

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 649 of 2016

1. Rajendra Yadav @ Dauwa S/o Kumar Yadav Aged About 17 Years The Student Through Legal & Natural Guardian, Father Kumar Yadav, Son Of Kartik Ram Yadav, Resident Of Village Datrengi, Police Station & Tahsil Palari, Civil & Revenue District Baloda Bazar - Bhatapara Chhattisgarh
2. Kumar Yadav S/o Kartikram Yadav Aged About 50 Years (Added As Applicant No. 2 As Mentioned In Judgment Of Appellate Court The Legal & Natural Guardian Of Juvenile Rajendra Yadav) R/o. Village Datrengi, Police Station & Tahsil Palari, Civil & Revenue District Baloda Bazar - Bhatapara Chhattisgarh

---- Petitioners

Versus

- State Of Chhattisgarh Through : Station House Officer, Police Station Palari, Civil & Revenue District Balod Bazar - Bhatapara Chhattisgarh

---- Respondent

For Applicants
For Respondent/State

Shri JR Verma, Advocate.
Shri Vaibhav A Gowardhan, Panel Lawyer.

SB: Hon'ble Shri Justice P.Sam Koshy

Order On Board

15/07/2016

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

2. The present Criminal Revision has been preferred challenging the order dated 27.06.2016 passed in Criminal Appeal No.47/2016 by the IInd Additional Sessions Judge, Baloda Bazar. The Sessions Judge has vide impugned order has affirmed the order of the Juvenile Justice Board, Baloda Bazar rejecting the bail application on 25.05.2015 in Criminal Case No. 64 of 2016.
3. Learned Counsel for the Applicants submits that the Applicant No.1

admittedly is a juvenile, aged about 17 years, and the prosecutrix also being a juvenile of the same age were having love affair for a considerable long period; that the offences which have been charged against him are under Sections 366 and 376 IPC and also under Section 4 of the Protection of Children from Sexual Offences Act. That, there is no criminal antecedent of the present applicant. Further, that he is in jail since 14.05.2016 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

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2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

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), it is a fit case where he can be released on bail.

7. Accordingly, the Criminal Revision is allowed. The impugned order dated 27.06.2016 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

inder