

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.657 of 2019**

- Dipak Diwakar S/o Sukhchain Diwakar, aged about 16 years, R/o village – Chandrakhuri, Police Station – Sargaon, District (Revenue & Civil) Mungeli (C.G.) through the natural guardian/father Sukhchain Diwakar S/o Pachkaud aged 50 years, R/o village- Chandrakhuri, Police Station – Sargaon District (Revenue & Civil) -Mungeli (C.G.)

---- Applicant

Versus

- State of Chhattisgarh through District Magistrate, Balodabazar, District (Revenue & Civil) – Balodabazar – Bhatapara (C.G.)

---- Respondent

For Applicant : Shri Sumit Jhavar, Advocate.
 For Respondent/State : Shri Priyank Rath, PL

Hon'ble Smt. Justice Rajani Dubey
Order on Board

11/07/2019

1. The present revision has been preferred under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 (in short 'the Act 2015') against the order dated 02.05.2019 passed in Criminal Appeal No. 45/2019 by the First Additional Sessions Judge, Balodabazar District Balodabazar (C.G.), whereby the learned Sessions Judge has rejected the appeal arising out of order dated 24.04.2019 passed in Criminal No. 112/2019 dismissing the bail application of the present applicant by the Principal Magistrate, Juvenile Justice Board, Balodabazar.

2. This is the revision petition filed by one of the accused persons, who is juvenile. The prosecution story, in brief, is that a report was lodged by the complainant in City Kotwari to the effect that the co-accused Puran Satnami was earlier employed as driver under him and prior to four months he left the job of driver and Rs. 6000/- was reported to be outstanding. On 12.04.2019, when complainant was going to make outstanding payment to co-accused Puran Satnami, he and his other friends assaulted him hurling abuses and snatched Samsung Mobile, golden chain and cash of Rs. 38,000/-. On the date of occurrence the present applicant being juvenile , was sent to juvenile home. He filed an application under Section 12 of the Juvenile Justice Act for granting bail which was dismissed. Against the said dismissal, an appeal was preferred which was also dismissed. Hence, this revision.
3. Learned counsel for the applicant submits that in the present case, the Juvenile Justice Board as well as the Appellate Court have completely ignored to consider the statutory scheme of Section 12 of the Act of 2015, which itself is *pari materia* of Section 12 of the Act of 2000 while considering the application for grant of bail under Section 12 of the Act of 2015. Learned counsel for the applicant argued that grant of bail to a juvenile is rule

and exceptional circumstances under which, it could be rejected are under those which have been exhaustively enumerated in Section 12 of the Act of 2015 itself. Unless those grounds are made out, a juvenile is required to be granted bail. It is further contended that in the present case, report of the Probation Officer does not indicate anywhere that his release would bring him in association with any known criminals or expose him to moral, physical or psychological danger or would otherwise defeat the ends of justice. It is contended that the Juvenile Justice Board as well as the appellate authority have rejected the bail application by mechanically applying the aforesaid clauses, though bereft of any material. Counsel for the applicant also submits that the applicant is in jail since 14.04.2019 and is has completed more than two months in custody, therefore, he may be extended benefit of bail.

4. Counsel for the State submits that the order passed by the two Courts below being fully justified and in accordance with the provisions of Section 12 of the Act does not warrant any interference and the instant revision deserves to be set aside.
5. The provisions regarding grant of bail to a juvenile as per Section 12 of the Act, it clearly shows that the legislature has used the word “shall” in the said Section with great stress and with somewhat mandatory force which in

other words means ordinarily irrespective of the nature of offence whenever a juvenile applies for bail he should be released on bail. The learned Single Judge of this Court in the case of **Jaleshwar Barman @ Dadu Vs. State of Chhattisgarh (CRR No.963/2016)** and **Shrawan Bhagat Vs. State of Chhattisgarh (CRR No. 67/2014)** aggregatively discussed on Section 12 and it is held that 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.

6. On perusal of the record and report of the Probationary Officer I do not find any reasonable ground having been brought before the Juvenile Justice Board or the Police Authorities in respect of the so called threat of the juvenile getting exposed to moral, physical or psychological danger or come in the company of known criminal.
7. In view of above consideration, the impugned order dated 27.05.2019 could not 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. 25,000/-, 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.

8. The revision is accordingly allowed.

Sd/-
(Rajani Dubey)
Judge