

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 740 of 2017**

Shya Macharan S/o Amritlal Sarthi, aged about 16 years, R/o. Balpur, P.S. Sarsewa, District Baloda Bazar-Bhatapara through its natural guardian/father Amritlal Sarthi, S/o. Karthik Sarthi, aged about 48 years, R/o. Balpur, P.S. Sarsewa, District Baloda Bazar- Bhatapara.

---- Applicant**Versus**

State of Chhattisgarh Through P.S. Sarsewa, District Baloda Bazar-Bhatapara (C.G.).

---- Respondent

For Applicant	:	Mr. Manoj Paranjpe, Advocate
For Respondent	:	Mr. U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board**06/02/2018**

1. This revision has been preferred under Section 102 of the Juvenile Justice (Care and Protection of Children), Act 2015 (in short 'the Act 2015) against the order dated 19/06/2017 passed by the Second Additional Sessions Judge, Baloda Bazar, District- Baloda Bazar-Bhatapara (C.G.) in Criminal Appeal No. H-33/2017, by which the Second Additional Sessions Judge has rejected the appeal arising out of the order dated 26/04/2017 dismissing his bail application passed in Crime No. 98/2017 for the offence punishable under Sections 363, 366, 376 of IPC and Sections 4 and 5 of the POCSO Act by the Juvenile Justice Board, Baloda-Bazar.

2. Brief facts of the case are that on the intervening night of 7-8 of April, 2017, present applicant along with other co-accused had taken the prosecutrix (aged about 16 years) forcefully to a village- Tihalipali, where, it is alleged that he along with co-accused raped with the minor girl. This applicant was arrested on 10/04/2017. His bail application under Section 12 was dismissed vide order dated 26/04/2017. Against the said dismissal, an appeal was preferred which was also dismissed vide order dated 19/06/2017. Hence this revision.
3. Learned counsel appearing on behalf of the applicant submits that the applicant is a juvenile and he is in custody since 10/04/2017. It is further submitted that the charge-sheet has already been filed and social investigation report does not suggest that on his release, he will come in contact with any known criminal or there would be danger to his psychological and physical state of mind. Therefore, he may be extended the benefit of bail.
4. Learned Counsel appearing for the State opposes the prayer for grant of bail.
5. I have heard Learned Counsel appearing for the parties and perused the social investigation report and other material available on record.
6. Before drawing any conclusion regarding correctness or otherwise of the orders impugned, glance of the relevant provisions such as Sections 12 & 13 of the Act, 2015 becomes necessitous, which are reproduced as follows:-

***“12. Bail to a person who is apparently a child
alleged to be in conflict with law.-- (1) When any
person, who is apparently a child and is alleged to***

have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or 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 person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger of the person's release would defeat the ends of justice, and the Board shall record the reason for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

13. Information to parents, guardian or probation officer.-- *(1) Where a child alleged to be in conflict with law is apprehended, the officer designated as Child Welfare Police Officer of the police station, or the special juvenile police unit to which such child is brought, shall, as soon as possible after apprehending the child, inform--*

(i) the parent or guardian of such child, if they can be found, and direct them to be present at the Board before which the child is produced; and

(ii) the probation officer, or if no probation officer is available, a Child Welfare Officer, for preparation and submission within two weeks to

the Board, a social investigation report containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry.

(2) Where a child is released on bail, the probation officer or the Child Welfare Officer shall be informed by the Board."

7. In the case in hand, the report of Probation Officer does not suggest that released of the applicant would expose him to moral, psychological and physical danger. The report also does not suggest that on release of the applicant, there is likelihood of bringing him in association with any known criminal and his release would defeat the ends of justice.
8. Considering the nature of allegation, facts of the case and the fact that the applicant is in custody since 10/04/2017 and the charge-sheet has already been filed, I am inclined to allow this revision and release the applicant on bail.
9. Consequently, the revision is allowed and the impugned judgment dated 19/06/2017 is set-aside. It is directed that the applicant shall be released on bail on furnishing two sureties each of Rs. 25,000/- to the satisfaction of the concerned Juvenile Justice Board for his appearance before the said Board as and when directed.

Sd/-

(Arvind Singh Chandel)
Judge