

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1014 of 2017**

Rahul Tarak S/o Ghanshyam Tarak Aged About 16 Years Through
Natural Guardian Father, R/o Village Kurra, Police Station- Gobra
Nawapara, District- Raipur, Chhattisgarh. Mob. No. 73540- 13042

---- Applicant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station-
Gobra Nawapara, District Raipur, Chhattisgarh.

---- Respondent

For applicant	Mr. T.K. Jha, Adv.
For Respondent/State	Mr. Neeraj Jain, Govt. Adv.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****13/04/2017**

1. Perused the covering memo filed along with copy of order sheet of the Juvenile Justice Board, Mana Camp, Raipur in connection with Criminal Case No. 78/2017 dated 25-3-2017 which goes to show that the applicant has surrendered before the Juvenile Justice Board on 25-3-2017 as directed.
2. Report of the Juvenile Justice Board dated 10-4-2017 is also annexed. As per said report also, the applicant has surrendered before the Board on 25-3-2017.
3. Heard finally.
4. The applicant has preferred this application for grant of bail as he is arrested on 28-1-2017 in connection with Crime No. 26/2017 registered by the Police Station Gobra Nawapara, Distt. Raipur for offence punishable under Section 341, 354, 506 of the Indian Penal Code and Section 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 (In brevity 'Act of 2012') and Section 3(1)(w)(i) of the of the Scheduled Caste and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 (in brevity 'SCST Act') (very wrongly mentioned as Section 3(1)B(i) of the SCST Act). Charge sheet has been filed after investigation and the same is registered as Criminal Case No. 78/2017 before the Juvenile Justice Board, Mana Camp, Raipur, CG.

5. Learned counsel for the applicant submits that the applicant is the first offender and juvenile. On 7-2-2017, the applicant was granted ad-interim bail so as to enable him to appear in the examination till 10-3-2017 and thereafter also the ad-interim bail granted was extended by the coordinate bench till 25-3-2017. On 25-3-2017 the applicant surrendered before the Juvenile Justice Board, Raipur and till date he is languishing in Observation Home at Mana. During the ad-interim bail, he has not misused the liberty granted. No criminal antecedent is reported against him. He will not commit any offence in future. It is further submitted that for the offence registered against him as he is juvenile, he can only be punished under the relevant act, not as per regular penal provision. He may be enlarged on bail till pendency of the trial before the Juvenile Justice Board, Raipur.
6. Per contra, learned counsel appearing for the State opposes the bail application and submits that though the applicant is a juvenile but he knowingly wrongfully confined a child i.e. the prosecutrix defined under Section 2(d) of the Act of 2012 and also attempted to outrage her modesty, gave her threat, acted for sexual assault as provided under Section 7 of the Act of 2012. Languishing in Observation Home is not treated as custody hence the prayer for bail till trial may be dismissed.
7. Before deciding the instant MCRC, it would be appropriate to point out the section wrongly mentioned by the 7th Additional Sessions Judge, Raipur. Learned Additional Sessions Judge in his order dated 3-2-2017 (In the certified copy placed before this Court twice the date

is mentioned as 3-1-2017 which is not correct as at one place below the signature of the Presiding Officer the date is mentioned as 3rd February, 2017 which sounds correct as the applicant was arrested on 28-1-2017. With this the concerned Presiding Officer is directed to remain cautious in mentioning the date in the entire order), mentioned the penal section in which the said crime number has been registered against the applicant and while quoting the said penal provision mentioned the relevant provision of Section 3(1)B (1) of the SCST Act. On perusal of entire Section 3 of the SCST Act, there is no such provision, instead the correct provision is Section 3 (1)(w)(i). With this learned Additional Sessions Judge ought to have looked into the correct provision of law and was duty bound to mention the correct section as per statute. Therefore, the concerned Additional Sessions Judge is directed to remain cautious in future while mentioning the different provisions of law. The District and Sessions Judge, Raipur is directed to send a copy of the order to the concerned Additional Sessions Judge for compliance.

8. The MCRC pending before this Court is filed under Section 439 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') after the order passed by the 7th Additional Sessions Judge, Raipur in bail petition No. 225/2017 dated 3-2-2017 under Section 439 of the Cr.P.C. The Juvenile Justice Board, Raipur vide order dated 1-2-2017 dismissed the application filed on behalf of the applicant under Section 12 of the Juvenile Justice (Care of Protection of Children) Act, 2015 (in brevity 'Act of 2015'). Against the said order the applicant has not preferred any appeal under Section 101 of the Act of 2015 instead the applicant filed an application under Section 439 of the Cr.P.C. for grant of bail before the Court of Sessions which was subsequently dismissed on 3rd February, 2017 thereafter again the applicant instead of preferring

any criminal revision as provided under Section 102 of the Act of 2015 filed an application under Section 439 of the Cr.P.C.

