

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 699 of 2016**

Avinash Banjare S/o Gautam Banjare Aged About 16 Years (Delinquent Juvenile), R/o Village Gidhauri, P.S. Gidhauri, District Baloda Bazar Bhatapara, Chhattisgarh. Through His Father & Natural Guardian Gautam Banjare, S/o Late Bund Ram Banjare, Aged About 48 Year, R/o Village Gidhauri, P.S. Gidhauri, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Applicant**Versus**

State of Chhattisgarh Through District Magistrate, Baloda Bazar, District Baloda Bazar Bhatapara, Chhattisgarh.

---- Non-applicant

For Applicant	Shri Hemant Gupta, Advocate.
For Non-applicant/State	Shri Aunpam Dubey, Dy. Government Advocate

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****29/07/2016**

Heard learned Counsel for the Applicant and the Non-applicant.

2. The present Criminal Revision has been preferred challenging the order dated 12.07.2016 passed in Criminal Appeal No.57/2016 by the Second Additional Sessions Judge, Baloda- Bazar, District – Baloda Bazar (C.G.). Vide the said impugned order the Court below has rejected appeal which he had preferred against the rejection of the bail application by the Juvenile Justice Board, Baloda Bazar on 22.06.2016 in Criminal Case No. 75 of 2016.
3. Learned Counsel for the Applicant submits that it is a case where the Applicant was having love affair for about 1 year with the Prosecutrix who was elder to him. The offences which have been charged against him are under

Sections 363, 366, 376 and 450 IPC and also Section 4 of Protection of Children from Sexual Offences Act. That, there is no criminal track record of the present applicant except for implication in the present case. That, it is not a case where the present Applicant has a criminal antecedents, but the act on part of the present Applicant, even if accepted as true, it is a folly of age, not with criminal intention or motive. Further, that he is in Observation Home since 30.05.2016 and therefore he may be enlarged on bail taking into consideration the provisions of Section 12 of the Juvenile Justice Act.

4. In the case of **Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh**¹ in para -6, this court has observed as under:

“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.”

5. The said observations of the court was based upon the decisions rendered in case of Akhilesh Kumar Vs. State of Chhattisgarh² as well as

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2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

judgment delivered by the MP High Court in case of Rahul Mishra Vs. State of Madhya Pradesh³.

6. Considering the total facts and circumstances of the case particularly the age of the Applicant as well as the Prosecutrix, and the fact that the Applicant is already in custody for about two months and also considering the nature of offence and the ratio of law laid down in Dayasagar (Supra), in the opinion of this Court present is a fit case where he can be released on bail.

7. Accordingly, the Criminal Revision is allowed. The impugned order dated 12.07.2016 is set aside. It is directed that the Applicant shall be released on bail on his and one of his guardian furnishing a personal bond for the sum of Rs.25,000/- with two sureties in the like sum to the satisfaction of the concerned Trial Court, for his appearance as and when directed.

Sd/-

(P. Sam Koshy)
JUDGE

kishore