

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 873 OF 2016

1. Vikas Nayak S/o Mansingh Nayak Aged About 17 Years Delinquent Juveniles Were The R/o. - Village - Deradhih, Police Station - Gidhouri, District - Baloda - Bazar - Bhatapara, Through : - His Father & Natural Guardian : - Man Singh Nayak, Aged About 45 Years, R/o :- Heeraji Nayak, Cast - Nayak, R/o - Village - Deradhih, Police Station - Gidhouri, District - Baloda Bazar Bhatapara Chhattisgarh

2. Prakash Nayak S/o Mansingh Nayak Aged About 15 Years Delinquent Juveniles Were The R/o. - Village - Deradhih, Police Station - Gidhouri, District - Baloda - Bazar - Bhatapara, Through : - His Father & Natural Guardian : - Man Singh Nayak, Aged About 45 Years, R/o :- Heeraji Nayak, Cast - Nayak, R/o - Village - Deradhih, Police Station - Gidhouri, District - Baloda Bazar Bhatapara Chhattisgarh

... Applicants

Versus

State Of Chhattisgarh Through - District - Magistrate, Baloda - Bazar, Distt. Baloda Bazar - Bhatapara Chhattisgarh

... Non-applicant

For Applicants	:	Shri Hemant Gupta, Advocate.
For Respondent-State	:	Smt M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/09/2016

1. Heard learned Counsel for the Applicants and the Non-Applicant.
2. The present Criminal Revision has been preferred against the order dated 2.9.2016 whereby the 2nd Additional Sessions Judge, Baloda Bazar, Distt. Baloda Bazar has rejected the appeal preferred by the Applicants against the order of rejection passed by the Juvenile Justice Board, Baloda Bazar.
3. Learned Counsel for the Applicants submits that it is a case where the Applicants have been found to be accused in a case under Section 34(2) of the Excise Act and they are in the observation home since

4.8.2016. He further submits that the quantity of the country made liquor seized from the possession of the Applicants was of 6.30 liters which itself is a small quantity and that they were found to be carrying the same on a motorcycle. He further submits that thus considering the facts and circumstances of the case, the Applicants 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 Applicants 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

1 2011 (1) CGLRW-140

2 2006 (1) CGLJ 305

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 Applicants being juveniles are already in custody for more than one month and also considering the fact that 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 Applicants can be released on bail.

8. Accordingly, the Criminal Revision is allowed. The impugned order dated 2.09.2016 is set aside. It is directed that the Applicants shall be released on bail on their and one of their guardians furnishing a personal bond for the sum of Rs.25,000/- with two sureties each in the like sum to the satisfaction of the concerned Trial Court for their appearance as and when directed.

**Sd/-
(P. Sam Koshy)
JUDGE**

Priya

3 2001 Cri.LJ 214