

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.510 of 2015**

- Sukhiram S/o Late Raje Singh Baiga Aged About 13 Years Occupation- Student, Minor Through Guardian- Uncle Sukalu S/o Dongaraha, Aged About- 50 Years, R/o Village- Toraiya Bahra, Police Station- Chilphi, Tahsil- Bodla, Civil And Revenue District- Kabirdham, Chhattisgarh

---- Petitioner**Versus**

- State Of Chhattisgarh S/o Through: District Magistrate/ Station House Officer, Police Station- Chilphi, District- Kabirdham, Chhattisgarh

---- Respondent

For Petitioner : Shri Dharmesh Shrivastava, Advocate
 For Respondent/State: Shri B. Gopa Kumar, Dy.AG

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****07/11/2016**

Heard.

2. This petition has been filed arising out of order dated 15-06-2015 passed in Criminal Appeal No.40/2015, 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. Learned counsel for the petitioner submits that the learned Juvenile Justice Board as also the learned appellate Court have completely misdirected itself in rejecting the application. He submits that the application of juvenile has not been considered in accordance with the provisions contained in Section 12 of the Act of 2000. Learned counsel for petitioner contended that the Court

below have committed gross illegality in examining the merits of the criminal case and rejecting the application without there being any material on record to come to the conclusion that the release would bring the juvenile in association with known criminal or is likely to subject the juvenile to physical, mental or psychological danger or otherwise release would defeat the ends of justice.

4. 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 on the basis of documents available on record as well as on the basis of sociological report submitted by the Probation Officer, because if he is released, likelihood of he coming in association with known offender, cannot be ruled out.

5. In the present case, as the impugned order passed by the Juvenile Justice Board as well as by the appellate authority reveal that the reasons operative for rejection of bail application is the gravity of offence. The appellate authority recorded a finding that the petitioner is alleged to have committed serious offence and further taking into consideration that the applicant is also charged of having caused disappearance of evidence which shows that he was not under proper control of his parents and in these conditions, if he is released on bail, he is likely to abscond which would result in defeating the ends of justice. It has also been stated that release of the applicant would bring him in association with known criminals or he is being subjected to physical, mental or psychological danger.

6. 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 @ Bhrat & 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.

7. 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.

8. The finding recorded by the Juvenile Justice Board and the learned appellate Court are wholly unsustainable in law. Upon perusal of the impugned order, it reveals that the Courts below have never examined the gravity of offence. There is no material on record to come to conclusion that the juvenile, who is only 13 years of age, is likely to abscond or tamper with the prosecution witnesses. Moreover, both the Courts below have recorded apprehension that in the event of release, he is likely to come in association with known criminals or subjected to physical, mental or psychological danger is also berupt of any material whatsoever and is merely figment and nothing more.

9. I have gone through the report submitted by the Probation Officer. The report does not contain any material to warrant any such finding as has been recorded by the Juvenile Justice Board and the appellate authority.

10. Therefore, in view of the aforesaid facts and circumstances of the case, 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.

11. 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 or mother 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. The record of the Juvenile Justice Board be remitted forthwith for expeditious conclusion of enquiry pending before the Juvenile Justice Board.

SD/-
(**Manindra Mohan Shrivastava**)
Judge