

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1073 of 2016

Dharmendra @ Chotu S/o Santram Vishwakarma Aged About 17 Years Through His Legal Guardian His Father Shri Santram Viswakarma, Aged About 55 Years, S/o Punouram Viswakarma, R/o Shivaji Chowk, Kharora, Police Station - Kharora, District - Revenue & Civil - Raipur Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through District Magistrate, Raipur, District Raipur Chhattisgarh

---- Respondent

For Applicant	:	Shri Yogesh Pandey, Advocate
For State	:	Shri D.R. Minj, Dy. Govt. Advocate

S.B.:Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

14/12/2016

1. This revision arises out of order dated 13th October, 2016 passed in appeal by which the order of rejection of juvenile's application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "*Act of 2015*") has been affirmed and appeal dismissed.
2. The applicant, a juvenile, has been apprehended and kept in Observation Home on the allegation of having committed offences under Sections 395 and 397 IPC as also commission of offence under Sections 25 & 27 of the Arms Act.
3. The allegation against the applicant is that the applicant, a minor, along with four other accused (one minor and three major), intercepted a biker on road, chilly powder was thrown in the eyes and it is alleged that bike and mobile

phones were looted.

4. Learned counsel for the applicant argues that the learned Appellate Court, while considering the appeal against an order of rejection of application for grant of bail, has completely misconstrued the mandate of Law and has rejected the application and appeal on extraneous consideration without examination of the appeal on its own merits.
5. On the other hand, learned counsel for the State has opposed the application. He submits that the order has been passed taking into consideration the nature of accusation, role of the applicant, gravity of offence as also that one of the accused has been granted bail by this Court.
6. After hearing learned counsel for the parties and going through the records of the case, I find that the impugned order is not in accordance with the mandate of Law.
7. While considering the application for grant of bail under Section 12 of the Act of 2015 by a juvenile, the relevant consideration are those which are specifically enumerated in Section 12 of the Act itself. Section 12 of the Act of 2015 reads thus :

“12. Bail to a person who is apparently a child alleged to be in conflict with law- (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 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 person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or

expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

8. 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 @ Bhurat & Another vs. State of CG, 2006 (1) CGLJ 72**, wherein it was held that the use of word "shall" by the legislative provisions in 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.

9. 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.
10. Therefore, in the matter of considering application for grant of bail by a juvenile, consideration have to be in accordance with the statutory mandate. I find that the learned lower Appellate Court has not applied its mind to the relevant factors which alone could be made a basis to reject the application. Otherwise, if those three grounds namely- release will bring the juvenile in association with any known criminals or expose him to moral, physical or psychological danger or otherwise defeat the ends of justice, are not made out, ordinarily, a juvenile

has to be granted bail. Moreover, one of the ground for rejecting appeal also does not appear to be based on correct approach. It appears that the learned Appellate Court has ignored to consider the distinction between the nature of jurisdiction exercisable by the Appellate Court while examining the correctness of an order passed by the Juvenile Justice Board rejecting application for grant of bail. The appeal could not be dismissed without considering the relevant aspects of the matter only on the ground that the other co-accused who happens to be major has been granted bail by this Court. As the consideration for grant of bail to a juvenile are quite distinct, such a ground would be wholly inappropriate. The learned lower Appellate Court was under a duty to examine the merits of the case in accordance with the statutory scheme of the Act.

11. The Social Investigation Report is on record which does not indicate any material to show that the release will bring the juvenile in association with any known criminals or expose him to moral, physical or psychological danger. Moreover, there does not appear any material placed before the Court by the State despite opportunity granted to show that in the event of grant of bail ends of justice would be defeated. Once the three grounds on which the bail of juvenile may be rejected are not made out, ordinarily rule of grant of bail to a juvenile has to be followed and the applicant deserves to be granted bail.
12. In the result, the impugned order is set aside. Application under Section 12 of the Act is allowed. The applicant shall be released on bail forthwith on furnishing a personal bond in the sum of Rs.10,000/- by the father or mother of the applicant to the satisfaction of the Juvenile Justice Board, for his appearance before the Board as and when directed during the pendency of the enquiry under the Act of 2015.
13. The revision is accordingly allowed.

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