

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 429 of 2016**

Shani S/o Birbal Aged About 15 Years Occupation Student (Minor),
Through His Natural Guardian Represented By His Father Birbal S/o
Jairam, Aged About 40 Years, Occupation-Labourer, R/o. Godripara, P.S.
Chirimiri, District Koriya Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station-Pondi, Through District
Magistrate, Baikunthpur, District Koriya Chhattisgarh.

---- Respondent

For Applicant	:	Shri Anil Gulati, Advocate.
For Respondent / State	:	Shri Dilman Rati Minj, Dy. Govt. Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****04/11/2016**

This petition has been filed by the applicant assailing correctness and validity of order dated 24/11/2015 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. The applicant is a juvenile, in conflict with law, who is alleged to have committed offence under Section 302 IPC. Age of the applicant is stated to be less than 16 years, the petitioner moved an application before the Juvenile Justice Board for grant of bail under Section 12 of the Act of 2000. Vide order dated 05/11/2015, the Board rejected the application giving rise to appeal before the appellate authority under Section 52 of the Act of 2000. By impugned order, the Appellate Court has also rejected the appeal and that is how, the juvenile is

before this Court.

3. Learned counsel for the applicant argued that in the present case, the Board as well as the appellate authority have completely ignored the statutory mandate of Section 12 of the Act of 2000 under which, grant of bail is rule and rejection is exception to the general rule, only for the reasons exhaustively enumerated in the provision itself. It is further submitted that as per the report of the probation officer, there is nothing to show that release will bring the juvenile / applicant in association with any known criminals or is likely to expose him to moral, physical and psychological danger. Further submission is that no material was considered nor was available before the authorities to form an opinion that the release would otherwise defeat the ends of justice. Therefore, rejection of the application and appeal is illegal.

4. On the other hand, learned State counsel opposes prayer for grant of bail and submits that the probation officer in his report found that the applicant is not going to school and is residing lonely which has given rise to the act which is in conflict with law and therefore, his release is likely to put him in mental, physical and psychological danger. Learned State counsel also submits that while rejecting appeal, the appellate authority has also taken into consideration that it will be more in the interest of justice that he is kept in Observation Home and not in jail, particularly when there is no one to properly look after him.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

Under the scheme of the Act of 2015, an assessment is required to be carried out in those cases, where the Juvenile, in conflict with law, is more than 16 years of age and is alleged to have committed an act which is categorized as heinous offence. However, in the present case, as the juvenile is less than 16 years, that situation does not arise for consideration.

11. If the order impugned in the present case is scrutinized in the light of the

principles as discussed above, it would defeat the ends of justice, appears to be guided by only one circumstance i.e. the gravity of offence, the appellate authority also relies upon the same circumstance but to come to the conclusion that the release would bring the applicant into association with criminals and expose him to psychological danger. I have perused the records of the case and there does not appear to be any other material or circumstance placed on record to come to the conclusion that release of the applicant would either bring him in association with known criminal or expose him to psychological danger or would otherwise defeat the ends of justice. In the absence of any such ground appearing, the applicant is entitled to grant of bail. After going through the order passed by the appellant authority, it appears that the appellate authority has endeavored to carry out a comparative assessment of the atmosphere of the Observation Home and outside that. This is clearly impermissible under the law. Nothing contains in Section 12 of the Act of 2000 allowing the Juvenile Justice Board or the appellate authority to carry out any such comparative assessment to decide the application for grant of bail under Section 12 of the Act of 2000 or the Act of 2015. As already stated hereinabove, once, grounds of rejection is not made out, grant of bail would be a rule irrespective of nature and gravity of allegations.

12. In view of above consideration, in the present case, considering that the juvenile is less than 16 years of age and there is no material either in the report of the probation officer or any other material placed before the Court or report of the appellate authority that his release is likely to bring him in association with known criminals or subject him to moral, physical or psychological danger or would otherwise defeat the ends of justice, juvenile has to be granted bail.

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 parents or guardians 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