

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 242 of 2016**

Rituraj Chandrawanshi S/o Harish Chandrawanshi Aged About 17 Years R/o Majgaon, Police Station Dadhi, District Bemetara, Present Address - Jhirouni, Police Station - Kawardha, Civil And Rev. District Kabirdham Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through District Magistrate / Station House Officer, Police Station Kawardha, District - Kabirdham Chhattisgarh.

---- Respondents

Ms. Sharmila Singhai, counsel for the applicant/s.
Shri R.K.Gupta, Dy.A.G. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****18/11/2016**

This revision arises out of order dated 21/01/2016 passed by the Appellate Court by which, rejection of bail application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short 'the Act of 2000') of the applicant / juvenile, in conflict with law, as been affirmed.

2. The applicant, a juvenile aged about 17 years, is alleged to have committed offence under Section 363, 366, 376 of IPC and Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

3. The applicant moved an application under Section 12 of the Act of 2000 which was rejected by the Juvenile Justice Board vide order dated 16/12/2015. The appeal has also been dismissed giving rise to this petition.

4. Learned counsel for the applicant submits that both the Courts below have rejected the application taking into consideration the nature and gravity of allegations and ignoring the statutory mandate of Section 12 of the Act of 2000. It is submitted that the Juvenile Justice Board rejected the application recording that

the applicant is alleged to have committed serious offence and his release would bring him in association with known criminals or expose him to moral, physical and psychological danger, or his release would otherwise defeat the ends of justice without considering any material. It is submitted that the gravity of offence is not a relevant consideration so as to deny bail which is a rule under Section 12 of the Act of 2000. As far as appellate authority is concerned, the appellant authority has rejected the application only on the ground that during investigation, the prosecutrix stated that she was forced by the applicant to give statement as suggested by him which means that in case of grant of bail, the applicant may tamper with the prosecution witnesses which will defeat the ends of justice. It is submitted that there is nothing to show that the applicant pressurized or threatened the prosecutrix to give statement in his favour so as to say that his release would defeat the ends of justice. It is further submitted that even the social investigation report of the probation officer contained nothing adverse against the applicant to suggest that his release would bring him in association with known criminals or expose him to moral, physical and psychological danger. Therefore, in these circumstances, the applicant may be granted bail.

5. On the other hand, learned State counsel opposes prayer and submits that the applicant is involved in commission of offence under Section 363, 366, 376 of IPC against a girl, who was minor in age which *prima facie* shows that the applicant is not living in proper company and if he is released, he may be exposed to moral, physical or psychological danger. It is also submitted that as the applicant approached the applicant to give statement as suggested by him, possibility of tampering with the prosecution witnesses cannot be ruled out.

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 a learned 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 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 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.

8. 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.

9. 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. 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.

10. 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 that 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, the

approach should be as to why bail should be refused.

11. 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 juvenile 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.

12. Applying the aforesaid provisions laid down in various decisions, it is found that in the present case, the main operative reason for rejection of application under Section 12 of the Act of 2000 has been gravity of allegations. That is what has been done by the Juvenile Justice Board. When the matter was taken up by the appellate authority, the appellate authority has rejected the application only on the basis that during investigation, prosecutrix stated that the applicant had suggested her to make a particular kind of statement. There is nothing in the order which shows that the prosecutrix was threatened, pressurized or coerced or lured by the applicant to make a statement in his favour. Further, the Appellate Court has not considered any other material which, at this stage, could be made a basis to form an opinion that in the event of his release, the applicant, who only happens to be aged 17 years, would tamper with the prosecution witnesses which may defeat the ends of justice. Moreover, the social investigation report of the probation officer produced before me by the State counsel also does not contain any material to show that his release would bring him in association with known criminals, expose him to moral, physical and psychological danger or would otherwise defeat the ends of justice. Therefore, the application ought to be

allowed.

13. In view of above consideration, impugned order cannot be sustained and is therefore set aside. The application under Section 12 of the Act of 2000 is allowed. The applicant shall be released on bail forthwith on furnishing a personal bond in the sum of Rs.10,000/- by the father or mother of the applicant, as the case may be, to the satisfaction of the Juvenile Justice Board for his appearance before the Board, as and when directed.

14. The revision is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge