Case is transferred to District Court, Mayiladuthurai for exclusive trial of cases under POCSO Act as per the proceedings of the District Judge Nagapattinam in A.No.224/2024 dated 26.09.2024. The accused is directed to appear before the Special Court Proceedings in A.No.224 of 2024 dated 26.09.2024 is not available in the records.

28. Old SSC No.11 of 2023 was thus re-numbered as SSC NO.212

of 2024 and transferred before the District and Sessions Judge Mayiladuthurai. The Docket order of aforesaid Court dated 24.10.2024 reads thus: The District and Sessions Court, Mayiaduthurai has been bifurcated from the Principle District Court, Nagapattinam and started functioning with effect from 25.03.2023. On the

point of territorial jurisdiction the Sessions Judge, Special Court under POCSO Act, Nagapattinam has transferred the cases to the District and Sessions Court, Mayiladuthurai vide letter in D.No.764/2024 dated 01.10.2024 and the same was taken on file new number assigned as Spl.S.C. 212/2024 and issue fresh accused summon for the hearing 16.12.2024. Send Court Notice to the concerned police and Defence counsel regarding the transfer of the case.

29. The docket sheet notings of the District and Sessions Court,

Mayiladuthurai that heard Spl.S.C.No 212/2024 on 16.12.2024, 10.02.2025, 17.03.2025, 21.04.2025, 04.07.2025 and 08.07.2025 read thus: SPL.SC.No.212/2024 Mayiladuthurai P.S. CCL Santhosh S/o Muthu (SC 23/23)C/W u/s. 120(B), 147, 148, 149, 341, 294(b), 342, 324, 307, 506(ii), 302 IPC, 25(1)(b) of Arms Act Adv. Mr.Mahendran 10.02.2025 LW1 to 3 For appearance of Accused.

### **(CCL) order**

Accused present. Mr.K.Mahendran Advocate filed continuation Memo for accused. Issue summon to LW1 to LW3 and case posted to 17.03.2025. 17.03.2025 For Examination of LW1 to 3 Accused absent. U/s.355 BNSS petition filed and allowed. Witness not produced. Issue summon to LW1 to 3 and case posted to 21.4.25. 21.4.25 For Examination of LW1 to LW3 Accused present. Witness not produced. Send Letter to S.P. regarding non production of witness at the stage of case is

Examination of Witness and case posted to 4.07.2025. Spl. SC.212/2024 Mayiladuthurai P.S. Santhosh S/o Muthu. 4.7.2025 For examination of LW1 to LW3. Accused present. Adj. to 8/7/25. For examination of LW1 to LW3. This case is clubbed with its mother case in Spl.SC.23/2023.

30. As per order dated 09.06.2023 in Crl.M.P.No.181 of 2023, trial

was to be conducted in Special Case No.212 of 2024 to try A4/child in conflict with law as an adult, in terms of the benevolent provisions of the JJ Act. The trial in S.C.No.23 of 2023 thus ought to have been conducted separately in respect of the other accused who are adults. The twist in the tale

31. On 08.07.2025, there is a docket order of the District and

Sessions Court, Mayiladuthurai, that reads thus: A4 in the original case namely Santhosh son of Muthu is appeared today. His case was split up in SPL.SC 212/2024. As per the request of the learned counsel of the said accused and with concurrence of the learned public prosecutor the case against Santhosh in SPL.SC 212/2024 is clubbed with this case. In respect of the witness already examined the learned counsel adopted the cross examination of other accused. A6 and A20 absent petition filed and allowed. A8, A18 and A19 are in the Judicial Custody in another case. The learned counsel appearing for A8, A18 and A19 agreed to proceed with trial as he is defending their right. LW2 examined as

PW3, LWS examined as PW4 and LW9 examined PW5, A1, A2, A3, A4, A5, A6 present. Issue summon to LW11 to 23. A9, 19, 20 produced through VC. by 18.07.2025.

