

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 64 OF 2016

Abhishek @ Chulbul Shukla, S/o Shri Mahaant Prasad Shukla, aged about 18 years, R/o Village Dariyapur, District Sultanpur, P.S. Sadar Civil & Revenue District Sultanpur (U.P.)

... Applicant

Versus

State of Chhattisgarh, through District Magistrate, District Raipur (C.G.)

... Non-applicant

For Applicant	:	Mr. Ajay Mishra, Advocate.
For Non-applicant/State	:	Mr. Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/07/2016

1. The present revision petition has been preferred under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, 'the Act') challenging the order dated 22.12.2015 passed by the Special/Additional Sessions Judge, Raipur in Criminal Appeal No.257 of 2015.
2. By impugned order dated 22.12.2015, the Court below has rejected the appeal wherein the Applicant had challenged the rejection of the bail application in Crime No.76 of 2015 pending before the Juvenile Justice Board, Mana Camp, Raipur, for the offence punishable under Sections 392, 120(B) IPC and Sections 25, 27 of the Arms Act.
3. Counsel for the Applicant submits that the Applicant is a minor and has been implicated in the case only on the basis of memorandum of statement of the co-accused persons who are major. He further submits that the Applicant has already remained in observation home for a period of almost 10 months and that the maximum sentence which could be

imposed upon him would be only that of 3 years. It was further submitted that since the only material against the Applicant is that of the memorandum of statement of the co-accused persons and which is a very piece of evidence, chances of conviction of the Applicant is very weak. He also submitted that there is no criminal antecedent of the Applicant and therefore he may be enlarged on bail taking into consideration the provisions of Section 12 of the Act.

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.

1 2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214

7. Considering the total facts and circumstances of the case particularly the fact that the Applicant being a juvenile has already remained in custody for almost 10 months and that this is the first offence committed by the Applicant and also considering the ratio of law laid down in Dayasagar (*supra*), it is a fit case where the Applicant can be released on bail.

8. Accordingly, the Criminal Revision is allowed. The impugned order dated 22.12.2015 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 in 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