

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 422 of 2016**

Arpit Patel S/o Rajkumar Patel Aged About 16 Years R/o Bhaisadafai Haldibadi, Police Station - Chirmiri, Tahsil - Khadganwa, Distt. Korea Chhattisgarh Through Natural Guardian Mother Smt. Bramhakumari Patel W/o Rajkumar Patel, Aged About 35 Years, R/o Bhaisadafai Haldibadi, Police Station - Chirmiri, Tahsil - Khadganwa, Distt. Korea Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Chirmiri Distt. Korea Chhattisgarh

---- Non-applicant

For Applicant	Shri Awadh Tripathi, Advocate.
For Non-applicant/State	Shri Rajendra Tripathi, Panel Lawyer.

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****19/07/2016**

Heard learned Counsel for the Applicant and the Non-applicant.

2. The present Criminal Revision has been preferred challenging the order dated 25.04.2016 passed in Criminal Appeal No.32/2016 by the Sessions Judge, Baikunthpur, district – Korea (C.G.). The Sessions Judge has vide impugned order has affirmed the order of the Juvenile Justice Board, Baikunthpur (Korera) rejecting the bail application on 17.03.2016 in Criminal Case No. 35 of 2016.

3. Learned Counsel for the Applicant submits that the Applicant admittedly is a juvenile, aged about 16 years, and the prosecutrix also being a juvenile, aged about 14 years, were having love affair for quite some time for about 3-4

years; that the offences which have been charged against him are under Sections 363, 366, 120(B), 343 and 376/34 IPC and also Section 4 and 6 of Protection of Children from Sexual Offences Act. That, there is no criminal antecedent of the present applicant. Rather the act on his part was a jolly of youth on the part of both the accused as well as the victim. Further, that he is in Observation Home since 30.01.2016 and therefore he may be enlarged on bail taking into consideration the provisions of Section 12 of the Juvenile Justice Act.

4. Counsel for the applicant further relies upon the judgment of this court in case of Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh¹ 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 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

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2011 (1) CGLRW-140

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. Considering the total facts and circumstances of the case particularly the fact that the Applicant being a juvenile is already in custody for more than five months and also considering the nature of offence and the ratio of law laid down in Dayasagar (Supra), it is a fit case where he can be released on bail.

7. Accordingly, the Criminal Revision is allowed. The impugned order dated 25.04.2016 is set aside. It is directed that the Applicant shall be released on bail on his and one of his guardian furnishing a personal bond for the sum of Rs.25,000/- with two sureties in the like sum to the satisfaction of the concerned Trial Court, for his appearance as and when directed.

Sd/-

(P. Sam Koshy)
JUDGE

kishore

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214