32. Based on the above docket order which indicates that there was

a request by the learned counsel for A4/detenu who wanted a joint trial of the detenu with the other accused, Special S.C.No.212 of 2024 was clubbed with S.C.No.23 of 2023 and a joint trial was conducted. In the

**judgment ultimately passed on 31.10.2025, the learned District and**

Sessions Judge, Mayiladuthurai refers to the process of clubbing at paragraph 17 in the following terms:

17. Santhosh, S/o. Muthu, arrayed A4 in the mother case was

treated as a juvenile and the case against him, was split up in SSC No.11/2023 on the file of Special Court. Under POCSO Act, Nagapattinam. The charges are framed against him U/s

148. 341, 342, 294(b), 302 of IPC and 25(1B) of Arms Act and

the case was transferred to this court on the point of territorial jurisdiction and as per order in CrlM.P No. 181/2023 dated 09.06.2023 new number assigned as SSC.No.212/2024. Later the case of A4 clubbed with this parent's case. Its details are given in the forthcoming paragraphs.

33. In paragraph 17, extracted above, he refers to the order in

Crl.M.P.No.181 of 2023 as the basis of transfer of the Juveniles case to the District and Sessions Court at Mayiladuthurai. It thus remains to be seen if this is correct, as, under order dated 18.06.2023, the Sessions Judge who was presiding over the Special Pocso Court in Nagapattinam had transferred the case records for trial before the Pocso Court only.

## **Issues**

**34.On the basis of the admitted facts as above, we frame the issues**

to be decided as (i) whether the habeas corpus petition is maintainable

(ii) whether the assumption of jurisdiction by the District and Sessions

Judge, Mayiladuthurai in Special Case 212 of 2024 by clubbing the case of the juvenile with other adult accused in S.C.No.23 of 2023, is right in law? (iii) If the answer to the second issue is in the affirmative, what is the consequence of the wrongful assumption of jurisdiction by the District and Sessions Court, Mayiladuthurai. Scheme of the JJ Act

35. The Juvenile Justice Act was specifically enacted in 2015 for

the care and protection of children. It was amended in 2021 to provide for a special mode of trial of a CCL between the ages of 16 and 18, as an adult, vide Act 23 of 2021, with effect from 01.09.2022 onwards, with various reformatory and corrective measures as well. There are certain definitions that would be relevant for the purpose of this case.

36. Under Section 2(12) a child must be a person who has not

completed 18 years of age. Under Section 2(13), a child in conflict with law refers to a child alleged or found to have committed an offence, and who has not completed 18 years of age as on the date of commission of such offence.

37. In order to determine whether the individual in question is a

child for grant of the protection under the JJ Act, it is the age of the individual as on the date of occurrence, that is relevant. Applying the provisions of Section 2(12) and 2(13) of the JJA, the detenu, date of birth being 13.03.2005, was a child in conflict with law as on the date of occurrence, hence entitled to the benefits under the JJ Act.

38. Section 2(15) defining child friendly, means, behaviour,

conduct, practice, process, attitude, environment or treatment that is humane, considerate and in the best interests of the child. Section 2(20) defines the Childrens Court, and means a Court established under the Commission for Protection of Child Rights Act, 2005 or a Special Court under the Protection of Children from Sexual Offences Act, 2012 wherever existing, and where such Courts have not been designated, reference to the Court of Sessions having jurisdiction to try offences under the Pocso Act.

39. Hence, a Childrens Court shall be a Special Court as

constituted under the Pocso Act, or where such Court has not been constituted, the Court of Sessions in that particular District that has been designated to try offences related to the Pocso Act. In the event of a vacancy in the post of a Presiding Officer in the Special Court, it is the learned Sessions Judge who would hear the cases assigned to the Special

Court, though in his/her capacity as the Sessions Judge presiding over the Childrens Court, and through the prism and protection of the JJ Act.

40. If there is a Special Pocso Court, all the cases there, would, by

design and default, be tried in line with the prescriptions under the JJ Act. However, if a regular Sessions Court is designated additionally as a Pocso Court, it is imperative that the learned Special Judge be conscious of the distinction between his role as a Sessions Judge on the one hand, and his role as Presiding Officer under the Pocso and JJ Acts on the other, as the approach, spirit and objects are unique, distinct and specific.

41. While as regards the former, the law applied would be criminal

law as applicable to adults, in the case of the latter, the approach of Judges would be different and distinct, as would be the manner in which the trial is conducted and the sentence imposed, having regard to the principles, prescriptions and object of the JJ Act.

42. Section 2(33) defines a heinous offence as being an offence for which minimum punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment of 7 years.

