

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 939 of 2019**

- Mohammed Farid Qureshi son of Mohammed Wasim Qureshi, aged about 16 years, resident of House No. 7/28 Kachna Housing Board, B.S.U.P. Colony, Police Station Vidhansabha, District- Raipur (C.G.) Through natural guardian father Mohammed Wasim Qureshi.

---- Applicant

Versus

- State of Chhattisgarh through Station House Officer, Police Station Vidhansabha Raipur, District Raipur (C.G.)

---- Respondent

For Applicant	:	Mr. K.K. Pandey, Advocate.
For Respondent/State	:	Mr. Wasim Miyan, PL

Hon'ble Smt. Justice Rajani Dubey
Order on Board

29/08/2019

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 09.07.2019 passed in Criminal Appeal No. 366/2019 by the Special Judge (Protection of Children from Sexual Offences Act, 2012) Raipur, District Raipur (C.G.), whereby the learned Special Judge has rejected the appeal arising out of order dated 27.06.2019 passed in Criminal Case No. 228/2019 dismissing the bail application of the present applicant by the Principal Magistrate, Juvenile Justice Board, Raipur C.G.

2. The prosecution story, in brief, is that complainant Rekha Sarna lodged an FIR at Police Station Vidhansabha alleging that

on 18.03.2019, the applicant and other co-accused persons have killed the deceased Rahul Sarna relating to money dispute. The applicant and other co-accused are being prosecuted for the offence punishable under Section 302/34 of IPC. 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. The applicant is in Jail since 18.03.2019 and he has completed more than 5 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. 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 09.07.2019 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