

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 975 of 2016

Jaleshwar Sahu S/o Manohar Sahu Aged About 17 Years (Labour Worker)
R/o Village Dhaurabhata, Police Station & Tahsil Palari, Civil & Revenue
District Baloda Bazar- Bhatapara, Chhattisgarh (Juvenile Minor- Legal &
Natural Guardian Father Manohar, S/o Sukdeo Sahu, Aged About 40 Years,
R/o Village Dhaurabhata, Police Station & Tahsil Palari, Civil & Revenue
District Baloda Bazar- Bhatapara, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The District Magistrate Baloda- Bazar, Civil &
Revenue District Baloda- Bazar/ Bhatapara, Chhattisgarh.

---- Respondent

For Applicant	:	Shri Janak Ram Verma, Advocate
For Respondent/State	:	Shri D.R. Minj, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

02/11/2016

Heard.

1. This Court had directed the State to place on record the report of the Probation Officer, but the report is not on record.
2. The order under challenge is passed by the Appellate Court by which applicant's appeal against rejection of his application under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "the Act of 2000") for grant of bail has been rejected.
3. Learned counsel for the applicant submits that according to the statutory scheme of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act of 2015") which was in force at the time when the offence was alleged to have been committed by the applicant, provides for grant of

bail which can be rejected only on the ground stated in the Act. He submits that without any such ground having been made out, the application has been rejected.

4. On the other hand, learned counsel for the State opposing the application submits that the Appellate Court has recorded in its order that as the juvenile in conflict with law is being taken care of properly in the Observation Home, therefore, it will be in his interest that he is allowed to continue in Observation Home only instead of granting him bail.

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 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 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