43. Section 3, falling under Chapter II, is the soul of the JJ Act and sets out various salutary principles involved in the care and protection of children. Those principles are,

- (i) presumption of innocence of any malafide or criminal intent,
- (ii) dignity and worth of the child
- (iii) participation of the child
- (iv) best interests of the child
- (v) family responsibility
- (vi) safety of the child
- (vii) Positive measures for promoting and providing an enabling environment to the child
- (viii) Use of non-stigmatising semantics
- (ix) non-waiver of rights
- (x) equality and non-discrimination on any grounds including sex, caste, ethnicity, place of birth, disability, and provision of equality of access, opportunity, and treatment shall be provided to every child
- (xi) Right to privacy and confidentiality
- (xii) Institutionalisation as a measure of last resort
- (xiii) Repatriation and restoration
- (xiv) Fresh start
- (xv) Diversion from judicial proceedings as far as possible
- (xvi) Natural justice.

44. Thus, any proceeding that is carried out in regard to a CCL must always have, as a reference and backdrop, the above salutary measures in mind. In a manner of speaking, the Childrens Court

assumes, in addition to the role of Presiding Officer, the role of *Parens Patriae*, to balance the delicate compulsions of both, imposing appropriate punishment, and reforming, the CCL.

45. Under Section 4 of the JJ Act a Juvenile Justice Board is

constituted which is tasked with making a preliminary enquiry and assessment in relation to the child produced before it, including the ability of the child to comprehend his actions and the consequences thereof.

46. Since the offence that the detenu was convicted with in this

case constitutes a heinous offence, a preliminary assessment would have to be made under Section 15 with regard to the mental and physical capacity of the child to commit the offence, ability to understand the consequence of the offence and the circumstances in which he allegedly committed the offence. Upon completion of the assessment, the Board was of the opinion that the detenu was competent, both to commit the offence, and to be aware of the consequences thereof.

47. The proviso to Section 15(2) states that the order of the Board

making the preliminary assessment can be appealed under Section 101(2) of the JJ Act. In the present case, the preliminary assessment has been accepted by the detenu.

48. Under Section 18, once the Board is satisfied that a child has committed a petty offence or serious offence, or a child above the age of

16 has committed a heinous offence, and based on the nature of offence and its assessment, the Board may either (i) allow the child to go home after advice/admonition, provide counselling either in a group or

**otherwise, (ii) order that the child perform community services, (iii) order**

the child or parents or the guardian of the child to pay fine, (iv) direct the child to be released on probation of good conduct and placed under the care of any parent, guardian or fit person, (v) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for a period of three years or (vi) direct the

child to be sent to a special home for a period not exceeding three years for providing reformatory services such as education, skill development, counselling, behaviour modification therapy, and psychiatric support and others.

49. The proviso to Section 18 states that depending on the conduct

and behaviour of the child, if the Board feels that, it would not be in the child's interest, or in the interest of other children housed in the Special Home, the child may be sent to a place of safety.

50. If the preliminary assessment made by the Board is that the

juvenile may be tried as an adult, such assessment is subject to further confirmation by the Children's Court under Section 19 of the JJ Act. Section 19 says that after such review, the Children's Court may decide whether there is a need for trial of the child as an adult per the provisions of Cr.P.C. and pass orders considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere.

51. If the Children's Court believes that there is no need for trial of

the child as an adult, the Children's Court may itself conduct enquiry assuming the role of the Juvenile Justice Board, passing orders in line with Section 18 and 19 of the JJ Act. Section 19(2) states that the final

**order passed by the Children's Court 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.

52. Section 19 (3) states that 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 21, and thereafter transferred to a jail ensuring

continuance of reformatory services such as education, skill development, and alternative therapy like counselling, behaviour modification therapy, and psychiatric support, if required. Section 19(4) states that periodic reports as per Section 19(4) shall be sent to the Childrens Court for proper follow-up.

53. Section 21 is critical to the scheme of juvenile justice, and states that no child in conflict with the law, shall be sentenced to death, or for life imprisonment without the possibility of release, for any offence either under the provisions of the JJ Act, the IPC or any other law for the time being in force.

54. This provision carves out an essential feature of juvenile

justice, being the possibility of reformation and release. A sentence of punishment under criminal law is always subject to the possibility of release as an act of benevolence by the State/Government.

