

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL REVISION No. 104 of 2016**

Ravinash Tigga S/o Rajesh Tigga Aged About 16 Years R/o Village Shonsh, Police Station Khadgawa, Civil & Revenue District Korea, Chhattisgarh. (Minor) Through His Natural Guardian Represented By His Father Rajesh Tigga S/o Nansay Tigga, Aged About 39 Years, R/o Village Shonsh, P.S. Khadgawa, Civil & Rev. Distt. Korea, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through District Magistrate, Baikunthpur, Police Station Khadgawa, District Korea, Chhattisgarh

---- Non-applicant

For Applicant	:	Shri Anil Gulati, Advocate.
For Non-applicant/State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****26.07.2016**

1. The present Criminal Revision has been preferred challenging the order dated 22.01.2016 passed by the Sessions Judge, Baikunthpur, Distt. Korea, in Criminal Appeal No.04/2016 whereby the appeal preferred by the Applicant under Section 12 of the Juvenile Justice (Care And Protection of Children) Act 2000 (hereinafter 'the Act, 2000') was rejected dismissing the appeal against the order of rejection of bail by the Court below on 06.08.2015 in Crime No. 212/2014.
2. Learned Counsel for the Applicant submits that the present Applicant is in the Observation home since 31.12.2014 i.e. he has remained in the observation home for one year and seven months. He further

submits that as per Section 12 of the Act, 2000, for the purpose of releasing the juvenile on bail, the gravity of offence is not to be seen. It is also submitted that both the courts below have not discussed anything so far as merits of the case is concerned. Therefore, it is a fit case where the applicant be enlarged on bail.

3. However, learned counsel appearing for the State opposes the bail application on the ground that taking into consideration the nature of offence committed by the applicant, it is not a fit case where the applicant be enlarged on bail. State counsel also refers to the report of Probationary Officer who too has given a report stating that applicant is in the habit of wrong company.
4. Counsel for the applicant further relies upon the judgment of this court in case of *Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh*¹ 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 @ Bhurat & 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

¹ 2011 (1) CGLRW-140

appears to the Board that either of the three conditions mentioned in Section 12 of the Act are existing.”

5. 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.
6. Taking into consideration the rival contentions put forth by the counsel for the parties, what is an admitted position is the fact that the applicant along with two other accused persons is said to have gang raped the prosecutrix to the nearby forest on the basis of which case has been registered and since then the applicant is in the observation home.
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.

² 2006 (1) CGLJ 305

³ 2001 Cri.LJ 214

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 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. That means, in the event the circumstances surrounding the juvenile shows that upon his release from the observation home can lead to exposing the juvenile to both moral as well as psychological danger, the Court may refuse to release the juvenile on bail.

8. In the instant case also taking into consideration the report of the Probationary Officer that the applicant is in the habit of being in the bad company, and taking note of the offence committed by the juvenile cannot be brushed aside. Therefore, in the opinion of this Court, if the applicant is released on bail, there is all chances of his coming into association with known bad company which would further expose him to moral as well as psychological danger and if

that happens on his release, then the ends of justice would get defeated.

9. For the aforesaid reasons, this Court is of the opinion that the findings given by the Court below does not warrant any interference at this juncture and the present case does not fall within the ambit of Section 12 of the Act, 2000, but would fall within the exception carved out in the said section.
10. Accordingly, no good case has been made out for allowing the instant Criminal Revision calling for interference with the order under challenge.
11. The Criminal Revision being devoid of merit, the same is dismissed.

SD/-

(P. Sam Koshy)
Judge