

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 963 of 2016**

Jaleshwar Barman @ Dadu S/o Hemdas Barman Aged About 16 Years
Labourar Resident Of Village Jhirwan, Police Station - Lormi, District
Mungeli (Chhattisgarh) Through Natural Guardian (Father) Shri Hemdas
Barman

---- Applicant**Versus**

State Of Chhattisgarh Through Police Station House - Lormi, District
Mungeli Chhattisgarh

---- Respondent

Shri Ashok Verma, counsel for the applicant/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****03/11/2016**

This revision is directed against order dated 14/09/2016 by which, the appeal of the applicant, a juvenile in conflict with law, has been dismissed affirming the order rejecting juvenile's application for grant of bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act of 2015').

2. On an allegation of having committed offence under Section 363, 365, 328 and Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'the POCSO Act'), a crime was registered against the applicant by the police of police station – Lormi under Crime No.262/2016 and thereafter, the applicant was produced before the Juvenile Justice Board, Mungeli. The applicant moved an application under Section 12 of the Act of 2015 for grant of bail which was rejected by the Juvenile Justice Board vide its order dated 20/07/2016 against which, an appeal was preferred which was also dismissed on 30/07/2016.

Thereafter, the Juvenile Justice Board proceeded to frame charges on the basis of the charge sheet filed before it alleging commission of offences under Section 363, 365, 366, 328 and 506-B of IPC, though no charges were framed for commission of offences under the POCSO Act. The applicant, thereafter, again moved an application for grant of bail under Section 12 of the Act of 2015, which was again rejected on 10/08/2016, against which, an appeal has also been preferred, which was dismissed giving rise to this revision petition.

3. Learned counsel for the applicant argued that in the present case, the Juvenile Justice Board as well as the Appellate Court have completely ignored to consider the statutory scheme of Section 12 of the Act of 2015, which itself is *pari materia* of Section 12 of the Act of 2000 while considering the application for grant of bail under Section 12 of the Act of 2015. Learned counsel for the applicant argued that grant of bail to a juvenile is rule and exceptional circumstances under which, it could be rejected are under those which have been exhaustively enumerated in Section 12 of the Act of 2015 itself. Unless those grounds are made out, a juvenile is required to be granted bail. It is further contended that in the present case, report of the Probation Officer does not indicate anywhere that his release would bring him in association with any known criminals or expose him to moral, physical or psychological danger or would otherwise defeat the ends of justice. It is contended that the Juvenile Justice Board as well as the appellate authority have rejected the bail application by mechanically applying the aforesaid clauses, though bereft of any material. Therefore, the applicant may be granted bail.

4. On the other hand, learned State counsel submits that as is reflected from para 16, 17 and 18 of the impugned order passed by the appellate authority, the manner in which the applicant kidnapped the prosecutrix and took her to another city has been taken into consideration by the appellate authority to come to a finding that upon his release, the applicant may be exposed to physical or psychological danger and may also come in association with known criminals which would defeat the ends of justice. Therefore, the bail application has been rejected.

5. This Court has perused the report of the probation officer.

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 @ 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.

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 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 2015. 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 2015, as alleged act is said to have been committed after coming into force of the Act of 2015. 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.

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 18 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 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.

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 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.

12. In view of above consideration, in the present case, considering that the juvenile is less than 18 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 2015 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