55. The JJ Act, however, makes a marked departure from this

position. Section 20 states that, where the child in conflict with the law attains the age of 21, but is yet to complete the term of stay, the Childrens Court shall have an evaluation of the child made by a competent person, such as the probation officer, District Child Protection Unit, social worker or by the Court itself, so as to determine whether the child has undergone reformatory changes and can contribute usefully to the society.

56. Under Section 20(2), the Childrens Court may then exercise

the power of releasing 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. Alternatively, the Childrens Court may, at its discretion, under Section 20(2)(ii) decide that the child may complete the remainder of his term in a jail. It is for this reason that Section 21 contains the possibility and promise (at its discretion, and subject to

conditions) of a Court-ordered release, hitherto unknown to Criminal Law.

57. Hence, on a combined reading of Sections 20 and 21, it is

possible for the Childrens Court even in the case of the commission of heinous offence by a child in conflict with the law, to release the child at the discretion of the Court and on the imposition of conditions deemed fit by the Court.

58. Another of the statutory mandates of the JJ Act is under Section

23 which states that, notwithstanding anything contained in Section 223 of the Cr.P.C or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with an adult. Section 23(2) states that, if during the inquiry by the Board or by the Childrens Court, the person alleged to be in conflict with law is found not to be a child, such person shall not be tried along with a child. This is an absolute bar, in light of which an individual determined to be a child cannot be tried jointly with an adult.

59. The Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2017, in exercise of power conferred under Section 110

(1) of the JJ Act carries forward the beneficial provisions set out under the JJ Act to the Rules as well. We extract Rule 15, which sets out the procedure in relation to the Childrens Court and the monitoring authorities:

15. Procedure in relation to Childrens court and Monitoring Authorities.-

(1) Upon receipt of preliminary assessment from the Board the Childrens court may decide whether there is need for trial of the child as an adult or as a child and pass appropriate orders. ..

(8) Where the Childrens 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 (Central Act 2 of 1974) of trial by sessions and maintaining a child friendly atmosphere.

(ii) The final order passed by the Childrens court shall

necessarily include an individual care plan for the child as per Form V 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 IX to evaluate the progress of the child and the reports shall be forwarded to the Childrens court;

(v) The Childrens court may also direct the child to be

produced before it periodically and at 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;

(vi) When the child attains the age of twenty-one years and is yet to complete the term of stay, the Childrens court shall,-

(a) interact with the child in order to evaluate whether the child has undergone reformatory changes and if the child can be a contributing member of the society.

(b) take into account the periodic reports of the progress of the child, prepared by the probation officer or the District Child Protection Unit or a social worker, if needed and further direct that institutional mechanism if inadequate be strengthened.

(c) After making the evaluation, the Childrens court may decide to,-

(ca) release the child forthwith;

(cb) release the child on execution of a personal bond with or without sureties for good behaviour;

(cc) release the child and issue directions regarding

education, vocational training, apprenticeship, employment, counselling and other therapeutic interventions with a view to promoting adaptive and positive behaviour etc.;

(cd) release the child and appoint a monitoring

authority for the remainder of the prescribed term of stay. The monitoring authority, where appointed shall maintain a Rehabilitation Card for the child in Form X.

60. We have set out above the scheme under the JJ Act and Tamil

Nadu Rules in regard to treatment of a CCL who is tried as an adult. Admittedly, the detenu was a CCL at the time of occurrence and the relevant date to determine the treatment accorded to him is the date of occurrence which is 17.08.2022. Bearing in mind the above scheme, we now address the first issue relating to the assumption of jurisdiction of the District and Sessions Judge, Mayiladuthurai in the trial of the detenu, that too after clubbing the detenus case in SPL SC.No.212/2024 with the case of the adult accused in S.C.No.23/2003.

61. We have seen that both the Board and the Special Judge, Childrens Court, Nagapattinam had ordered the CCL to be tried as an adult applying the provisions of the Cr PC tempered with the provisions

of the JJ Act and TN Rules. The District and Sessions Judge however, under docket order dated 08.07.2025, has clubbed the two trials, conducting a joint trial of Special SC.No.212 of 2024 along with S.C.No.23 of 2023. His justification for the clubbing, is that a request had

been so made by the counsel for A4. This has been reiterated by learned Additional Public Prosecutor as well.

