

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1033 of 2016**

Khulesh Patre S/o Kheduram Aged About 15 Years R/o Village Gatapar,
Chowki Chilfi, Police Station Lormi, District Mungeli Chhattisgarh

---- Applicant**Versus**

State Of Chhattisgarh Through : The Chowki Chilfi, Police Station Lormi,
District Mungeli Chhattisgarh

---- Respondent

For Applicant	:	Shri Rajeev Kumar Dubey, Advocate.
For Respondent / State	:	Shri B. Gop Kumar, Dy. A.G.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****30/11/2016**

Heard.

1. This revision is directed against order dated 29.09.2016 passed by the Lower Appellate Court by which the order of rejection of application for bail under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act of 2015") by the Juvenile Justice Board has been affirmed.

2. The applicant is a juvenile, aged between 14 to 15 years, who is alleged to have committed offence under Section 147, 148, 149 & 302 of IPC and Section 25 of the Arms Act along with number of his own family members in connection with FIR lodged on 18.07.2016 where it was alleged that when deceased Janak Ram was returning from market, a dispute arose in which, the juvenile along with number of members of his family who were armed with club and other sharp

edged weapon assaulted and inflicted fatal injury is resulted in death.

3. Both the Juvenile Justice Board as well as the Appellate Court rejected the application under Section 12 of the Act of 2015 filed by the juvenile by recording a satisfaction that release of the juvenile would bring him in association with known criminal and further that it would also expose him to physical, moral or psychological danger as also defeat the ends of justice.

4. Learned counsel for the applicant argued that the Courts below have mechanically rejected the application by reproducing the provision of Section 12 of the Act of 2015 without there being any material to come to such a conclusion. According to him, the incident involves almost every member of the family including the applicant, who was only young boy aged 14 to 15 years and even according to the prosecution, other members of the family which includes his own mother, father, uncle assaulted the deceased. It is next submitted that in the matter of consideration of application for grant of bail filed under Section 12 of the Act of 2015, gravity of offence is not relevant consideration but only on three limited grounds, the application could be rejected otherwise as a matter of rule, the bail has to be granted as per the statutory mandate.

5. It is also submitted that even in the social investigation report, there is nothing to indicate that the release of the applicant will bring him in association with known criminal or may expose him to moral, physical or psychological danger or would otherwise defeat the ends of justice.

6. On the other hand, learned State counsel submits that the applicant having committed offence under Section 147, 148, 149 & 302 of IPC and Section 25 of the Arms Act, a part of unlawful assembly of his own family members and the applicant is also alleged to have assaulted the deceased with the help of

club. This clearly shows that in the event of his release, he may be exposed to moral, physical or psychological danger and may also come in association with known criminal which would defeat the ends of justice. Therefore, the bail application has been rightly rejected.

7. This Court has repeatedly held in number of cases that under the statutory scheme of Section 12 of the Act of 2015, a grant of bail to juvenile is rule and rejection is exception only for the reasons exhaustively enumerated in the provision itself 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.

Unless there are material available before the Juvenile Justice Board or the Appellate Court to come to such conclusion stated herein above, the juvenile will have to be granted bail and it would not be in accordance with the spirit of the provision of law of the Act to search for the nature and gravity of offence.

8. In fact, the provision does not indicate that the bail application would be liable to be rejected in case of grave offence. Use of word “shall” occurred in Section 12 of the Act of 2015 clearly manifests the legislative intention that the juvenile shall be granted bail and rejection will be only in three specific circumstances.

9. The order passed by the Appellate Court, if I may say so, merely reproduces the statutory provision, bereft of any material to arrive at the satisfaction that the release of a juvenile is likely to bring him in association with

any known criminal, or to expose him to moral, physical and psychological danger, or otherwise defeats the ends of justice.

10. The social investigation report also does not indicate anything against the juvenile. Therefore, it appears that the main operative reason for rejection of the application and nothing more.

11. Learned State counsel also could not point out that in the event of release of the applicant, the accused is in a position to tamper with the prosecution witnesses or that in all probabilities, he will flee away from justice. Therefore, there is no material to show that in the event of release, he is likely to defeat the ends of justice.

12. In view of the above analysis, I am of the view that the Courts below have committed illegality in rejecting application for grant of bail. Accordingly, the impugned order is 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 Gangaram Patel, maternal uncle of the applicant because the parents are stated to be in jail, to the satisfaction of the Juvenile Justice Board for his appearance before the Board, as and when directed.

13. The revision is accordingly allowed.

Sd/-

(Manindra Mohan Shrivastava)
Judge