

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 915 of 2016**

- Bajrang @ Bhurwa Dhritlahare S/o Sahasram Dhritlahare Aged About 17 Years R/o Village Farsadih, Police Station Lawan, Police Station Kasdol, District Baloda Bazar- Bhatapara, Chhattisgarh. (Through Natural Guardian) Father Sahasram Dhritlahare, Aged About 60 Years, S/o Ganeshram, R/o Village Farsadih, Police Station. Lawan, Police Station Kasdol, District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh Through District Magistrate Baloda Bazar, Police Station Palari, District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Respondent

 For Applicant : Mr. Sanjay Patel , Advocate
 For State : Mr. Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava**CAV ORDER****Delivered on : 06 /12/2016**

1. This petition has been filed by the applicant assailing correctness and validity of order dated 15/09/2016 passed in appeal whereby the order of rejection of application for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000') has been affirmed.
2. Learned counsel for the applicant submits that grant of bail under Section 12 of the Act of 2000 is a Rule, but the Court below has committed gross illegality in rejecting the application for bail, swayed by the nature of allegation and ignoring that the applicant is a juvenile and there is nothing on record to justify the rejection of his application for grant of bail as provided under Section 12 of the Act of 2000.
3. On the other hand, learned State counsel opposes the revision petition.
4. 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 a learned 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 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.

5. 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 a 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.

6. Grant of bail to a juvenile, in conflict with law, is engrafted under Section 12 of the Act of 2000. In the present case, the applicant has been subjected to proceedings and application for grant of bail has been moved under Section 12 of the repealed Act of 2000, as alleged act is said to have been committed when the Act of 2000 was in force. The Act of 2000 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2015, (for short 'the Act of 2015') Act No.2 of 2016 which received the assent of the President on the 31st of December, 2015 and Act published in the Gazette of India (Extraordinary) Part II Section 1 dated 01/01/2016 pages 1 – 44.

On a comparative reading of provisions contained in Section 12 of the old and new Act, the provisions are *pari materia*. The provisions and scheme of grant of bail to a Juvenile, in conflict with law which existed in the old Act has been continued in the new Act which is reproduction of provisions contained in Section 12 of the Act of 2000.

7. The legislature, in its wisdom, has made grant of bail to a juvenile a rule irrespective of nature and gravity of allegations alleged to have been committed by a juvenile. Present is a case of a juvenile who is less than 16 years of age. Therefore, in this case, no case arises for carrying out assessment in terms of provisions contained in Section 15 of the Act of 2015. In respect of the applicant, an enquiry is to be made by the Juvenile Justice Board. Therefore, in such a situation, the Board and the appellate authority were obliged under the law to consider prayer for grant of bail, keeping in view the legislative mandate engrafted under Section 12 of the Act of 2000.
8. It has been held in catena of decisions that nature and gravity of offence is not a relevant consideration while deciding application for grant of bail filed by juvenile in conflict with law. Not only that, as the language of Section 12 goes to show, grant of bail is rule and rejection is exception only when one of the grounds enumerated under Section 12 of the Act are made out, which are as under -

- A. That release of a juvenile is likely to bring him in association with any known criminals, or
- B. That his release is likely to expose him to moral, physical and psychological danger, or
- C. That his release would otherwise defeats the ends of justice.

The grounds which have been stated under Section 12 of the Act of 2000 are exhaustive and not inclusive so as to say that the application could be rejected for grounds other than those, which have been mentioned in Section 12 of the Act of 2000. When application under Section 12 of the Act of 2000 is filed before the Board for grant of bail, approach has to be different from the approach of the Courts while considering the application for grant of bail under Section 437, 438 and 439 CrPC. The legislature has purposely gave overriding effect of the provisions of the Act of 2000 by clearly mentioning in Section 12 (1) of the Act of 2000 that “notwithstanding anything contained in Code of Criminal Procedure of 1973 or any other law, for the time being in force, the Juvenile shall be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person.” By way of proviso, the exceptional grounds which could be made a basis to reject the application have been exhaustively mentioned. Therefore, the approach while considering the applications for grant of bail under Section 437, 438 and 439 CrPC is as to why the applicant should be granted bail whereas while considering the application for grant of bail made on behalf of a juvenile, in conflict with law under the provisions of the Act of 2000 or for that matter, under the provisions of the Act of 2015, the approach should be as to why bail should be refused.

- 9. The Juvenile Justice Board and the appellate authority are required to look more into aspects which may be relevant with reference to three grounds namely likelihood of association with known criminals, likelihood of physical, mental and psychological danger and likelihood of defeating the ends of justice, rather than searching into merits of the case or the nature and gravity of allegations.

The report of a probation officer assumes great importance because it contains social investigation report of the child in conflict with law. The Special Juvenile Police Unit and the police station where the offence has been registered, may also place before the Juvenile Justice Board, any material relevant for deciding whether any ground is made out to reject the application which are mentioned in the provisions contained in Section 12 of the Act of 2000. Once, those grounds are not made out, the only consequence is release of the juvenile. Rejection of application for grant of bail by making a detailed enquiry into the nature and gravity of allegations would be completely contrary to the statutory mandate of Section 12 of the Act of 2000.

10. If the order passed in appeal is examined under the statutory scheme of the Act of 2015 as stated here-in-above with regard to grant of bail which is similar to statutory scheme of grant of bail under Section 12 of the repealed Act of the Act of 2000, it is found that the main operative reason for rejecting the application for grant of bail is that the applicant is in the habit of taking intoxicating material and is used of it. The other reason, which has been assigned by the Court below is that during the pendency of the case, the brother of the applicant has filed an affidavit for compromise written by the guardian of the prosecutrix wherein it has been stated that he does not want to take further process. Attempt has been made to temper with the prosecution witnesses. Under the statutory scheme of the Act, 2000, ordinarily the bail is required to be granted. However, the three conditions, examined here-in-above, show that in a case where the Board confirms that release is likely to bring him in association with any known criminals, or that his release is likely to expose him to moral, physical and psychological danger or his release would otherwise defeats the ends of justice, the bail may be rejected.
11. If the aforesaid conditions applied in the present case, looking to the material on record that the applicant is in habit of taking intoxicating material and is used of it and further that attempts have been made to temper the prosecution witnesses by filing affidavit of the guardian of the prosecutrix, the likelihood of tempering the prosecution witnesses

cannot be ruled out. In these circumstances, release may also defeat the ends of justice. Apart from this looking to the habit of taking intoxicating material and that the juvenile appears to be addicted, his release is likely to expose him to moral, physical and psychological danger also.

12. Therefore, in these circumstances, impugned order cannot be found fault with. The revision petition is therefore, dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge