

The petitioner Sumanta Bindhani is detained in the observation home since 05.07.2016 in connection with P.R. No.58 of 2016-17 dated 05.07.2016 of E.I. and E.B., Unit-II, Cuttack which is now subjudiced before the learned C.J.M -cum- Principal Magistrate, Juvenile Justice Board, Cuttack in JJC No.42 of 2016 in which final P.R. has been submitted under section 20(b)(ii)(c) of the N.D.P.S. Act.

Learned counsel for the petitioner contended that the petitioner was prosecuting his studies in Panchayat Junior College, Phiringia, Kandhamal in +2 Arts when he was falsely implicated in connection with this case.

It is contended that though initially the petitioner was produced before the learned Sessions Judge -cum- Special Judge, Cuttack but after conducting the inquiry, the petitioner was found to be child in conflict with law and accordingly, the case records were sent to the C.J.M -cum- Principal Magistrate, Juvenile Justice Board, Cuttack for inquiry.

Learned counsel for the petitioner further submitted that there is no other criminal antecedents against the petitioner and there is no chance of absconding of the petitioner and therefore, taking into account his period of detention, the bail application may be favourably considered.

Learned counsel for the State on the other hand contended that commercial quantity ganja was seized from the possession of the petitioner and therefore, in view of the bar under section 37 of the N.D.P.S. Act, the petitioner is not entitled to be released on bail.

This Court while admitting this revision petition on 16.01.2017 directed the C.J.M -cum-Principal Magistrate, Juvenile Justice Board, Cuttack to submit the preliminary assessment report which indicates that considering the facts and circumstances of the case, the C.J.M -cum- Principal Magistrate, Juvenile Justice Board, Cuttack was of the opinion that the petitioner seems to have done the illegal act without knowing its nature and consequence about such act and therefore, the case was held to be not suitable to be sent to the Children's Court for its adjudication.

The legislature has provided for the juvenile to be extended special care, treatment, development and rehabilitation. The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter '2015 Act') contemplates total separation of juveniles from the mainstream offenders. Both the Acts, viz., 2015 Act and N.D.P.S. Act are Special Acts passed by the Parliament and contain non-obstacle clauses having

overriding effect in the bail matters but the juveniles having been given special place in the scheme of things, section 12 of the 2015 Act overrides the provisions under section 37 of the N.D.P.S. Act, in the case of a person who is a juvenile.

Considering the submissions made by the learned counsel for the petitioner, the provision under section 12 of the 2015 Act, the preliminary assessment report submitted in the case, period of detention of the petitioner in the Observation Home and absence of any material that while on bail the petitioner is likely to come in association with any known criminal or will be exposed to moral, physical or psychological danger or his release would defeat the ends of justice, I am inclined to release the petitioner on bail.

Accordingly, the petitioner is directed to be released on bail on his father or any family member executing personal bond for a sum of Rs.20,000.00 (rupees twenty thousand only) with two solvent sureties each for the like amount to the satisfaction of the C.J.M. -cum- Principal Magistrate, Juvenile Justice Board, Cuttack and also on filing an affidavit by such family member before the concerned Court to the effect that,

- (i) he shall be responsible for the well-being of the petitioner;
- (ii) he shall ensure that the petitioner does not fall into bad company; and
- (iii) he shall ensure the presence of the petitioner before the learned C.J.M.-cum-Principal Magistrate, Juvenile Justice Board, Cuttack on each date when the case would be posted for inquiry.

In the result, the CRLREV petition is allowed.

Urgent certified copy of this order be granted on proper application.

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S.K. Sahoo, J.