

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.680 of 2015**

- Balram Rathiya S/o Dau Singh Rathiya Aged About 17 Years Through His Mother Smt. Vimla Rathiya W/o Dau Singh Rathiya, R/o Village - Devbahal, P.S. Chakardhar Nagar, Tahsil - & Distt. Raigarh, Civil & Revenue Distt. Raigarh Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through : District Magistrate, Raigarh, Distt. Raigarh Chhattisgarh

---- Respondent

For Petitioner	:	Shri M. K. Sinha, 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 12-08-2015 passed in Criminal Appeal No.20200000045/2015, whereby the order of rejection of application for grant of bail under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 (In short "the Act of 2000") filed by the Juvenile, has been affirmed.

3. The applicant is a juvenile and he is alleged to have committed offence under Section 302 of IPC. Allegation is that the applicant along with his father and brother assaulted the deceased with hands and fists resulting in his death. Application filed by the Juvenile for grant of bail under Section 12 of the Act of 2000 was rejected by the Juvenile Justice Board on 22-07-2015, against which, the appeal was filed which has also been rejected on 12-08-2015, impugned in

this revision.

4. Learned counsel for the applicant argued that the Board as well as the appellate Court have completely misdirected itself in rejecting application and the appeal without taking into consideration the object and spirit of provision contained under Section 12 of the Act of 2000 as it existed at the time of commission of alleged offence. Submission of learned counsel for the petitioner is that the grant of bail to a juvenile is a rule and rule is made exception only on the ground stated under Section 12 of the Act of 2000 and in the present case, there is no material to come to the conclusion that release would bring the applicant in association with known criminals or expose him to mental, physical or psychological danger and would otherwise defeat the ends of justice. Therefore, bail application of the applicant ought to be allowed and he ought to be granted bail.

5. On the other hand, learned State counsel submitted that looking to the gravity of offence that the applicant participated in a criminal act, wherein murder has taken place, the Courts below have rejected the application by recording a finding that in the event of release, the appellant may be exposed to physical, moral and psychological danger. It is submitted that the appellate Court has recorded that if he is released on bail, adversial kind of atmosphere may be created in the village.

6. 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 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.

7. 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.

8. Applying the principles laid down in the provisions of the Act of 2000 and the aforesaid decisions, the facts of the case on record do not provide any material to arrive at satisfaction that the release of the applicant would bring him in association with known criminals or expose him to physical, mental or psychological danger. There is no material on record to arrive at satisfaction either by the Juvenile Justice Board or the appellate Court that release of the applicant is likely to defeat the ends of justice. There are two social investigation reports submitted by the Probation Officer, one is dated 12-08-2015 placed in the records of the appellate Court and the other is directly submitted before this Court along with covering memo dated 02-02-2016. In the first report, it has been stated that the background of the incident is that the deceased used to come in intoxicated condition in the house of the applicant, which led to alleged commission of offence and the applicant was provoked and the circumstances are that the deceased entered the house of the applicant which resulted in dispute and murder. In the second report, which has been sent to this Court by the Probation Officer, it has been stated that there is lack of discipline and the applicant has left school. It is also stated that earlier the father did not take proper care and proper education has not been provided, therefore, the juvenile went to the house of his maternal uncle for completion of his studies but later on, left the same.

The aforesaid report does not provide any material to come to the conclusion that the release of the applicant would bring him in association with known criminals or subject him to physical, mental or psychological danger.

12. Considering the aforesaid facts and circumstances of the case and that grant of bail under Section 12 of the Act of 2000 is a rule and none of the grounds to make out exceptional cases are made out, the revision is allowed. The impugned order passed by the appellate Court as well as by the Juvenile Justice 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 of the applicant to the satisfaction of the Juvenile Justice 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