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HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Order on : 26.08.2020

Order Passed on : 12 /10/2020

CR.R. No. 552 of 2020

State of Chhattisgarh, Through : The District Magistrate, Durg, District Durg, Chhattisgarh.

---- Applicant

Versus

Ishant Kumar, S/o. Ashok Kumar Thakur, aged about 17 years, Through : His Legal Guardian - Ashok Kumar Thakur, S/o. Late Gopal Ram, Resident of House No. 106-E, Risali Sector, Bhilai, District Durg, Chhattisgarh.

-----Respondent

AND

CR.R. No. 569 of 2020

Smt. Mamta Yadav, W/o. Awadesh Yadav, aged about 46 years, R/o. Q.No.-115/01, Maitri Kunj, Risali, Bhilai, Police Station Newai, District Durg, Chhattisgarh.

---- Applicant

Versus

1. Isanth Kumar, S/o. Ashok Kumar Thakur, aged about 17 years, Through : Guardian of Juvenile - Ashok Kumar Thakur, S/o. Lt. Gopal Rao, R/o. 106/E, Risali Sector, Bhilai, District- Durg, Chhattisgarh.
2. State of Chhattisgarh, Through : S.H.O., Police Station Newai, District Durg, Chhattisgarh

-----Respondent

For Applicant in (Cr.R. No. 552/20) & for State/respondent No.2 in (Cr.R. No.569)	: Mr. Adil Minhaj, Govt. Advocate
For Applicant in (Cr.R. No. 569/20)	: Mr. T.K. Jha, Advocate
For Respondent No.1 (in Cr.R. No.552 & 569 of 2020)	: Mr. Malay Shrivastava, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

12/10/2020

1. Both the revision petitions are heard and decided together by this common order as they are directed against the order dated 04.11.2019, passed in Criminal Appeal No. 257 of 2019, by the learned Additional Sessions Judge (F.T.C.), Durg, District – Durg (C.G.), allowing the appeal filed under Section 101 of Juvenile Justice (Care and Protection of Children) Act, 2015 (in short “the Act, 2015”) granting bail to the respondent No.1 against the rejection order passed by the Juvenile Justice Board.
2. Learned State counsel appearing in Cr.R.No. 552/2020 submits that the order granting bail passed by the Appellate Court is erroneous and is passed without appreciating the facts and circumstances present in the case. The respondent is charged for commission of offence of murder and the facts of the case disclose that it was a planned murder. Section 2 (33) of the Act, 2015 clearly classifies such offence as a heinous offence. The age of the respondent is about 17 years, therefore, his trial as adult is under contemplation before the Juvenile Justice Board, which is to be made in accordance with Section 15 of the Act, 2015. The grant of bail to the respondent has given rise to unrest in the locality, which may lead to some unpleasant events, therefore, it is prayed that the impugned order be set-aside and the respondent No.1 be directed to be placed in detention in observation home.

3. Mr. T.K. Jha, Advocate appearing on behalf of the applicant (in Cr.R. No.569/2020) submits that the offence committed by the respondent No.1 is heinous offence as defined under Section 2 (33) of the Act, 2015, therefore, in such case, benefit of Section 12 of the Act, 2015 shall not be available to him. Clause (f) of sub-section (5) of Section 14 of the Act, 2015 specially provides for enquiry of heinous offence, regarding which preliminary assessment has to be made by the Board compulsorily under Section 15 of the Act, 2015 and subsequent to which, there is possibility that case may be tried by the Children's Court as the age of the respondent is above 16 years. Therefore, it is submitted that this petition be allowed and the impugned order be set-aside.
4. Learned counsel for the respondent No.1 - Ishant Kumar in both the cases submits that the impugned order has been passed in detail giving reason for granting bail, which are very specific and clear. The facts of the case shows that the FIR was lodged against unknown person and the applicant has been implicated in this case only on the basis of the memorandum statement of the applicant recorded by the police, which is clearly a statement given under coercion and not admissible in law. Therefore, practically there is no evidence against the applicant for commission of heinous crime and the social status report given by the Probation Officer was clearly in favour of the respondent No.1/applicant. Hence, no error has been committed by the Appellate Court and there is no reason to interfere with the impugned order. It is prayed that both the revision petitions be dismissed.

