

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 894 of 2016**

- Kariya @ Akash Chauhan S/o Shri Dani Chauhan Aged About 16 Years R/o. Village : Subhash Nagar, Dewarpara, Police Station Telibandha District : Raipur Chhattisgarh Through : Shri Dani Chauhan (Father)

---- Applicant**Versus**

- State Of Chhattisgarh Through : The Police Station, Telibandha, Raipur Chhattisgarh

--- Non-applicant

For Applicant

Shri N. Naha Roy, Advocate.

For Non-applicant/State

Shri Rajendra Tripathi, Panel Lawyer

SB: Hon'ble Shri Justice P.Sam Koshy**Order On Board****23/09/2016**

Heard learned Counsel for the Applicant and the Non-applicant.

2. The present Criminal Revision has been preferred challenging the order dated 16.08.2016 passed in Criminal Appeal No.146/2016 by the Additional Sessions Judge (F.T.C.), Raipur (C.G.). Vide the said impugned order the Court below has rejected appeal which he had preferred against the rejection of the bail application by the Juvenile Justice Board, Raipur on 01.08.2016 in Criminal Case No. 235 of 2016.

3. Learned Counsel for the Applicant submits that it is a case where the Applicant and Prosecutrix, both of them being juvenile, were having love affair for quite some time. In the process of this love affair some sort of physical

relationship developed and was established between them. The offences which have been charged against him are under Sections 363, 366 and 376 IPC and also Sections 3 and 4 of Protection of Children from Sexual Offences Act. There is no criminal track record of the present applicant except for implication in the present case. It is not a case where the present Applicant has a criminal antecedents, but the act on part of the present Applicant, even if accepted as true, it is a folly of age, not a criminal intention or motive. Further, that he is in the Observation Home since 01.06.2016, he may be enlarged on bail taking into consideration the provisions of Section 12 of the Juvenile Justice Act.

4. Learned State Counsel however opposes the Revision Petition on the ground that the Applicant has been prosecuted for the offence under Sections 363, 366 and 376 IPC and also Sections 3 and 4 of Protection of Children from Sexual Offences Act. Considering the seriousness of the offence the Applicant should not be given benefits provisios of Section 12 of the Juvenile Justice Act.

5. In the case of **Dayasagar Yadav @ Sagar Vs. State of Chhattisgarh**¹ 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 @ Bhrat & 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,

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2011 (1) CGLRW-140

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 age of the Applicant as well as the Prosecutrix, and the fact that the Applicant is already in custody for more than three and half months and also considering the nature of offence and the ratio of law laid down in Dayasagar (Supra), in the opinion of this Court present is a fit case where he can be released on bail.

8. Accordingly, the Criminal Revision is allowed. The impugned order dated 16.08.2016 is set aside. It is directed that the Applicant shall be released on bail on his and one of his guardian 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

2 2006 (1) CGLJ 305

3 2001 Cri.LJ 214