9. With this, initial question for consideration before this Court is whether a revision as provided under Section 102 of the Act of 2015 would be maintainable or the application filed by the applicant under Section 439 of the Cr.P.C. would be applicable. For this, a judgment of this court in the case of **Mohan -v- State of Chhattisgarh** reported in 2005 (1) CGLJ 320 is referred. In the said matter, the coordinate bench of this Court held that the petitioner, the juvenile, instead of filing revision may also apply for bail under Section 439 of the Cr.P.C. Para 11, 13, 14 and 15 of the said cited case law is hereby reproduced for relevance:-

“11. Section 6(2) of the Act empowers High Court and Court of Session to exercise all the powers conferred on the board by or under this Act when the proceeding comes before them in appeal, revision or “otherwise”. The word “otherwise” has a wide edifice and it includes the proceedings under Sections 438 and 439 of the Code of Criminal Procedure. After considering all aspects, I am of the view that, the said non-obstante clause only has overriding effect over Section 436 and 437 of the Code of Criminal Procedure. A juvenile, accused of a non-bailable offence, can approach for remedy available under Section 438 of the Code of Criminal Procedure. The juvenile, accused of a bailable or non-bailable offence, under custody, after exhausting the remedy available under Section 12 of the Act has option to file application for grant of bail under Section 439 of the Code of Criminal Procedure. The High Court or the Court of session can exercise not only the powers contained in Section 438 and 439 of the Code of Criminal Procedure but also the powers conferred on the Juvenile Justice Board being empowered under Section 6(2) of the Act.

13. The petitioner has filed application for converting the bail application into revision. If any person, aggrieved by any

order, files revision, it is necessary that, the same should be filed within period of limitation and the same should contain the description of the impugned order and the ground on which its legality or propriety has been assailed. All these ingredients are not required in a petition filed under Section 439 of the Code of Criminal Procedure. The petitioner has placed reliance on the decision rendered in *Hardip Singh Vs. State of Punjab (2002 (2) Crimes 179*. On facts, the case is distinguishable. In the application, filed for grant of bail under Section 439 of the Code of Criminal Procedure, all the aforesaid ingredients are lacking. Apart from that, neither the Act nor the code of Criminal Procedure authorizes for converting any bail application into revision.

14. From the aforesaid discussions, it is held that the Act does not take away the power and jurisdiction of High Court or the Court of Session regarding bail as provided under Sections 438 and 439 of the Code of Criminal Procedure. It is further held that the bail application filed under Section 439 of the Code of Criminal Procedure cannot be converted into revision.

15. The petitioner has right either to file properly drafted revision petition within the period of limitation in accordance with law before the High Court or can apply for grant of bail under Section 439 of the Code of Criminal Procedure to the court of Session, and in case of refusal the petitioner can apply for grant of bail before this Court under Section 439 of the Code of Criminal Procedure.”

10. Nothing is submitted before me at the time of passing of this order that the cited case law of **Mohan** (supra) is overruled or distinguished. With this, this Court holds that the cited case law is a good case law and as per law settled, the Act in connection with juvenile does not take away the power and jurisdiction of the High Court or the Court of Session regarding bail as provided under section 438 and 439 of the Cr.P.C. With this in the considered view of this Court, the applicant need not to file a criminal revision under Section 102 of the Act of 2015 but the application under Section 439 of the Cr.P.C. is also

maintainable.

11. Now coming to the facts of the case, as submitted there is no criminal antecedent of the applicant. During the period of interim bail, he has not misused the liberty and as submitted, he will not commit any offence in future. Consequently, looking to the entire facts and circumstances it would be appropriate to grant an opportunity to the applicant so that he may remain in the society without committing any further crime.

12. Consequently, the application filed by the applicant is hereby allowed.

It is directed that if the parent of the applicant furnishes a personal bond in the sum of Rs. 20,000/- with one solvent surety of the like sum to the satisfaction of the Juvenile Justice Board, Raipur whereby they will undertake to present the applicant as and when directed by the Juvenile Justice Board, Raipur, he be released on bail till pendency of the trial for his appearance regularly as and when directed till pendency of the trial.

13. It is made clear that this order granting bail to the applicant shall stand cancelled automatically without reference to the bench by the Court below if (i) the trial Court finds that the applicant suppressed filing or pendency of any other application for grant of bail before this court or the Hon'ble Apex Court intentionally, (ii) the applicant does not cooperate in the trial; (iii) the applicant is found to be involved in any offence of the like nature; (iv) the trial Court finds that the applicant remains absent without any sufficient and cogent reason. If bail is cancelled automatically in view of above, the Court below may proceed further under the provisions of law under intimation.

14. CC today.

Sd/-
(Chandra Bhushan Bajpai)
Judge