

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1161 of 2015**

1. Manish Kumar Thakur S/o Bhagwati Thakur, aged about 16 years, minor represented through guardian mother Kala Bai W/o Bhagwati Thakur, aged about 45 years, R/o Udiya Mohalla, Prabhat Nagar, Lalbag, Tahsil & District Rajnandgaon Chhattisgarh. (As per Order Dtd. 02/11/2015 Description of Applicant).

---- Applicant

Versus

1. State of Chhattisgarh through District Magistrate, Rajnandgaon, (P.S. Dongargarh) District Rajnandgaon Chhattisgarh.

---- Non-applicant

For Applicant – Shri Malay Kumar Bhaduri, Advocate.

For Non-applicant – Shri S.C.Khakhariya, Deputy Advocate General.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****05/05/2016**

1. Heard on I.A.No.2/2016, application for urgent hearing.
2. On due consideration, the same is disposed of.
3. With the consent of the parties, heard the matter finally.
4. Brief facts required for disposal of the instant criminal revision are that Crime No.176/2015 has been registered against the present applicant, juvenile, along with co-accused Kamlesh Verma by Dongargarh police for the offence under Sections 365, 364, 302, 201, 34 of the IPC. Police had filed charge sheet against the present applicant before the Juvenile Justice Board and charge sheet was filed separately against the co-accused before regular Court. The applicant had filed an application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act, 2000). The Juvenile Justice Board vide order dated 16-09-2015 dismissed the said application of bail and held that if the applicant be granted bail, he may come into contact of criminals, hence, it would not be appropriate to give the custody

of the applicant to his parent. Against the said order the applicant preferred Criminal Appeal No.67/2015 before the Sessions Judge, Rajnandgaon, C.G. The learned Sessions Judge vide order dated 02-11-2015 affirmed the order passed by the Juvenile Justice Board and held that at the instance of the memorandum recorded by the co-accused, mobile of deceased Suraj Kumar Verma, knife used for murder of Suraj Kumar Verma and the motorcycle of the co-accused were seized at the instance of the present applicant. The present applicant was not present in his house on the date of incident, his parents not informed anybody for his absence. The applicant was in contact of person having criminal antecedent and mentality, it goes to show that there was no any control of the parents on the said juvenile. The learned Sessions Judge observed that if bail is granted, the applicant may continue with the company of criminals, hence, dismissed the said appeal. Against the said order, the applicant preferred the instant criminal revision under Section 53 of the Act, 2000 wherein it is submitted that the application filed on behalf of the applicant was wrongly rejected. There was no any eye-witness to the incident, the case is entirely based on the circumstantial evidence. Only on the memorandum statement of the accused, the applicant has been implicated in the matter. There is no any adverse report of the probationary officer in the matter; there is no material to show that there is any likelihood to bring him into association with the known criminals or to expose any moral, physical or psychological danger or his release would defeat the ends of justice. The applicant is a permanent resident and there is no chance of his absconding or tempering the prosecution witnesses. Hence, he may be granted bail during pendency of the said criminal case against him.

5. Heard learned counsel for the parties and perused the record.

6. Learned counsel for the applicant submits that there is no any evidence against the present applicant. Only the memorandum statement of other co-accused was recorded and at the instance of the present applicant one mobile, knife and one motorcycle of the co-accused were seized. There is no any FSL report. It is not proved that the mobile belongs to the deceased. There is no any report of probation officer. It is further submitted that postmortem report of the deceased does not supports the case of the prosecution that he was given poison in liquor and thereafter injuries were inflicted by the knife. There is no any report of probation officer that after his release the applicant may come in company of known or unknown criminals, no presumption can be inferred for the same. The case of the present applicant is different. Points for consideration of case of a juvenile is different with the case of an adult accused; it is not required to value the element of seriousness of the offence in a case of juvenile. Hence, it is submitted that the applicant may be released on bail.

7. Per contra, learned counsel for the State/respondent opposes the petition and submits that both the courts below held that if the applicant is granted bail he may come into contact of criminals and with this, both the courts below not found it appropriate to give the custody to the parents thereby rightly dismissed the application for bail and the criminal appeal. Looking to the other facts, the order passed by both the courts below are appropriate. Hence, the instant criminal revision may be dismissed.

8. For the present matter, Section 12 (1) of the Act, 2000 is relevant which reads as under:-

“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.”

9. From perusal of the above provision of law, it appears that if there are reasonable grounds to believe that release is likely to bring him into association with known criminal or expose him to moral, physical or psychological danger and his release would defeat the ends of justice, the court may refuse the prayer of bail.

10. In the present case, the applicant, the juvenile, is facing a trial under relevant clause for the offence under Sections 365, 364, 302, 201, 34 of the IPC. At the instance of the applicant certain articles are seized, which goes to show prima facie circumstantial evidence against the applicant. Both the courts below held that there are possibilities that after release the applicant may come into contact of criminals. The appellate Court further held that since on the night of the incident, the applicant was not in his home, even then, his parents not reported the matter to anyone and also the applicant was in close contact of person having criminal character, it goes to show that the parents are not having any control over the applicant; thereby both the courts believed that there are chances if bail is granted that the applicant may come into contact of criminals. On due consideration, I do not find any reason to disagree with the grounds and facts discussed with the orders passed by the courts below. Looking to the entire facts, I am of the considered opinion that both the courts below while applying the lawful discretion and for the reasons mentioned refused the bail to the applicant.

11. The instant criminal revision is not worth to be allowed. Consequently, the instant criminal revision is hereby dismissed.

12. The criminal revision dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE