

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.892 of 2016**

- Shailendra Sahu S/o Govind Sahu Aged About 17 Years R/o Village - Ranijaraud, Police - Station - Suhela, Tahsil - Simga, District - Balodabazar - Bhatapara Chhattisgarh Through Its Shrawan Kumar Sahu S/o Govind Sahu Aged About 24 Years, R/o Village - Ranijaraud, Police - Station - Suhela, Tahsil - Simga, District - Balodabazar - Bhatapara Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh Through District Magistrate Balodabazar District - Baloda - Bazar Bhatapara Chhattisgarh

---- Respondent

For Petitioner : Shri B. L. Sahu, Advocate
 For Respondent/State : Shri D. R. Minz, Dy.GA

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****24/10/2016**

Heard.

2. This petition has been filed arising out of order dated 22-08-2016 passed in Criminal Appeal No.75/2016, by which, the appellate authority has rejected the appeal arising out of order rejecting applicant's application under Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2000 (In short "the Act of 2000") as existed at the time of passing of order by the Juvenile Justice Board.

3. The applicant is alleged to have been involved in the commission of offence under Section 302, 201 & 120-B of IPC on the allegation that the main

accused-Roshan Sahu, who wanted to grab the property of his grandmother -Sukhiya Sahu, murdered Sukhiya Sahu and threw the dead body in the pond. Allegation is that the applicant and some other accused are also involved in the alleged commission of offence.

4. Learned counsel for the applicant submits that the main accused-Roshan Sahu and co-accused Govind Sahu, both of them have been released on bail vide order dated 30-08-2016 passed in M.Cr.C.No.4966 of 2016 and order dated 03-10-2016 passed in M.Cr.C.No.6034 of 2016 respectively. Learned counsel for applicant argued that the applicant being juvenile is in conflict with law, is liable to be released in view of the provisions contained in Section 12 of the Act of 2000, which was in force at the time of allegation of commission of offence. There is no material to come to the conclusion that release of the applicant would either bring him in association with known criminal or expose him to psychological danger or otherwise would defeat the ends of justice. It is argued that in the matter of juvenile, in conflict with law, grant of bail is a matter of course, unless the Court finds extra-ordinary and exceptional reason, for which release would not be permissible on the considerations specified under Section 12 of the Act of 2000.

5. On the other hand, learned State counsel submits that the applicant has been alleged of commission of offence under Section 302 of IPC and it has been found that the applicant was involved in the commission of offence along with other accused in this case, therefore, the Juvenile Justice Board and the appellate Court have rightly rejected the application of the applicant, because if he is released, likelihood of he coming in association with known offender, cannot be ruled out. It is submitted that the appellate Court has also taken into consideration that as the applicant is presently being kept in the Observation

Home, where there is remarkable development of his moral and character values, hence, it would be proper to keep the applicant in the Observation Home.

Though time was granted to the learned State counsel but no reply was filed. The impugned order indicate that the sociological report does not contain any adverse remarks against the applicant.

6. In the considered opinion of this Court, the Juvenile Justice Board and the appellate Court have completely misconstrued the object of Section 12 of the Act of 2000 as it was in force at the time of alleged commission of offence.

7. The scope and object of provision regarding grant of bail to a Juvenile as envisaged under Section 12 of the Act of 2000 came up for consideration before the Single Judge of this Court in the case of ***Bharat @ Bhurat & Another vs. State of CG, 2006 (1) CGLJ 72***, 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 of 2000 are existing. In the case of ***Akhilesh Kumar vs. State of CG, 2006(1) CGLJ 305***, dealing with the case of a Juvenile, this Court while examining the correctness and validity of order rejecting application of the applicant filed under Section 12 of the Act of 2000 on the ground that release would defeat the ends of justice,

found that though the Juvenile Justice Board had dismissed the bail application on the ground that release would defeat the ends of justice but how the release would defeat the ends of justice has not been stated. In that view of the matter, this Court came to the conclusion that the orders passed by the Court below are not sustainable in the eye of law.

8. In the case of ***Rahul Mishra vs. State of MP, 2001 Cr.L.J. 214***, the High Court of M.P. has considered the provisions contained in Section 12 of the Act of 2000 and held that the words notwithstanding anything contained in the Code of Criminal Procedure, 1973, would indicate that the considerations which are germane for granting or refusing bail to persons who are not juvenile delinquent shall not come into play for granting or refusing bail to Juvenile. It was also held that the words “ends of justice” should be confined to those facts which show that the grant of bail itself is likely to result in injustice. The Juvenile delinquent may appear to be guilty prima facie but he is especially protected by the Act and is favourably considered for grant of bail. From the aforesaid decisions and the law propounded by Their Lordships in various cases, it is clear that ordinarily bail is required to be granted to a Juvenile in view of the provisions contained in Section 12 of the Act of 2000. It is only when the Court finds that the grounds therein are made out that the Court shall reject the application.

9. In the present case, as the impugned order reveals, the sociological report in respect of the applicant has been shown to be favourable to him. There is nothing in the report which indicates that in case of release of Juvenile, he will come in association with known criminal. The only finding recorded by the learned appellate Court is that if the applicant is released, he is likely to abscond or may commit another offence or tamper with prosecution witnesses. This finding of the appellate Court is based on what has been stated by the

police. To say the least, this hardly constitutes material to come to the conclusion that release would bring the applicant in association with known criminals. In order to come to such conclusion, there has to be very clinching and cogent material before the Juvenile Justice Board and such kind of apprehension that upon release, the accused is likely to commit offence or abscond, cannot be equated with the material so as to warrant conclusion that the release would bring the Juvenile in association with known criminals. Therefore, the finding in this regard are without any relevant material.

10. The other ground in the order, if I may say so, is wholly extraneous, in consideration. What the trial Court has observed in the order to reject the application is that the applicant's moral and character development is favourable in the observation home, therefore, it would be proper to continue the applicant in the Observation Home. Consequently, on that basis, it has jumped to the conclusion that release of the applicant-Juvenile would result in suffering from moral, physical or psychological danger. Merely because, the applicant is being protected in accordance with law while being kept in the observation Home, no comparative examination can be made. The proper approach in this case is not on comparative basis but on the basis of independent material on following aspect as to whether in the event of release:-

(A) It would bring the applicant in association with criminals and expose him to physical or psychological danger.

(B) Otherwise, it would defeat the ends of justice.

If there is no such material before the Juvenile Justice Board, the Juvenile has to be granted bail under Section 12 of the Act of 2000, what has been clearly mandated under the law. Therefore, inference drawn on the basis of the treatment being meted out in the Observation Home and apprehensions are not

well founded under the law.

11. Learned counsel for the applicant has brought to the notice of the Court that the main accused and other accused, who are major have already been granted bail mainly taking into consideration that the persons who are stated to be witnesses of the incident have not supported the case of the prosecution. Therefore, in view of the aforesaid facts and circumstances, this Court find no material warranting conclusion that the release of the applicant either would bring in association with known criminals or subject him to psychological danger or in any manner, defeat the ends of justice.

12. In the result, the revision is allowed. The impugned order passed by the appellate Court as well as by the Juvenile Justice Board are hereby quashed. The applicant-Juvenile shall be released on bail forthwith on furnishing personal bond in the sum of Rs.10,000/- by the father of the applicant and in his absence, any other member of the family for his protection as and when required, to the satisfaction of the Juvenile Justice Board, for his appearance before the Board on all dates of trial.

SD/-
(Manindra Mohan Shrivastava)
Judge