

Dayasagar Yadav vs State Of Chhattisgarh on 16 November, 2010

HIGH COURT OF CHATTISGARH BILASPUR

Criminal Revision NO 296 OF 2010

Dayasagar Yadav

...Petitioners

Versus

State of Chhattisgarh

...Respondents

! Shri Adil Minhaj counsel for the applicant ^ Shri Avinash K Mishra Panel Lawyer for the State
CORAM: Single Bench Honble Shri Manindra Mohan Shrivastava J Dated: 16/11/2010 : Judgement
ORAL ORDER (Passed on 16th of November, 2010) Criminal Revision under Section 53 of the
Juvenile Justice Care and Protection of Children Act 2000 With the consent of learned counsel for
the parties, the matter is heard finally.

2. This criminal revision under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act") is directed against order dated 06-05-2010 passed by the Sessions Judge, Raipur in Criminal Appeal No.35 of 2010 whereby order dated 21- 04-2010 passed by the Principal Magistrate, Juvenile Justice Board, Mana Camp, Raipur, rejecting petitioner's application under Section 12 of the Act has been confirmed.

3. Assailing the correctness and validity of the order dated 21-04-2010 passed by the Juvenile Justice Board and the order passed in appeal by the appellate Court, learned counsel for the applicant contended that the rejection of application for grant of bail is wholly illegal. Learned counsel for the applicant argued that in view of the provisions of Section 12 of the Act, in case of alleged commission of offence by a Juvenile, ordinarily, bail has to be granted and the statutory mandate not to release will operate only when there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

Referring to the provisions contained in Section 12 of the Act, learned counsel for the applicant argued that the Juvenile Justice Board rejected the application without there being any material or

circumstances justifying conclusion that release would defeat the ends of justice. Further submission is that none of the grounds justifying rejection of the application were made out yet by taking into consideration extraneous aspect with regard to the nature and gravity of offence, which is ordinarily relevant while considering applications for grant of bail under Section 439 of the Cr.P.C., application of the applicant has been rejected by the Juvenile Justice Board in the present case. In order to buttress his submission, learned counsel for the applicant relied upon the decision of this Court Bharat @ Bhurat & Another vs. State of C.G., 2006 (1) C.G.L.J. 72, Akhilesh Kumar vs. State of C.G., 2006 (1) C.G.L.J. 305 and Rahul Mishra v. State of M.P., 2001 Cr.L.J.

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4. On the other hand, learned State counsel submitted that while rejecting applicant's application under Section 12 of the Act, no illegality has been committed by the Juvenile Justice Board, as the Court below has considered only relevant considerations in order to form an opinion against release of the applicant that such release would defeat the ends of justice. Further submission of learned State counsel is that the learned lower appellate Court has also considered this aspect and taking into consideration the overall circumstances of the case, has recorded that release of the applicant would bring him into association with any known criminal and also expose him to moral, physical or psychological danger. Learned State counsel argued that the circumstances in which the offences is alleged to have been committed itself show that the Juvenile was not living in a healthy company, and therefore, if he is allowed to be released, it would not be in his interest for the reasons stated in the order passed by the Board as well as by the appellate Court.

5. The Board vide its order dated 21-04-2010 rejected application of the applicant by recording that in the event of release, the ends of justice are likely to be defeated. No specific reason has been assigned by the Board to come to the said conclusion. However, from a reading of the order and the contents thereof preceding such a conclusion, it is revealed that the Court has taken into consideration that the applicant is charged of commission of offence under Section 302 of the I.P.C. causing death of owner of Dhabha by assaulting with a club. The order further records that considering the nature of offence; release would defeat the ends of justice. From the aforesaid reading of the order, it is clear that the Board arrived at the conclusion that the release would defeat the ends of justice only on the basis of the nature of offence.

The learned appellate Court has recorded that the offence of murder is a serious offence. The finding recorded by the appellate Court that release would bring him into association with any known criminal or expose him to moral, physical or psychological danger is again not based on any other circumstance except that the offence is of grave nature.

From the order passed by the Board as well as by the appellate authority, it is thus discernable that while the Board rejected the application of the applicant only on the ground that it would defeat the ends of justice in view of the nature of offence, the appellate Court has confirmed the order by recording a finding of exposures by psychological danger on the basis of gravity of offence. There is no other circumstance or ground considered by the Courts below to come to such conclusion and reject the application.

6. The scope and object of provision regarding grant of bail to a Juvenile as envisaged under Section 12 of the Act came up for consideration before the Single Judge of this Court in the case of Bharat @ Bhrrat & Another (supra), wherein it was held that the use of word "Shall" by the legislative provisions in the 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. It has also been held that ordinarily the bail has to be granted to the Juvenile and would be liable to be rejected only when it appears to the Board that either of the three conditions mentioned in Section 12 of the Act are existing. In the case of Akhilesh Kumar (supra), dealing with the case of a Juvenile, this Court while examining the correctness and validity of order rejecting application of the applicant filed under Section 12 of the Act on the ground that release would defeat the ends of justice, found that though the Juvenile Justice Board had dismissed the bail application on the ground that release would defeat the ends of justice but how the release would defeat the ends of justice has not been stated. In that view of the matter, this Court came to the conclusion that the orders passed by the Court below are not sustainable in the eye of law.

7. In the case of Rahul Mishra, (supra), the High Court of M.P. has considered the provisions contained in Section 12 of the Act and held that the words notwithstanding anything contained in the Code of Criminal Procedure, 1973", would indicate that the considerations which are germane for granting or refusing bail to persons who are not juvenile delinquent shall not come into play for granting or refusing bail to them. It was also held that the words "ends of justice" should be confined to those facts which show that the grant of bail itself is likely to result in injustice. The Juvenile delinquent may appear to be guilty prima facie but he is especially protected by the Act and is favourably considered for grant of bail. From the aforesaid decisions and the law propounded by Their Lordships in various cases, it is clear that ordinarily bail is required to be granted to a Juvenile in view of the provisions contained in Section 12 of the Act. It is only when the Court finds that the grounds therein are made out that the Court shall reject the application. If the order impugned in the present case is scrutinized in the light of the principles as discussed above, it would at once appear that the impugned orders are passed on extraneous considerations. The Board while rejecting the application, stating that the release would defeat the ends of justice, appears to be guided by only one circumstance i.e. the gravity of offence, the appellate authority also relies upon the same circumstance but to come to the conclusion that the release would bring the applicant into association with criminals and expose him to psychological danger. I have perused the records of the case and there does not appear to be any other material or circumstance placed on record to come to the conclusion that release of the applicant would either bring him in association with known criminal or expose him to psychological danger or would otherwise defeat the ends of justice. In the absence of any such ground appearing, the applicant is entitled to grant of bail.

8. Accordingly, this revision petition is allowed and the orders passed by the Court below are hereby set aside. The applicant shall be released upon furnishing two sureties of Rs.10,000/- each by the uncle namely Chhotu Yadav including that of his own to the satisfaction of the Juvenile Justice Board, for his appearance before the Board on all dates of trial. Records of the Court below may be

returned forthwith.

JUDGE