62. This argument flies in the face of Section 23 read with Section

3(ix) of the JJ Act. Section 23, as we have earlier noted, places a categoric embargo against a juvenile being tried along with an adult. This is a gross error in law. Moreover, the condition of separate trials is not liable to be waived, as per Section 3(ix) which stipulates a specific Principle to that effect. The Principle reads:

3. General Principles to be followed in administration of

Act.- The Central Government, the State Governments, the Board, the Committee or other agencies, as the case may be, while implementing the provisions of the Act shall be guided by the following fundamental principles, namely:- (ix) Principle of non-waiver of rights: No waiver of any of the right of the child is permissible or valid, whether sought by the child or person acting on behalf of the child, or a Board or a committee and any non-exercise of a fundamental right shall not amount to a waiver.

63. The Right under Section 23 to an independent and separate trial, conducted in line with the stipulations under the JJ Act is thus an indefeasible one, and one that cannot be waived even by the juvenile himself/herself, which is the reason assigned by the learned District and Sessions Judge, Mayiladuthurai for clubbing of the case.

64. We thus hold that the jurisdiction assumed by the District and

Sessions Court Mayiladuthurai, in consolidating the Special case of the juvenile with the Sessions case of the other adult accused, and conducting a joint trial of the two cases, is utterly bad in law, and vitiates the proceedings in entirety. We answer issue No. 1 accordingly.

65. We now examine the consequences of the wrongful assumption

of jurisdiction. The detenu has, with the conduct of joint trial in the Sessions Court, been deprived of, and denied all the salutary features under the JJ Act and TN Rules. We start with the beneficial presumptions under Section 3.

66. A critical distinction in approach, between general criminal law

and criminal law as applicable to a juvenile, is the presumption of innocence with no malafide or criminal intent. While under general law too, an accused is presumed to be innocent until proved guilty, this is reiterated with more force in the case of a CCL. Hence, the burden cast upon the prosecution would have been that much stronger. Unfortunately, this preferential treatment that ought to have been extended to the detenu was given a go-by by the Sessions Court.

67. In this case, both the JJB and Childrens Court have held that

the detenu was to be tried as an adult. Section 19 vests vast, and munificent powers on the Childrens Court to extend a range of measures including punishment of different kinds, at its discretion, and imposing such conditions as it thinks fit. By conducting a joint trial and not following the mandate of the JJ Act, the detenu has been denied these recourses.

68. Sections 20 and 21 of the Act enable the Presiding Officer of the Childrens Court to consider release of the juvenile at his discretion. This benefit too, has been lost.

69. In summation, and to answer issue No.2, the consequence of

the illegal assumption of jurisdiction is that the detenu has been treated not as a CCL but as an adult for the purpose of the criminal trial sans the statutorily available benefits. Though the juvenile in certain cases is tried as an adult, such a trial is to be set in the context of the JJ Act and Tamil

Nadu Rules. The detenu has lost the benefit of all the beneficial presumptions and general principles set out under Section 3 for the administration of the JJ Act, and has also been denied the benefit of the orders that could have been passed under Section 19(2) of the JJ Act including the benefit of rehabilitational efforts and support, such as counselling, behavioural modification therapy, psychiatric support and child friendly treatment.

70. Most importantly, the detenu has been denied the benefit of

Section 21 of the JJ Act, for early release at the discretion of the Childrens Court. These denials assume very serious consequences of violation of statutory rights of the child, as protected under the JJ Act. Issue No.2 is answered as aforesaid.

71. We address the issue of maintainability last. The relevant dates

are as follows. The date of birth of the detenu is 13.03.2005. The date of incident is 17.08.2022, on which date, he was 17 years 5 months and 3 days. He became an adult at the age of 18 on 13.03.2023. The date of sentence is 09.06.2023, and in total effacement of the provisions of the JJ Act, the detenu has been kept in regular jail from the date of sentence, i.e., from 09.06.2023 till date.

72. In light of our conclusions on issue Nos. 1 and 2 above, the

detention of the detenu between 09.06.2023 when he was 18 years and 3 months till date, even if in a different wing having young offenders, is nothing if not illegal.

73. Mr.Muniyapparaj has argued that the conduct of the trial by the

Sessions Court constitutes an irregularity, not fatal to the proceedings. In Janardan Reddy and others<sup>19</sup>, a Constitution Bench of the Supreme Court was concerned with the basic difference between want of jurisdiction and Foot Note Supra (12) illegal or irregular exercise of jurisdiction.

