

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 912 of 2015

1. Birendra Ekka son of Mehilal Ekka, aged about 14 years, Caste Uraon, Occupation – Cultivator & student, resident of village Kotaktal, Police Station Patna, Tahsil Baikunthpur, District Korea (CG), minor through natural guardian Fathr Mehilal son of Noharsai, aged about 58 years, Caste Uraon, Occupation Cultivator, resident of village Kotadol, Police Station Patna, Tahsil Baikunthpur, District Korea, CG

---- Applicant

Versus

1. State of Chhattisgarh through Station House Officer, Police Station Patna, District Korea (CG)

---- Respondent

For Applicant: Shri Pushpendra Kumar Patel, Advocate

For Respondent/State: Shri Adil Minhaj, PL

Order On Board by Pritinker Diwaker, J

22/01/2016

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 14.10.2015 passed by Additional Sessionsl Judge (FTC) Baikunthpur in Criminal Appeal No. 36/2015 dismissing the appeal preferred by him against the order dated 17.9.2015 passed by the Juvenile Justice Board, Baikunthpur.

2. As per the case of prosecution, on 23.7.2015 the accused/applicant and two other family members namely Chhotelal and Nilesh Ekka caused injury to Jaljit and Paras. All of them are being prosecuted in crime No. 126/2015 for the offences punishable under Sections 341, 294, 506-B, 323, 324 and 307 IPC. The application prefered by the applicant in Juvenile Justice Board, Baikunthpur under Section 12 of the Juvneile Justice (Care & Protection of Children) Act, 2000 (for short the “Act of 2000”) for grant of bail

was rejected on 17.9.2015. The order of the Juvenile Justice Board, on appeal, has also been confirmed by the order impugned. Hence this revision.

3. Counsel for the applicant submits that main accused Chhotelal and Nilesh have already been granted bail by this Court under section 439 Cr.P.C. whereas the present applicant being minor is in juvenile home since 12.8.2015. He 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 having been influenced with his father and elder brother, the applicant has committed the offence otherwise he never indulged in such offences. Referring to the report of the Probation Officer, he further submits that it would be just and proper if by giving sympathetic consideration the accused/applicant is released on bail and if the same is done he is not likely to repeat the offence.

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 or his family members had no previous criminal record against

them and that after being influenced by his father and elder brother, the applicant committed the offence alleged against him. Report further says that if the sympathy is shown and he is released on bail, there is no likelihood of his repeating the act. 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 **31.3.2016** 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