5. I have heard the learned counsel for the parties and perused the documents placed on record.
6. Considered on the submissions and the facts of the case. There is no denial that the age of the respondent No.1/applicant was above 16 years and therefore, the procedure as required under Section 14 (3), (5) and 15 of the Act, 2015 has to be completed by the Juvenile Justice Board and if it is the result of preliminary assessment that respondent has to be tried as an adult, then the procedure under Section 18 (3) of the Act, 2015 shall follow, which may result in exercise of powers of the trial Court under Section 19 of the Act, 2015, as it is a case of commission of heinous offence as defined under Section 2 (33) of the Act, 2015.
7. The Juvenile Justice (Care and Protection of Children) Act, 2015, came into force on 01.01.2016. This Act from very beginning, embodies the provision under Section 12 for grant of bail and the provision under Section 14 (5), 15, 18 and 19 of the Act, 2015. There is classification of offences under Section 2(33) of the Act, 2015 and there is procedure provided for trial of juvenile as an adult, in case, the juvenile offender is of age above 16 years and the Juvenile Justice Board makes an assessment accordingly recommending his trial by the Children's Court. The classification of the offence and the classification of the trial of age below 16 years and the age above 16 years is present in the Act and similarly the provision for granting bail under Section 12 of the Act, 2015 is also present in the Act, which is as under :-

“Section – 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 fulfil 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.”

8. Section 12 of the Act, 2015 does not make any classification with respect to grant of bail to a child in conflict with law below 16 years of age or to a child in conflict with law above 16 years of age. Section 12 of the Act, 2015 simply provides that person, who is apparently child can be granted bail in accordance with the presence of circumstances, which are described in the provision and similarly, his application for bail can be dismissed in presence of circumstances as mentioned in the proviso to Section 12 (1) of the Act, 2015.
9. The word 'child' has been defined in Section 2 (12) of the Act, 2015 according to which “Child” means a person, who has not completed 18 years of age and Section 2 (13) defines child-in-conflict with law, which means, who alleged or found to have committed an offence, who has not completed 18 years of age on the date of commission of such offence.
10. There is nothing specific in this definition to make out that in case a child in conflict with law is assessed and recommended to be tried by a Children Court has to be treated differently in the matter of bail. It is found that there may be differentiation and classification in the offence in the procedure to be followed in the Act but that classification has not been made in the provision of Section 12 of the Act, 2015 with respect to granting and rejecting bail to the juvenile in conflict with law, therefore, these arguments that

respondent No.1 is not entitled for benefit of Section 12 of the Act, 2015 appears to be without any substance and this ground raised in the revision petition is not acceptable.

11. The Division Bench of Patna High Court has in the case of **Lalu Kumar @ Lal Babu Vs. State of Bihar**, reported in **2019 (4) Crimes (HC) 249 (Pat.)** held in paragraphs 106, 110 and 111, which are as follows :-

“106. Now, the stage is set for answering the first and the second questions : "(i) Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015 ?" ; and "(ii) Under which provision of law, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail after the transfer of his case to the Children's Court for trial by the Board ?"

110. For the reasons aforestated, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 during the pendency of preliminary assessment by the Board under Section 15 of the Act of 2015.

111. For the same reasons, a child, who has completed or is above the age of 16 years and is alleged to have committed a 'heinous offence' can maintain his application for release on bail under Section 12 of the Act of 2015 after the transfer of his

case to the Children's Court. “

12. On considering the other ground on gravity of offence on which there is main emphasis given by the State counsel in (Cr.R. No.552), it would be seen that the learned Appellate Court has given full consideration to the facts and circumstances of the case and also the social status report of the Probation Officer. It is recorded in the impugned order that the applicant has no previous criminal records. It is the father of the applicant, who has sought his custody according to which the possibility of respondent being associated with any criminal elements was also not found present. Similarly there was nothing to suggest in the social status-report that respondent may face moral, psychological or physical danger, if he has released on bail. Only because the offence charged against the applicant is of heinous nature, therefore, in absence of other circumstances it can not be held that the release of the applicant would defeat the ends of justice. Therefore, I am of this view that there had been no grounds made out in accordance with the proviso of Section 12 (1) of the Act, 2015 to deny bail to the respondent No.1 and also that the respondent had entitlement to be considered for grant of bail under Section 12 (1) of the Act, 2015.
13. Resultantly, I do not find any merits in both the revision petitions, which are dismissed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge