

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 629 of 2015

1. Prakesh Nishad S/o Shri Samaylal (Gardian) aged about 17 years, resident of village Bahesar Police Station Dharsiva, District Raipur through father Samaylal Nishad.

---- Applicant

Versus

1. State of Chhattisgarh through Police Station Dharsiva, District Raipur CG.

---- Respondent

For Applicant:	Shri B.P Sharma, Advocate
For Respondent/State:	Shri Rahul Tamaskar, PL

Order On Board by Pritinker Diwaker, J

03/11/2015

On mention being made, this case is taken up for being decided finally.

2. This revision petition has been filed by the applicant against the order dated 14.7.2015 passed by Additional Sessions Judge (Special Judge, CBI), Raipur, in Criminal Appeal No. 96/2015 dismissing the appeal preferred by him against the order dated 30.6.2015 passed by the Juvenile Justice Board, Raipur in Criminal Case No. 214/2015.

3. As per the case of prosecution, on 9.3.2015 at about 10.30 PM as many as three accused persons including the applicant committed murder of Ku. Pooja Nishad and buried her dead body.

4. Counsel for the applicant submits that both the Courts below have erred in law in rejecting the bail application by order dated 30.6.2015 as also the appeal filed by the applicant, by order dated 14.7.2015. He submits that the provisions of Section 12 of the Act of 2000 have been completely ignored by both the Courts below. According to the counsel for the applicant the report of the Probation officer does not indicate anything against the applicant, rather it says

that the applicant has no criminal inclination and is a discipline-loving boy, and has come to be involved in the case in hand only after coming in contact with accused Virendra. He further points out the important aspect of the report which says that the applicant himself was not actively involved in the commission of murder of the deceased but just assisted the main wrongdoer in digging the pothole for burying her dead body. According to the counsel for the applicant, the report of the Probation Officer nowhere says that release of the applicant on bail would expose him to moral, physical or psychological danger or bring him into association with any known criminal.

5. State counsel however supports the orders impugned passed by the Courts below and submits that the application for release of the applicant on bail and then the appeal preferred subsequently have rightly been dismissed and there is no infirmity or illegality in the same.

6. Heard counsel for the parties and perused the documents on record.

7. Before drawing any conclusion regarding correctness or otherwise of the orders impugned, glance of the relevant provisions such as Section 12 of the Act of 2000 becomes necessitous, which is reproduced as follows:

“Section 12 : Bail of Juvenile. - (1) When any person accused of a bailable or non bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the

police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under subsection (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

A bare reading of section 12 (1) makes it clear that any person accused of a bailable or non bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force be released on bail with or without surety. It further says that such person shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

8. Similarly, Section 13 of the Act of 2000 reads as under:

"13. Information to parent, guardian or probation officer.- Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform-

(a) the parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry."

9. In the case in hand the report of the probation officer says that applicant has no criminal background against him, rather it says that the applicant is a discipline-loving boy and has come to be involved in the case in hand only after coming in contact with accused Virendra.

Report also mentions that the applicant himself was not actively involved in the commission of murder of the deceased but just assisted the main wrongdoer in digging the pothole for burying her dead body. The report nowhere says that if the applicant is released on bail, he would come into association with any known criminal or it would expose him to moral, physical or psychological danger or it would defeat the ends of justice.

10. Thus considering the facts and circumstances of the case and the report of the Probation Officer, present revision is allowed. Orders impugned are hereby set aside. Applicant is directed to be released on bail on his guardian or parents furnishing a bond in the sum of Rs. 10,000 with one surety for the like sum to the satisfaction of the concerned Juvenile Justice Board. The applicant is directed to appear before the said Board on all the dates as are given to him.

11. Revision allowed.

Sd/-

(Pritinker Diwaker)

Judge