

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.970 of 2016**

- Vikas Kaushal S/o Shri Chiman Kaushal Aged About 16 Years R/o Haram Madhavpara, Police Station Geedam, District South Bastar Dantewada, Chhattisgarh, Through Father Shri Chiman Kaushal, R/o Haram, District South Bastar Dantewada, Chhattisgarh.

---- Petitioner**Versus**

- State Of Chhattisgarh Through District Magistrate, Dantewada, District South Bastar Dantewada, Chhattisgarh.

---- Respondent

For Petitioner	:	Shri P. R. Patankar, Advocate
For Respondent/State	:	Shri B. Gopa Kumar, Dy.AG

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****09/11/2016**

Heard.

2. This petition has been filed arising out of order dated 05-09-2016 passed in Criminal Appeal No.17/2016, whereby the order of rejection of application for grant of bail under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 (In short "the Act of 2015") filed by the Juvenile, has been affirmed.

3. The applicant is alleged to be involved in the commission of offence under Section 363, 366-A, 376-D, 323 & 306/34 of IPC as also under Section 4 & 8 of Protection of Children from Sexual Offences Act, 2012 on the allegation that the applicant and three other accused committed rape on the prosecutrix. The applicant being juvenile, aged 16 years, was apprehended and produced before the Juvenile Justice Board (In short "the Board"), wherefrom he has been sent to the Observation Home. An application under Section 12 of the Act of 2015 was

moved by the Juvenile which was rejected vide order dated 03-08-2016 by the Board. Aggrieved by the said order, the applicant preferred an appeal under Section 101 of the Act of 2015, which has also been rejected, giving rise to the instant petition.

4. Learned counsel for the applicant submits that grant of bail to a juvenile is a rule and rule is made exception only on the ground enumerated under the provision, the grant of bail could be refused. He submits that there is no material brought before the Board or the appellate Court to come to the conclusion that release would bring the applicant in association with known criminal or is likely to subject him to mental, physical or psychological danger and would otherwise defeat the ends of justice. Learned counsel for the applicant also submitted that in fact, in the trial of other accused, they have acquitted from the charges because the prosecutrix has not involved them in the commission of offence including the present applicant. Therefore, rejection of bail application of the applicant is illegal.

5. On the other hand, learned State counsel submitted that the applicant is involved in the commission of heinous offence of gang rape. The applicant along with other accused persons is alleged to have committed rape of the prosecutrix, for which, looking to the gravity of offence as also the manner, in which, the offence was committed by the applicant, if he is released on bail, as observed by the appellate authority, he will be deprived of all facilities and good atmosphere, which he could get in the Observation Home.

6. After going through the order passed by the Board and the appellate authority, I find that both the Courts below have failed to consider the application in accordance with the statutory scheme of the Act of 2015 and in particular, provision contained in the Section 12 of the Act of 2015.

7. The scope and object of provision regarding grant of bail to a Juvenile as

envisaged under Section 12 of the Act of 2000 came up for consideration before the Single Judge of this Court in the case of ***Bharat @ Bhrat & Another vs. State of CG, 2006 (1) CGLJ 72***, 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 of 2000 are existing. In the case of ***Akhilesh Kumar vs. State of CG, 2006(1) CGLJ 305***, dealing with the case of a Juvenile, this Court while examining the correctness and validity of order rejecting application of the applicant filed under Section 12 of the Act of 2000 on the ground that release would defeat the ends of justice, found that though the Juvenile Justice Board had dismissed the bail application on the ground that release would defeat the ends of justice but how the release would defeat the ends of justice has not been stated. In that view of the matter, this Court came to the conclusion that the orders passed by the Court below are not sustainable in the eye of law.

8. In the case of ***Rahul Mishra vs. State of MP, 2001 Cr.L.J. 214***, the High Court of M.P. has considered the provisions contained in Section 12 of the Act of 2000 and held that the words notwithstanding anything contained in the Code of Criminal Procedure, 1973, would indicate that the considerations which are germane for granting or refusing bail to persons who are not juvenile delinquent shall not come into play for granting or refusing bail to Juvenile. It was also held that the words “ends of justice” should be confined to those facts which show that

the grant of bail itself is likely to result in injustice. The Juvenile delinquent may appear to be guilty prima facie but he is especially protected by the Act and is favourably considered for grant of bail. From the aforesaid decisions and the law propounded by Their Lordships in various cases, it is clear that ordinarily bail is required to be granted to a Juvenile in view of the provisions contained in Section 12 of the Act of 2000. It is only when the Court finds that the grounds therein are made out that the Court shall reject the application.