74. That too was a case where the prayer was for Habeas Corpus,

on the ground that the detention of the petitioner was illegal, on the ground of misjoinder of charges. After considering a series of judgments, the Court states as follows: The trend of decisions thus seems to be in favour of the view that if it should appear on the face of the return that a person is in detention in execution of a sentence on indictment on a criminal charge, that would be a sufficient answer to an application for a writ of habeas corpus. Assuming, however, that it is open even in such cases to investigate the question of jurisdiction, as was held in *In re Anthers* it appears to us that the learned judges who decided that case went too far in holding that notwithstanding the fact that the conviction and sentence had been upheld on appeal by a court of competent jurisdiction, the mere fact that the trial court had acted without jurisdiction would justify interference, treating the appellate order also as a nullity. Evidently, the appellate court in a case which properly comes before it on appeal, is fully competent to decide whether the trial was with or without jurisdiction, and it has jurisdiction to decide the matter rightly as well as wrongly. If it affirms the conviction and thereby decides wrongly that the trial court had the jurisdiction to try and convict, it cannot be said to have acted without jurisdiction, and its order cannot be treated as a nullity. It is true that there is no such thing as the principle of constructive res judicata in a criminal case, but there is such a principle as finality of judgments, which applies to criminal as well as civil cases and is implicit in every system, wherein provisions are to be found for correcting errors in appeal or in revision. Section 430, Criminal Procedure Code, and section 355 of the Hyderabad Criminal Procedure Code, have given express recognition to this principle of finality by providing that "Judgments and orders passed by an Appellate Court upon appeal shall be final, except in cases provided for in section 417 and Chapter XXXII.

75. The argument of the State is that till such time conviction dated

31.10.2005 is set aside in a manner known to law, the detention cannot be said to be illegal. There are two aspects to the matter. Firstly, we have

to appreciate the nature of error and make a distinction between whether the error amounts to an irregularity, curable in law, or an illegality that would go to the root of the matter and vitiate all proceedings.

76. In Janardhan Reddys<sup>20</sup> case there was a misjoinder of charges

that, under Section 460/464 of the Cr.P.C, is an irregularity that would not vitiate the trial or the assumption of jurisdiction. It is on this account that the conviction in that case (Janardan Reddy and others) was confirmed, notwithstanding the error in misjoinder of charges.

77. However, the errors as we have found in the present case, are

grave as they vitiate the statutory scheme of the JJ Act, and go to the root of the matter. We have gone through the entire scheme of the JJ Act and have pointed out various instances where the statutory provisions of the JJ Act have been violated, ignored and given a go-by.

78. At the risk of repetition, we may say that Section 23

specifically mandating an individual trial, and making it clear that no joint trial with adults is to be conducted, has been violated, Sections 19, 20 and 21 which provide for method and mode of sentencing of a CCL Foot Note Supra (12) have been ignored, and the detenu has been kept in regular jail contrary to the express stipulation, object and purpose of the JJ Act. These are errors which, in our considered view, will not constitute mere irregularities but illegalities that would vitiate the trial and sentence.

79. We draw support from a judgment of the Division Bench of this

Court in S.Madheswaran<sup>21</sup>. This very issue came to be considered in that matter and after noticing the decision in Suresh @ D.Sureshkumar V. The Inspector of Police and others<sup>22</sup> and several other cases, the Court concluded that the question of juvenility can be raised at any time, even after disposal of the case.

80. There were instances where the plea of juvenility had been established even after the conviction had been upheld by Supreme Court. We thus conclude that this Habeas Corpus Petition is maintainable.

## **Conclusion**

81. We now address the consequence of our decision, that the plea

of Habeas Corpus is maintainable for want of jurisdiction and illegalities committed by the learned District and Sessions Court, Mayiladuthurai. The sequitur is that the trial is vitiated, and consequently, the finding of guilt and sentence are liable to be set aside. In the interests of justice, we Foot Note Supra (3) CDJ 2012 MHC 3086 are inclined, however, to remand the matter to the Childrens Court for retrial. We also direct, in the facts of this case, that the evidence recorded in S.C.No.23 of 2023 shall be deemed to have been recorded by the Childrens Court.

