

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 520 OF 2016

1. Krishna Netam @ Deepu, S/o Devlal Netam, aged about 16 years, R/o Tikrapara, Dhamtari, Tahsil and District Dhamtari (C.G.)
2. Durgesh @ Sonu Avsariya, S/o Late Mukesh Kumar Avsariya, aged about 15 years, R/o Tikrapara, Dhamtari, District Dhamtari (C.G.)

... Petitioners

Versus

The State of Chhattisgarh, through the District Magistrate, Dhamtari, District Dhamtari (C.G.)

... Respondent

For Petitioners	:	Mr. P.P. Sahu, Advocate.
For Respondent-State	:	Mr Anupam Dubey, Dy. Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/07/2016

1. The Petitioners being juveniles have filed the present revision challenging the order 30.5.2016 passed by Additional Sessions Judge (F.T.C.), Dhamtari in Criminal Appeal No. 52 of 2016, whereby the Additional Sessions Judge has dismissed the appeal confirming the order passed by the Juvenile Justice Board, Dhamtari in Criminal Case No.26 of 2015, dated 6.5.2016.
2. Counsel for the Petitioners submits that this is the first criminal case where the Petitioners have been implicated and that there is no other criminal antecedents against them. He further submits that taking into consideration the nature of offence at this juncture, the Petitioners having already remained in custody for a period of almost more than 2½ months, they may be released on bail.
3. Counsel for the Petitioners further submits that the requirement under Section 12 of the Juvenile Justice (Care and Protection of Children)

Act clearly stipulates that the juvenile once having been taken into custody should normally be released on bail and at the time of granting of bail the gravity of offence is not to be seen.

4. Learned Counsel for the State however opposes the prayer for bail.

5. This Court in the case of **Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh**¹ has observed as under:

“6. The scope and object of provision regarding grant of bail to a Juvenile as envisaged under Section 12 of the Act came up for consideration before the Single Judge of this Court in the case of **Bharat @ Bhurat & Another (supra)**, wherein it was held that the use of word "Shall" by the legislative provisions in the Section 12 of the Act is of great significance and which raises a presumption that the particular provision is imperative and makes it manifest that ordinarily the Board is under obligation to release the Juvenile on bail with or without surety, but the Juvenile shall not be so released in certain circumstances as latter part of the Section also uses the word "Shall" imposing certain mandatory conditions prohibiting the release of the Juvenile by the Board. It has also been held that ordinarily the bail has to be granted to the Juvenile and would be liable to be rejected only when it appears to the Board that either of the three conditions mentioned in Section 12 of the Act are existing.”

6. The said observations of the Court was based upon the decision rendered in case of **Akhilesh Kumar Vs. State of Chhattisgarh**² as well as on the judgment delivered by the Madhya Pradesh High Court in the case of **Rahul Mishra Vs. State of Madhya Pradesh**³.

7. On due consideration of the facts and circumstances of the case particularly taking note of the age of the Petitioners and that the present being the first offence in which they are involved and there is no criminal antecedents and also considering the ratio of law laid down in **Dayasagar (supra)**, it is a fit case where the Petitioners can be released on bail.

1 2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214

8. Accordingly, the Criminal Revision is allowed. The impugned order dated 30.5.2016 passed by Additional Sessions Judge (F.T.C.), Dhamtari in Criminal Appeal No.52 of 2016 is set aside. It is directed that the Petitioners shall be released on bail on their and one of their guardians furnishing a personal bond in the sum of **Rs.25,000/- each with two sureties** in the like sum to the satisfaction of the concerned Trial Court, for their appearance as and when directed.

Sd/-
(P. Sam Koshy)
Judge

/sharad/