

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 727 of 2019**

1. Khileshwar Sahu (Juvenile), S/o Naresh Sahu, aged about 17 years, through his legal/natural guardian father Naresh Sahu, S/o Late Budhu Sahu, aged about 40 years, R/o – village-Ganoud, Post Office & Police Station – Rakhi, Raipur, District Raipur (C.G.)
2. Umesh yadav (Juvenile) S/o Jageshwar Yadav, aged about 17 years, through his legal/natural guardian mother Smt. Savita Bai Yadav, W/o Jageshwar Yadav, aged about 50 years, R/o village-Dhamni, Post Office & Police Station Mandir Hasoud, Raipur, District Raipur (C.G.)

---- Applicants

Versus

- State of Chhattisgarh through the District Magistrate, Raipur, District- Raipur (G.G.)

---- Respondent

For Applicants	:	Shri Shivendu Pandya, Advocate.
For Respondent/State	:	Shri Rahul Mishra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey
Order on Board

10/07/2019

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 27.05.2019 passed in Criminal Appeal No. 273/2019 by the Children Court/Ninth Additional Sessions Judge, Raipur District Raipur (C.G.), whereby the learned Sessions Judge has rejected the appeal arising out of order dated 10.05.2019 passed in Criminal Case No. 179/2019 dismissing the bail application of the

present applicants by the Principal Magistrate, Juvenile Justice Board, Raipur.

2. This is the revision petition filed by the accused persons, who are juvenile. The prosecution story, in brief, is that complainant along with Domar Dhruv were sitting near 'Choura' of village Ganoud, P.S. Rakhi, Raipur, thereafter, one Shekhar Dhruv came near the complainant and told about the standing boys near Bajarang Chowk. When complainant reached near Bajarang chowk, the present applicants/accused caught hold the complainant and one of the accused namely Chelaram assaulted the complainant with the knife and used filthy language. The complainant Mahendra Kumar Dhruv was injured and lodged an FIR against the accused/applicants. On the date of occurrence the present applicants are juvenile so, they were sent to juvenile home. They 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 applicants 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 applicants 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 their release would bring them in association with any known criminals or expose them 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 applicants also submits that the applicants are in jail since 18.02.2019 and they are completed more than four months in custody, therefore, they 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 applicants shall be released on bail forthwith on furnishing a personal bond in the sum of Rs. 25,000/- each, by the parents or guardians of the applicants, as the case may be, to the satisfaction of the Juvenile Justice Board for their appearance before the Board, as and when directed.
8. The revision is accordingly allowed.

Sd/-
(Rajani Dubey)
Judge