

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 827 of 2015

Rajeshwar Chandra, S/o Babulal Chandra, Aged About 17 Years, R/o Jharpali, Police Station Sarangarh, District Raigarh Chhattisgarh. Through Natural Guardian Brother Seetaram Chandra, S/o Katguram Chandra, Aged 45 Years, S/o Village Suataal, Tahsil And Police Station Sarangarh, Civil And Rev. Distt. Raigarh Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through District Magistrate, District Raigarh Chhattisgarh.

---- Respondent

For Applicant	:	Shri Abhishek Saraf, Advocate
For State	:	Shri Gary Mukhopadhyay, Dy. Govt. Advocate

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

Order On Board

05/10/2016

1. This revision arises out of order dated 27th August, 2015 passed in Criminal Appeal of juvenile in conflict law. The applicant, at the time of alleged commission of offence on 27.4.2015, was less than 18 years of age and, therefore, entitled to grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "*Act of 2000*").
2. The applicant along with other co-accused is alleged to have caused death of his sister-in-law. It is said in the story of the prosecution that the applicant was living along with his parents, brothers and sister-in-laws in the house and he along with other accused had subjected to cruelty his sister-in-law Lata Bai, in connection with demand of dowry. Prosecution

case is that on 27.4.2015, Lata sustained severe burned injury and succumbed to death. Further case of the prosecution is that after Lata sustained burned injury, she was brought to the hospital and her dying declaration was recorded on 27.4.2015 in which she involved her husband-Dineshwar, mother-in-law, father-in-law as also present applicant, stating that she was being harassed in connection with demand of dowry and other utility items. In the dying declaration, it has been stated that her husband, mother-in-law, father-in-law and brother-in-law, present applicant, set her ablaze by pouring kerosene oil.

3. According to the case of the prosecution itself, the applicant is a juvenile. The applicant moved an application under Section 12 of the Act of 2000 for grant of bail. The application of the applicant was rejected by the Juvenile Justice Board vide order dated 10.8.2015. Aggrieved by the said order, the applicant preferred an appeal under Section 52 of the Act of 2000. Learned appellate Court also dismissed the appeal holding that on the basis of evidence collected against the applicant, a prima facie case of commission of offence is made out and if the applicant is released on bail, he may be exposed to moral and physical danger in the situation which may arise in the village. Learned appellate Court also observed that as the offence is alleged to have been committed by the applicant concerns a social menace, his release may also defeat the ends of justice.
4. Learned counsel for the applicant argues that rejection of applicant's application for grant of bail under Section 12 of the Act of 2000 and dismissal of appeal is illegal. He submits that the considerations which have weighed in the mind of Appellate Court to reject the appeal have no factual foundation. According to learned counsel for the applicant, the approach of the Juvenile Justice Board and Appellate Court is not correct in law inasmuch as, the bail applications are not to be decided on the basis of the nature of allegation, material available, but only on relevant considerations as engrafted under Section 12 of the Act of 2000. He

submits that in the absence of there being any material on record to come to the conclusion that release would likely to bring the applicant in association of any known criminals or expose him to moral, physical or psychological danger, the applicant was entitled to be released. He further submits that the consideration that the offence concerns a social menace cannot be made a basis to come to the conclusion that grant of bail would defeat the ends of justice. The applicant highlighted that grant of bail under Section 12 is rule and rejection is exception for reasons exhaustively enumerated therein. Learned counsel for the applicant further submits that the report of the Probation Officer which has been placed before the Court also indicates that the applicant is juvenile and he is in a need of proper care, he is **scared** and if he is allowed to continue in the observation home, he may sustain further other physiological danger.

5. On the other hand, learned counsel for the State submits that though the applicant is juvenile being less than 18 years of age, the contents of allegation against the applicant are serious and he is involved in commission of heinous offence. According to him, the role alleged to be played by the applicant in the offence also reveals that the applicant was mentally and physically involved in the alleged incident and subjecting his sister-in-law to cruelty and thereafter setting her on fire by pouring kerosene along with other members of the family. He further submits that in the case like this, where there is involvement of the applicant is prima facie made out in view of the dying declaration of the deceased, release of the applicant would defeat the ends of justice.
6. It cannot be disputed at this stage that the applicant is alleged to have committed offence on 27.4.2015 when the earlier Act i.e. Juvenile Justice (Care and Protection of Children) Act, 2000 was in force. Therefore, while considering application for grant of bail, the provision contained under Section 12 of the Act of 2000 and consideration relevant would be required to be examined in order to decide whether present is a fit case

for grant of bail to the applicant under Section 12 of the Act of 2000.

7. The nature, scope and ambit of the statutory scheme of grant of bail to a juvenile, as engrafted under Section 12 of the Act of 2000, has been considered in plethora of decisions. I deem it expedient to refer to some of the decisions, to expound the spirit and object behind Section 12 of the Act of 2000.
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. It cannot be doubted that ordinarily in a case where a juvenile is found to be in conflict with law, while considering his application for grant of bail under Section 12 of the Act of 2000, the juvenile is to be released on bail with or without surety. The course of action which may be adopted by the Board is to either place the juvenile under supervision of a Probation Officer or under the care of any fit institution or fit person. However, three exceptions have been carved out under the provision itself under which a juvenile may not be considered fit for being released and they are as under :
 - A. There are reasonable grounds for believing that the release is likely to bring him in association with any known criminals.
 - B. Reasonable ground for believing that release is likely to expose him to moral, physical or physiological danger.
 - C. That his release would defeat the ends of justice.

The case of the applicant, therefore, is required to be examined on the aforesaid three aspects.

11. In the present case, the application of the juvenile has been rejected observing that if the juvenile is released on bail, it may lead to applicant being subjected to moral and physical torture. However, no material to come to such conclusion has been taken into consideration. This is more in the nature of conjecture and surmises and if I may say so, figment of imagination and nothing more.

It appears that the learned Courts below were more guided by the gravity of allegation and on that basis, it has been recorded that as the offence relates to a social menace, grant of bail would defeat the ends of justice.

It is not a case where there is any material available to form an opinion that in the event of grant of bail, there is likelihood of the juvenile delinquent interfering with the course of justice or likely to abscond from the jurisdiction of the Court, so as to say that grant of bail would defeat the ends of justice. The aforesaid categories are only by way of illustration and not exhaustive. Even though a delinquent may appear to be guilty *prima facie* but he has been especially protected by the provisions contained under the Act of 2000 for reasons of his age and bail has to be granted unless for specific reasons exhaustively enumerated in the provision itself, the application is liable to be rejected. At the time of consideration of bail under Section 12 of the Act of 2000, merit or nature of offence has no relevancy. The language of Section 12 of the Act, using the word “shall” is mandatory in nature and providing *non obstante* clause by using the expression “notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time-being in force be released on bail” shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court; however, with exception to release him on bail if there were reasonable

grounds for believing that his 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. No material or evidence of reasonable ground was shown to believe that juvenile if released on bail is likely to come into association with known criminals or expose him to moral, physical or psychological danger.

12. In the result, the impugned order is set aside. Application under Section 12 of the Act of 2000 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.

13. The revision is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge