

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 668 OF 2016

Nikesh Miri Satnami, aged about 16 years, S/o Sahdev Satnami, R/o Village Kosmidih, PS Masturi, Civil and Revenue District Bilaspur. Through Natural Guardian His Mother Rajni, Village Kosmidih Civil and Revenue District Bilaspur.

... Applicant

Versus

State of Chhattisgarh, through Station House Officer of Police Station Masturi, District Bilaspur (CG).

... Non-applicant

For Applicant	:	Shri Abdul Wahab Khan, Advocate.
For Respondent-State	:	Shri Vaibhav A Gowardhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

26/08/2016

1. Heard learned Counsel for the Applicant and the Non-applicant.
2. The present Criminal Revision has been preferred challenging the order dated 16.06.2016 passed in Criminal Appeal No.101/2016 by the Sessions Judge Bilaspur. The Sessions Judge vide impugned order has affirmed the order of the Juvenile Justice Board, Bilaspur rejecting the bail application on 22.03.2016 in Criminal Case No. 80 of 2016.
3. Learned Counsel for the Applicant submits that the Applicant admittedly is a juvenile, aged about 16 years. The applicant is alleged to have abducted the prosecutrix, aged about 15 years, took her to different places and have sexually ravished her on the basis of which a criminal case has been registered at Police Station

Masturi for the offence under Sections 363,366 and 376 IPC. It is a case where the applicant is said to have a love affair with the prosecutrix as is evident from the statement of prosecutrix herself. He further submits that apart from this case, there is no criminal antecedent of the present applicant. The applicant is in the observation home since 10.03.2016. There is no chances of his coming into association with known bad company which could further expose him to moral as well as psychological danger, and therefore, he may be enlarged on bail taking into consideration the provisions of Section 12 of the Juvenile Justice Act. According to the applicant's counsel, the act on the part of the applicant is not with criminal mindset, but was a folly of youth.

4. On the other hand, learned counsel for the State opposes the bail.
5. Counsel for the applicant further relies upon the judgment of this court in case of Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh¹ wherein 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 @ Bhrat & 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.”

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2011 (1) CGLRW-140

6. The said observations of the court was based upon the decisions rendered in case of Akhilesh Kumar Vs. State of Chhattisgarh² as well as judgment delivered by the MP High Court in case of Rahul Mishra Vs. State of Madhya Pradesh³.
7. Before considering the case of the applicant it would be appropriate if Section 12 (1) of the Act is of 2000 is taken into consideration and for ready reference the same is being reproduced hereunder:

"Section 12: (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."

A plain reading of the said section by itself gives a clear indication that under the normal circumstances as a matter of routine, in case an accused person happens to be a juvenile and is arrested, detained and is brought before the Board, such person notwithstanding anything contained in either Code of Criminal Procedure or under any other special law which is in force should be released on bail. But at the same time the latter part of Sub Section 1 of Section 12 clearly envisages the fact that in a given factual background of a case if it appears to the Court that the releasing of the said juvenile can bring him into the association of

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214

the company with which he landed himself in the remand home or he may get exposed to moral and psychological danger as also exposing himself to physical danger, the juvenile may not be released.

8. Considering the total facts and circumstances of the case, particularly the statement of the prosecutrix-victim and the fact that the Applicant being a juvenile is already in observation home for more than five months, also considering the nature of offence and the ratio of law laid down in Dayasagar (Supra), keeping in mind the fact that if the applicant is released on bail, there is no chances of his coming into association with known bad company which could further expose him to moral as well as psychological danger, further it also appears that prima-facie it is an act which is a folly of age and that there was no criminal motive or intention on the part of the applicant juvenile, thus, it is a fit case where the applicant can be released on bail.

9. Accordingly, the Criminal Revision is allowed. The impugned order dated 16.06.2016 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