9. The aforesaid statutory scheme examined in various decisions is based on interpretation and the scheme of Act of 2015. Under the new Act of 2015, the provision with regard to bail as contained in Section 12 which is *pari materia* of Section 12 of the Old Act of 2000. Therefore, it is quite apparent that the considerations for grant of bail to a Juvenile and the grounds, on which, the application for grant of bail to Juvenile could be rejected, remains one and the same under the old Act as well as under the new Act. Therefore, the judicially evolved principles, which have been discussed hereinabove, is clearly applicable for the consideration of applications for grant of bail in case of juvenile, who is alleged to have committed offence, after coming into force of the new Act of 2015, which has come into from 01-01-2016.

10. If the material available on record of the present case are examined in the light of aforesaid settled principles laid down by the Courts of law, the impugned order cannot be sustained.

11. The approach of the Board as well as the appellate authority is not in accordance with law. While the Board rejected the application of the applicant taking into consideration the merits of the case connecting the same with the likelihood of juvenile coming in association with known criminals, the appellate authority adopted another approach of drawing comparison between the atmosphere which the Juvenile is presently getting in the Observation Home with

the surroundings, which he may have in case of his release. Approach of both the Courts below are illegal.

Only on the basis of seriousness of allegations, the Board has jumped to the conclusion that in case of release, the Juvenile is likely to come in association of known criminal. Only on the basis of nature and gravity of offence, in the absence of there being anything more to provide as a material to reach upon such conclusion, it cannot be said that release would bring the juvenile in association with known criminals. The same consideration has also led to conclusion that in the event of release, the applicant-juvenile may be subjected to mental, physical or psychological danger and at the same time recording that the release would defeat the ends of justice. It is thus clear that the Board has mechanically applied the grounds, on which, the bail could be rejected under Section 12 of the Act of 2015 without making any enquiry or looking into the records where it contains any material to come to such conclusion. Except gravity of offence, no other consideration has taken place.

12. The approach of the appellate Court is also not acceptable under the scheme of the Act. In para 9 of the order, what has been considered, clearly shows that the Court was swayed by the nature and gravity of the allegations against the applicant. In para 10 of the order, the appellate Court has said that upon inspection made out by him, the arrangement and facility in the Observation Home are proper and therefore, if the Juvenile is allowed to continue in the Observation Home, then it would be in his interest.

The Act nowhere provides this kind of consideration. There cannot be any comparison on such basis that if Juvenile is allowed to continue in the Observation Home, it would be better in his interest. The Act does not postulate any such consideration. The proper approach in such case is to find out material either produced before the Police while submitting charge sheet or from the social

investigation report submitted by the Probation Officer or any other material brought before the Board to arrive at satisfaction with reference to three grounds stated in the provisions under Section 12 of the Act of 2015. Unless there are material that the release would bring the accused in association with known criminal or subject him to physical, moral or psychological danger or would defeat the ends of justice, considerations, which have been made by the Board and the appellate authority, would not come in the way of grant of bail to Juvenile. The Courts of law are required to administer justice according to law. If law of the land provides that grant of bail would be a rule and rule would be exception only on the ground stated under Section 12 of the Act of 2015, the Court has to give full effect to the statutory mandate. As the gravity of offence is not a consideration at this stage, while consideration of application for grant of bail, irrespective of all these considerations, the bail is required to be granted.

13. In the result, the revision is allowed. The impugned order passed by the appellate Court as well as by the Board are hereby quashed. The applicant-Juvenile shall be released on bail forthwith on furnishing personal bond in the sum of Rs.10,000/- by the mother or father of the applicant to the satisfaction of the Board, for his appearance before the Board on all dates of trial and also to comply with such conditions as may be imposed by the Juvenile Justice Board.

SD/-
(**Manindra Mohan Shrivastava**)
Judge