

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No.729 of 2019**

- Toran Chandraker, aged about 17 years, S/o Shri Juthel Chandraker, Through his Legal Guardian his father Shri Juthel Chandraker, age about 55 years S/o Bhanjan Chandraker, R/o Rameshwer Nagar, Bhanpuri, P.S. Khamtarie, District – (Revenue & Civil) Raipur (C.G.)

---- Applicant

Versus

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

---- Respondent

For Applicant	:	Shri Yogesh Pandey, Advocate.
For Respondent/State	:	Shri I. Lakra, Dy. G.A.

Hon'ble Smt. Justice Rajani Dubey
Order on Board

30/07/2019

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 17.05.2019 passed in Criminal Appeal No. 261/2019 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 26.04.2019 passed in Criminal Case No. 93/2019 dismissing the bail application of the present applicant by the Principal Magistrate, Juvenile Justice Board, Raipur.

2. The prosecution story, in brief, is that on 05.02.2019, Sub-inspector Shiv Kumar Dhruv, Thana Khamrai, got a secret

information that a person was stood near Patidar Bhawan, Bhanpuri having illegal cannabis (Ganja) in a nylon bag and searching clients to sell the same. On the basis of information a person was arrested who told his name Toran Chandrakar (Present applicant). A case was registered under Section 20A of the Narcotic Drugs and Psychotropic Substance Act, 1985 against him. After completion of investigation he was sent to juvenile home as on the date of occurrence the present applicant being juvenile. 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. He further submits that the applicant has been falsely implicated in the present case. He has no criminal background. Orders passed by both the Courts below are improper and contrary to the law. In view of provision contained in Section 12 of the Juvenile Justice Act, the applicant deserves to be released on 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. However, Social Investigation Report indicated that the accused, who is juvenile, is having bad habits but his

parents/guardian submitted that they are ready to follow every conditions of this Court. In view of above consideration, the impugned order dated 17.05.2019 could not be sustained and is therefore, set aside. Accordingly, the application under Section 12 of the Act of 2015 is allowed.

7. It is, therefore, directed that the applicant be released on bail on the conditions given below :-

1. The applicant shall be released on bail on his father/legal guardian furnishing a personal bond in the sum of Rs. 25,000/- with one surety in the like sum to the satisfaction of the Juvenile Justice Board for his(applicant) appearance.

2. The applicant shall appear before the Juvenile Justice Board on all such other subsequent dates as given to him till the disposal of the case.

3. Father/natural guardian of the applicant shall file an undertaking that the applicant will not indulge in criminal activities during the bail period otherwise his bail will automatically stand canceled.

8. The revision is accordingly allowed.

Sd/-
(Rajani Dubey)
Judge