

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 453 OF 2016

Shiv Kumar Sahu (Juvenile) S/o Dashrath Sahu Aged About 17 Years Through His Legal/ Natural Guardian Father Dashrath Sahu, S/o Dayaram Sahu, Aged About 40 Years, R/o Bhut Para, Shiv Nagar, Post Office Raipur, Police Station Tikrapara, District Raipur, Chhattisgarh.

... Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Tikrapara, District Raipur, Chhattisgarh.

... Non-applicant

For Applicant	:	Shri Shivendu Pandya, Advocate.
For Respondent-State	:	Shri UKS Chandel, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

9/09/2016

1. Heard learned Counsel for the Applicant and the Non-Applicant.
2. The present Criminal Revision has been preferred challenging the order dated 30.04.2016 passed in Criminal Appeal No.83/2016 by the Additional Sessions Judge, Raipur whereby the lower Appellate Court has affirmed the order dated 6.4.2016 passed by the Juvenile Justice Board in Criminal Case No.565/2015 rejecting the bail application of the Applicant.
3. Learned Counsel for the Applicant submits that the Applicant admittedly is a juvenile, aged about 17 years and the co-accused in the instant case namely Anirudh Kamde, a major has already been released on bail by this Court vide order dated 6.4.2016 passed in M.Cr.C No.1841/2016. He further submits that the present Applicant has already remained in the Juvenile Observation Home since 13.11.2015 i.e. for almost about 10 months and that the maximum sentence which could be

imposed upon him is of 3 years, thus considering the facts and circumstances of the case, he shall be released on bail taking into consideration the provisions of Section 12 of the Juvenile Justice Board.

4. State Counsel opposes the bail application.

5. Counsel for the Applicant further relies upon the judgment of this court in case of Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh¹ wherein in para -6, this court has observed as under:

“The scope and object of provision regarding grant of bail to a Juvenile as envisaged under Section 12 of the Act came up for consideration before the Single Judge of this Court in the case of Bharat @ Bhurat & Another (supra), 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 are existing.”

6. The said observations of the court was based upon the decisions rendered in case of Akhilesh Kumar Vs. State of Chhattisgarh² as well as judgment delivered by the MP High Court in case of Rahul Mishra Vs. State of Madhya Pradesh³.

7. Considering the total facts and circumstances of the case particularly the fact that the Applicant being a juvenile is already in custody for more than ten months and also considering the fact that the

1 2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214

adult co-accused has already been released on bail, in addition the nature of offence and the ratio of law laid down in Dayasagar (Supra) and the other decisions by this Court referred to above, it is a fit case where the Applicant can be released on bail.

8. Accordingly, the Criminal Revision is allowed. The impugned order dated 30.04.2016 is set aside. It is directed that the Applicant shall be released on bail on his and one of his guardians furnishing a personal bond for the sum of Rs.25,000/- with two sureties in the like sum to the satisfaction of the concerned Trial Court for his appearance as and when directed.

Sd/-
(P. Sam Koshy)
JUDGE

Priya