

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 641 of 2020

Shubham Kashyap S/o Late Chamru Kashyap Aged About 16 Years R/o Vikas Nagar, Jagdalpur, Distt. Bastar (Chhattisgarh) Through Natural Guardian (Mother) Smt. Dashmi Kashyap, Wd/o Late Chamru Kashyap, R/o Vikas Nagar, Jagdalpur, Distt. Bastar (Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through District Magistrate, Jagdalpur, Distt. Bastar (Chhattisgarh), District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

AND

CRR No. 676 of 2020

Rahul Swami As Per Honble Court Dated 02-12-2020, S/o Late Chinna Swami, R/o Mahavir Nagar, Atal Awas Dharampura No. 02, Jagdalpur District Bastar Chhattisgarh Through Guardian (Brother In Law) Kartik S/o Pachiyapan Aged About 35 Years R/o Gandhi Nagar Ward Jagdapur District Bastar Chhattisgarh, District : Bastar(Jagdalpur), Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through Police Station Kotwali, District Bastar Chhattisgarh., District : Bastar(Jagdalpur), Chhattisgarh.

---- Respondent

For Applicant	: Ms. Madhunisha Singh and Shri Pankaj Singh, Advocate in CRR No. 641 of 2020. Shri P.K. Tulsyan, Advocate in CRR No. 676 of 2020.
For Respondent/State	: Mr. Adil Minhaj, G.A.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

03-12-2020

Heard.

1. As both the criminal revision petitions arise of the same crime number, they are being disposed off by this common order. These revision petitions have been brought against the orders dated 5.2.2020 and 3.9.2020 passed in Criminal Appeals No. 4 of 2020 and 27 of 2020 by the Learned Sessions Judge and Learned Additional Sessions Judge (F.T.C.)/ Child Court, Bastar at Jagdalpur upholding the judgment of conviction and sentence passed by the trial Court.
2. Learned counsel for the applicant in CRR No. 641 of 2020 submits that the applicant has been falsely implicated in this case. He has not participated in the commission of offence, he went on the spot only to mediate but then, he has been falsely involved. The social status report is in his favour and there is nothing adverse present. Learned Courts below have failed to appreciate these circumstances and passed orders of rejection which suffer from infirmity and are liable to be set aside.

Learned counsel for the applicant in CRR No. 676 of 2020 submits that the applicant has been falsely implicated in this case. According to the social status report, this applicant does not have any criminal antecedents and there are no other circumstances present in the report for refusal of bail to him. The only thing that is mentioned in the report that this applicant is short tempered and aggressive, that cannot be made a ground for rejection of bail prayer, therefore, the Courts committed error in passing the rejection orders. Hence, the revision petitions be allowed.

3. Learned counsel appearing for the respondent/ State opposes the submissions so made and submits, that it is a case of commission of heinous offence of murder of a home-guard personnel. There are four eyewitnesses to this incident who have also identified both the applicants and one another co-accused in the test identification parade.

The offence has been committed in an atrocious manner, therefore, for these reasons, the applicants have no entitlement for grant of bail. Learned Board as well as the Appellate Court both have not committed any error. Hence, the revision petitions be dismissed.

4. Heard both counsel for the parties and perused the material available on record.
5. Considered the submissions and also the facts of the case. Although, it is a case in which the applicants are being prosecuted for the commission of offence of murder of home-guard personnel, but according to Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000, it is very clear that the gravity and nature of offence is never considered for grant or rejection of bail prayer made by the juvenile in conflict with law. The specific conditions which are required to be made out under the proviso to Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 are that there is possibility of the juvenile getting associated with criminal elements, the possibility of his being exposed to physical or psychological danger or his release on bail would defeat the ends of justice.
6. Considering the social status report with respect to both these applicants, I am of this view that no such circumstance is present for refusal of bail to them, therefore, I am of the considered view that the Juvenile Justice Board as well as the learned Appellate Court both have committed error. Hence, the orders passed are not sustainable.
7. Hence, for these reasons, both the revision petitions are allowed.
8. Consequently, the orders dated 5.2.2020 and 3.9.2020 passed by the Learned Sessions Judge and Learned Additional Sessions Judge in

both the cases are set aside. It is directed that the applicant in both the cases shall be released on bail on furnishing a surety of Rs.25,000/- each, alongwith a personal bond of the same amount by their natural guardian/ guardian to the satisfaction of the concerned Juvenile Justice Board, for their appearance as and when directed, then they shall be given in custody of their father/ guardian.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi