

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 604 of 2016

- Uday S/o Birjan Aged About 17 Years & 10 Months, Through - Natural Guardian (Father) Birjan, S/o Late Lotan, Aged About - 60 Years, R/o Village - Daridih, P.S. - Raghunathnagar, Tehsil - Wadrafanagar, Revenue & Civil District - Balrampur - Ramanujganj Chhattisgarh

---- Applicant

Versus

- State of Chhattisgarh, Through District Magistrate, Balrampur, Revenue & Civil District - Balrampur - Ramanujganj Chhattisgarh

---- Respondent

For applicant : Shri Surfaraj Khan, Advocate
For Respondent/State : Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order On Board By

04/07/2016

1. Heard learned counsel for the applicant and non-applicant.
2. The present criminal Revision has been preferred challenging the order dated 17/06/2016 passed in Criminal Appeal No. R-19/2016 by the Additional Sessions Judge/Juvenile Justice Court, Ramanujganj, District Balrampur-Ramanujganj. The Additional Sessions Judge/Juvenile Justice Court has vide impugned order has affirmed the order of the Juvenile Justice Board, Balrampur rejecting the bail application on 11/05/2016.
3. Learned counsel for the applicant submits that the prosecutrix and the the present applicant both are aged about 17 years and that both were studying together and were having love affairs between them. They had also established physical relationship between with each other. According to him what they did was a jolly of youth inasmuch as both

the applicant and the prosecutrix is concerned. Learned counsel for the applicant also submits that he does not have any criminal background and he is also not a person who is said to be in bad company. In case if he is not released then he would be morally or psychologically endanger. He further submits that taking into consideration the provision of Section 12 of the Juvenile Justice Board the present applicant ought to have been released on bail in the peculiar facts and circumstances of the case. Learned counsel also submits that Probationary Officer is also given report in favour of the present applicant in respect of his conduct otherwise being normal.

4. Learned State counsel however opposed the bail of the applicant on the ground that the prosecutrix is a juvenile and the act committed on his part was one of Section 376 of I.P.C., which is apparently grave and serious, therefore, he should not be released on bail at this juncture.
5. Counsel for the applicant further relies upon the judgment of this court in case of ***Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh 2011 (1) CGLRW-140*** 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."

6. The said observations of the court was based upon the decisions rendered in case of ***Akhilesh Kumar Vs. State of Chhattisgarh, 2006 (1) CGLJ 305*** as well as judgment delivered by the MP High Court in case of ***Rahul Mishra Vs. State of Madhya Pradesh, 2001 Cri.LJ 214.***
7. 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 2½ 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.
8. Accordingly, the Criminal Revision is allowed. The impugned order dated 17/06/2016 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