

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 814 of 2015

1. Kamesh Kumar S/o Rambharosha Sahu, aged about 17 years (Minor) through natural guardian father Rambharosha Sahu R/o village Matra, Police Station Nandini, District Durg, CG

Presently residing at Near Shiv Mandir, Rajendra Nagar, Ward No. 1, Urla, Police Station Urla, Raipur, District Raipur, CG.

---- Applicant

Versus

1. State of Chhattisgarh through District Magistrate, Police station – Urla, District Raipur, CG

---- Respondent

For Applicant:	Shri Pankaj Agrawalj, Advocate
For Respondent/State:	Shri Adil Minhaj, PL

Order On Board by Pritinker Diwaker, J

11/01/2016

On mention being made, this case is taken up for being decided finally.

This revision petition has been filed by the applicant against the order dated 7.9.2015 passed by Additional Sessionsl Judge (FTC) Raipur in Criminal Appeal No. 137/2015 dissmising the appeal preferred by him against the order dated 11.8.2015 passed by the Principal Magistrate, Juvenile Justice Board, Raipur in Criminal Case No. 201/2015.

2. As per the case of prosecution, on 19.3.2015 the applicant took away the prosecutrix aged about five years and committed forcible sexual intercourse with her. On the basis of the report lodged by the father of the prosecutrix, the case was registered agaisn the applicant under Section 376 IPC and sections 4, 6 and 8 of Protection of Children from Sexual Offences Act, 2012. The appliant filed an application before the Principal Magistrate, Juvenile Justice Board, Raigarh under Section 12 of the Juvneile Justice (Care & Protection of Children) Act , 2000 (for short the “Act of 2000”) for

grant of bail which was rejected on 11.8.2015 on the ground that if released on bail, he may influence the witnesses. The order of the Juvenile Justice Board, on appeal, has come to be confirmed by the order impugned. Hence this revision.

3. Counsel for the applicant submits that both the Courts below have erred in law in rejecting the bail application as also the appeal filed by the applicant. He submits that the provisions of Section 12 of the Act of 2000 have been completely ignored by both the Courts below. According to the counsel for the applicant the report of the Probation officer does not indicate anything against the applicant, rather it says that the applicant is a student of class X and he is average at studies. Referring to the report, counsel for the applicant further submits that according to the people of the locality, conduct of the applicant is good and that he co-operates his parents in the domestic work. Further referring to the said report, it is submitted that the applicant lacks the proper moral guidance required for the adolescents and for this only the alleged offence has taken place by him. Report of the Probation Officer further says that after realising his act the applicant is repentant for the same and that there is improvement in his attitude. According to the report, the applicant takes interest in social activities and looking to his constructive approach, he has been made the representative of the disciplinary committee. Lastly, the report states that keeping in mind the paramount interest of the applicant, one opportunity is required to be given to him.

4. State counsel however supports the orders impugned passed by the Courts below and submits that the application for release of the applicant on bail and then the appeal preferred subsequently have rightly been dismissed and there is no infirmity or illegality in the same.

5. Heard counsel for the parties and perused the documents on record.

6. Before drawing any conclusion regarding correctness or otherwise of

the orders impugned, glance of the relevant provisions such as Section 12 of the Act of 2000 becomes necessitous, which is reproduced as follows:

“Section 12 : Bail of Juvenile. - (1) When any person accused of a bailable or non bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer in charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.”

A bare reading of section 12 (1) makes it clear that any person accused of a bailable or non bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force be released on bail with or without surety. It further says that such person shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

7. Similarly, Section 13 of the Act of 2000 reads as under:

“13. *Information to parent, guardian or probation officer.*- Where a juvenile is arrested, the officer incharge of the police station or the special juvenile police unit to which the juvenile is brought shall, as soon as may be after the arrest, inform-

(a) the parent or guardian of the juvenile, if he can be found of such arrest and direct him to be present at the Board before which the juvenile will appear; and

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile and other material circumstances likely to be of assistance to the Board for making the inquiry.”

8. In the case in hand the report of the probation officer says that the applicant is a student of class X; that he is average at studies; that his conduct is good; that he takes interest in constructive cultural activities; that he has realised his guilt and is repentant for the same; that there is improvement in his attitude and that looking to his overall interest, one chance is required to be given to him. The report nowhere says that if the applicant is released on bail, he would come into association with any known criminal or it would expose him to moral, physical or psychological danger or would it defeat the ends of justice.

9. Thus considering the facts and circumstances of the case and the report of the Probation Officer, present revision is allowed. Orders impugned are hereby set aside. Applicant is directed to be released on bail on his guardian or parents furnishing a bond in the sum of Rs. 10,000 with one surety for the like sum to the satisfaction of the concerned Juvenile Justice Board and also on filing an affidavit by him/her before the said Board to the effect that:

- (i) he shall be responsible for well-being of his son/the applicant,
- (ii) he shall ensure that the applicant continues his studies and does not fall into bad company, and
- (iii) he shall report to the concerned Juvenile Justice Board on 28.3.2016 and thereafter once in two months on the dates fixed by the Board regarding the progress made by his son/the applicant, till the applicant attains/completes the age of 18 years.

10. Revision allowed.

Sd/-

(Pritinker Diwaker)
Judge