82. In such a circumstance, we pass the following order:

(i) The authorities are directed to transfer forthwith the case files

including the evidence recorded to the Presiding Officer of the Childrens Court, Mayiladuthurai. In other words, the evidence recorded in S.C.No.23 of 2023 insofar as it relates to A4/detenu, shall be placed along with Special S.C.No.212 of 2024 before the Presiding Officer of the Childrens Court at Mayiladuthurai, forthwith.

(ii) The above Childrens Court shall take up the matter

immediately and decide the same in priority, in light of the provisions of the JJ Act, including specifically Sections 3, 19, 20, and 21 thereof. The Court shall permit the prosecution and the defence to adduce additional evidence, if required, (including recall of witnesses for further examination or cross examination), hear the detenu, the State or any other party that the Court deems necessary, and pass orders afresh in relation to the charges laid as against A4/detenu.

(iii) The above exercise shall be completed within a period of six

(6) months from date of uploading of this order on the website of this Court.

83. With our conclusion that the detention has been illegal since

09.06.2023, there is no further justification for the continued retention of the detenu in jail. In light of our directions in the paragraph supra, we direct the release of the detenu, Santhosh, S/o. Muthu, PID No. 727002 aged 19 years, presently confined in Central Prison, Cuddalore on bail on the following conditions: i. The detenu shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only), with two sureties each for a like sum to the satisfaction of the District and Sessions Judge, Mayiladuthurai; ii. The detenu and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds; iii. The detenu shall appear before the Inspector of Police, Mayiladuthurai Police Station on every Monday at 10.30 a.m; iv. The detenu shall not abscond or tamper with the evidence or witness either during investigation or trial; v. If there is a breach of any of the aforementioned conditions, the Trial Court is entitled to take appropriate action against the detenu in accordance with law, as if the conditions have

been imposed and the detenu released on bail by the learned Magistrate/Trial Court himself, as laid down by the Hon'ble Supreme Court in P.K.Shaji Vs. State of Kerala [(2005) AIR SCW 5560] and; vi. If the detenu thereafter absconds, a fresh FIR shall be registered under Section 229-A IPC.

84. The discussion in the paragraphs supra leading to our

**conclusion that the confinement of the detenu was illegal, reveals a lack**

of appreciation of the provisions and operation of the JJ Act by the learned District and Sessions Judge, Mayiladuthurai. In order to prevent the recurrence of such an instance, we direct the Registry to forward a copy of this order to the officer

concerned, District and Sessions Judge, Mayiladuthurai forthwith.

85. In light of our conclusion that the detention of the detenu from

09.06.2023 till date is illegal, he is liable to be compensated for the same. The detention of the detenu has been held to be illegal on account of various irregularities in the conduct of trial. That apart, i) the learned Judge has on 31.10.2025 directed the detenu to be placed in Borstal School oblivious of the decision of the Constitution Bench in the case of N.Gowthaman @ Babu23 and the Tamil Nadu Borstal Schools (Repeal) Foot Note Supra (1)

Act, 2025, gazetted by the Government on 22.01.2025.

86. In light of the aforesaid G.O. doing away with the system of

Borstal Schools the State has placed the detenu in regular jail without even seeking a clarification from the learned District and Sessions Judge, Mayiladuthurai as to the proper course of action to be adopted. This is what has led to the illegal detention of the detenu. The Respondents shall accordingly deposit an amount of Rs.1,00,000/- (Rupees one lakh only) to the credit of his bank account within two weeks from today and file proof of compliance thereof.

87. We place on record our appreciation for the learned Amicus Curiae Mr.E.V.Chandru in this matter. This Habeas Corpus Petition is disposed in terms of this order. [A.S.M, J.] [S.M, J.] 08.04.2026 sl Index:Yes/No

### **Speaking order/Non-speaking order**

Neutral Citation:Yes/No Note: Registry is directed to issue a copy of this order today. To 1.The Superintendent of Prison, Central Prison, Cuddalore, Cuddalore District. 2.The Inspector of Police, Mayiladduthurai Police Station, Mailaduthurai District. 3.The Superintendent of Prison, Central Prison, Cuddalore. 4.The Public Prosecutor, High Court, Madras.

5. The District and Sessions Judge, Mayiladuthurai.

6. The Registrar, District Judiciary, High Court, Madras.

6. 5. t

**DR. ANITA SUMANTH,J.**

and

**SUNDER MOHAN,J.**

sl 08.04.2026

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