

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 626 of 2017**

- Deepak Kushwaha S/o Duryodhan Kushwaha, Aged About 14 Years R/o House Of Punitram Sahu, Behind Bamleshwari Mandir, Daganiya, Police Station D.D. Nagar, Raipur, District Raipur, Chhattisgarh. --- **Petitioner**

Versus

- State of Chhattisgarh through Station House Officer, Police Station D.D. Nagar, District Raipur, Chhattisgarh. --- **Respondent**

For the applicant	:	Mr. Rajeev Shrivastava, Advocate
For the Respondent	:	Mr. Sangharsh Pandey, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****27.07.2017**

1. This revision is against the order dated 05th May, 2017 passed by the Court of Sessions Judge (FTC), Raipur, in Criminal Appeal No.120/2017 whereby the order of rejection of bail 19.04.2017 passed by the Juvenile Justice Board, Raipur, in Crime No.103 of 2017 was affirmed.
2. As per the case of prosecution, a report was made by the mother of victim on 31.03.2017 that when she and her husband went for their works in the morning, 3 children were playing in the house and when she came back that her daughter was sitting by folding both the legs. Having enquired the matter, it was stated that she was bleeding from the private part. It was further revealed that while they were playing in the room, the applicant came there, asked the other two children to go out and thereafter by taking out the clothes committed sexual intercourse whereby she was

bleeding. Consequently the report was lodged.

3. Learned counsel for the applicant would submit that the social investigation report which is filed in this case by the State would show that the release of the applicant will not bring him into association with any known criminal and while rejecting the bail petition of the applicant, both the Courts below failed to consider the provisions of section 12 of the Juvenile Justice Act, 2015 wherein certain norms have been prescribed. It is further stated that in the instant case, the applicant who is juvenile cannot be treated at par with other matured criminals more so when the victim of the rape itself is in doubt. It is stated that no definite opinion has been given by the doctor and it is also not supported by the FSL report as negative report has been given. It is stated that under the circumstances taking into the spirit of section 12 of the Act, 2015 and as per the law laid down in **2012 (2) CGLJ 513 – Vishwajeet @ Krishna Bharadwaj Vs. State of C.G.**, the applicant may be enlarged on bail.
4. Per contra, learned State Counsel opposes the bail. Perused the case diary and the documents. In the case diary, the statement of the victim is seen as also the opinion of the doctor. The doctor has stated that no definite opinion can be given about the sexual intercourse and reference was made to FSL for confirmation.
5. The doctor's opinion shows that sexual intercourse might have been done which can be confirmed with the clinical pathological examination. The FSL report is also on record in which the presence of spermatozoa is not found. Be that as it may, the order of the Court below is seen. The court has

recorded that if the applicant is released on bail, it may endanger the moral, physical and psychological life of the applicant and the object of the law may fail. It was further observed that since the ct committed can be condemned socially, therefore, the bail was rejected.

6. Section 12 of the Act of Juvenile Justice (Care and Protection of Children) Act, 2015 deals with bail to juvenile which reads as under :

“Section 12 : Bail of Juvenile.--(1).
When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety [or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person] but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.”

(2) xxx xxx xxx

(3) xxx xxx xxx

7. The social investigation report which is filed in this case is perused. A perusal of the social investigation report would show that the applicant used to reside with the mother, father and one sister in the house. Both the mother and father used to go out to earn their livelihood. They have TV, mobile phone etc. Further the social investigation report shows that the applicant was a regular student of Class VIII. According to the opinion of the school teachers, the boy was little bit sentimental; according to the colleagues, he is good and punctual and according to the neighbors the applicant is simple and reserved in speaking with others, maintains good behaviour and accordingly positive attitude was shown by

the neighbors. The reasons for the offence has been shown with adolescent mind set of the applicant. The expert opinion shows that the incident happened because of the communication of porn pictures in the mobiles and because of the age, the incident happened which he needs proper guidance. The report further shows that the institutional behaviour of the boy is good and it appears that no apprehension has been raised that if the applicant is released on bail, it will likely to bring into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

8. Considering the investigation report and the provisions of section 12 of the Act, I am inclined to allow this revision. The orders passed by both the courts below dated 05.05.2017 and 19.04.2017 are set aside. The applicant is directed to be released on bail on furnishing surety in sum of Rs.25,000/- by the father/guardian of the applicant.

**Sd/-
GOUTAM BHADURI
JUDGE**