

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 493 of 2016

Mohammad Sohail S/o Mr. Mohammad Ramzaan, aged about 15 years,
R/o village Aadhari Nawagaon, Tehsil and District – Dhamtari (CG).

... Applicant

Versus

State of Chhattisgarh, through District Magistrate, Dhamtari (CG).

... Non-applicant

For Applicant	:	Shri Achyut Tiwari, Advocate.
For Respondent-State	:	Shri Anupamd Dubey, Deputy Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/06/2016

1. Heard learned Counsel for the Applicant and the Non-applicant.
2. The present Criminal Revision has been preferred challenging the order dated 02.05.2016 passed in Criminal Appeal No.45/2016 by the Sessions Judge, Dhamtari. The Sessions Judge has vide impugned order has affirmed the order of the Juvenile Justice Board, Dhamtari rejecting the bail application on 27.04.2016 in Criminal Case No. 23 of 2016.
3. Learned Counsel for the Applicant submits that the Applicant admittedly is a juvenile, aged about 15 years, and that the offences which have been charged against him are under Sections 457 and 380 of IPC. He further submits that allegation against the applicant is that he has committed theft in a betel shop and on memorandum, there is a recovery of certain packets of Cigarette and Pan Masala made and that these articles were also not in the exclusive possession of the applicant. That, there is no criminal antecedent of the present applicant. Further, that he is

in custody since 11.04.2016 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 @ Bhrat & 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 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 two months and also considering the nature of offence and the ratio of law laid down in Dayasagar (Supra), this Court is

1 2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214

of the opinion that it is a fit case where the applicant can be released on bail.

7. Accordingly, the present Criminal Revision is allowed. The impugned order dated 02.05.2016 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**