

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.1194 of 2018**

Betti Joga, S/o Betti Handa, 15 years, through Father and natural guardian
Betti Handa, S/o Betti Kosa, 43 years, R/o Village Potakpalli, P.S. Kistaram,
District Sukma, Chhattisgarh

---- Applicant

versus

State of Chhattisgarh through P.S. Kistaram, District Sukma, Chhattisgarh

--- Respondent

For Applicant	:	Shri Prafull N. Bharat, Advocate
For Respondent	:	Shri K.K. Dewangan, Dy. Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

23.1.2019

1. The instant revision has been preferred against the order dated 1.9.2018 passed by the Special Judge under the N.I.A. Act, Jagdalpur in connection with Crime No.7 of 2018, whereby the Special Court has rejected the application submitted on behalf of the Applicant under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (henceforth 'the Act of 2015') for grant of bail.
2. Facts of the case, in brief, are that the Applicant has been arrested on 12.4.2018 in connection with Crime No.7 of 2018 registered at Police Station Kistaram, District Sukma for offence punishable under Sections 147, 148, 149, 307, 302, 396, 120B, 427, 332 and 333 of the Indian Penal Code, Sections 25 and 27 of the Arms Act and Sections 3 and 5(b) of the Explosive Substances Act. On 1.9.2018, an application under Section 12 of the Act of 2015 was

filed on behalf of the Applicant before the Special Court for grant of bail on the ground that his date of birth is 3.2.2003, therefore, on the date of alleged incident, he was below 18 years of age. In support of this, the Applicant annexed Aadhar Card, Ration Card, School Certificates and other documents. Vide the impugned order dated 1.9.2018, without going through the merits of the application under Section 12 of the Act of 2015, the Special Court rejected the same. It was observed by the Special Court that while granting remand of the accused/Applicant, i.e., on 14.3.2018, his age was mentioned to be 21 years in the remand papers and the Applicant also informed the Court that his age was 21 years. It was also observed by the Special Court that it would not be appropriate to pass any order on the application without giving any opportunity of hearing to the prosecution and thus the Special Court rejected the application under Section 12 of the Act of 2015 without going through the merits of the application and for determination of age of the Applicant it was ordered that the documents submitted by the Applicant be given to the prosecution as well as to the Station House Officer of the concerned police station for their comments.

3. Shri Prafull N. Bharat, Learned Counsel appearing for the Applicant submits that since the Applicant had submitted documents claiming his age to be below 18 years and prayed for grant of bail under Section 12 of the Act of 2015, his application for bail should not have been decided till determination of his age and kept pending, but the Special Court has rejected the application. Hence, the impugned order passed by the Special Court is contrary to law.
4. Section 12 of the Juvenile Justice (Care and Protection of

Children) Act, 2015 reads thus:

“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 or the person's release would defeat the ends of justice, and the Board shall record the reasons 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.”

5. Rule 12 of the Juvenile Justice (Care and Protection of Children)

Rules, 2007 runs as under:

“12. Procedure to be followed in determination of Age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in Rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance of documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after

taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law;

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

6. Now, on examination of the facts of the case in hand, it is clear that the application under Section 12 of the Act of 2015 was submitted before the Special Court notified under the N.I.A. Act not before the Juvenile Justice Board. As observed by the Special Court that at the time of granting remand, the age of the Applicant was mentioned to be 21 years and the Applicant also orally informed the Special Court in this regard. Thereafter, during the course of investigation and pendency of remand proceeding, the present

application under Section 12 of the Act of 2015 was filed by the Applicant for grant of bail on the ground that on the date of incident his age was below 18 years. In these circumstances, the Special Court ought to have first determined the actual age of the Applicant on the date of incident and after inquiry if the age of the Applicant found to be below 18 years then the application should have been sent to the competent Juvenile Justice Board. But, the Special Court did not make any inquiry on the age of the Applicant nor did it give any finding on this point and without going through the merits of the application, it rejected the application. Thus, the order of the Special Court cannot be held to be in accordance with law and, therefore, the impugned order is set aside. The Special Court shall itself determine the age of the Applicant or shall get the same done through the competent Juvenile Justice Board and shall thereafter decide the application under Section 12 of the Act of 2015 in accordance with law.

7. Resultantly, the instant revision stands disposed of in the aforesaid terms.

Sd/-

(Arvind Singh Chandel)
Judge