

**Nari @ Narendra Barik** ..... **Appellant**

**-Vrs.-**

**State of Odisha** ..... **Respondent**

09. 17.05.2021

I have heard Mr. S.K. Mohanty, learned counsel for the appellant and Mrs. Saswata Pattnaik, learned Additional Government Advocate through Hybrid Mode because of the Covid 19 pandemic.

This appeal has been preferred under Section 101 (5) of Juvenile Justice (Care and Protection of Children) Act 2015 ( in short "the JJ Act") challenging the order dated 16.04.2020 passed by the learned Presiding Officer (Children Court), Ganjam, Berhampur (I/c) in connection with J.R. Case No.87 of 2019 corresponding to Kodala P.S. Case No.283 of 2019 registered under Sections 302/294/323/324/34 of I.P.C., dismissing the appeal of the appellant for bail.

The prosecution allegations in brief are that on 13.10.2019 at about 8 P.M. the appellant entered the house of the informant and abused him in obscene language and assaulted his son Pintu Naik by means of a Bhujali causing bleeding injuries. When the informant protested he was assaulted with fist blows and kicks for which he fell down. The appellant also took away some articles from his house. Pintu Naik succumbed to his injuries while undergoing treatment at MKCG MCH Berhampur.

Learned counsel for the appellant -CICL submitted that the CICL is aged about 17 years old and is detained in the observation home since more than one and half years and charge sheet has been filed in the meanwhile.He further

submits that the CICL has no criminal antecedents and his release is necessary in view of his age and in view of the mandate of Sec 12 of the JJ Act and in view of the risk posed by the Covid-19 pandemic. He has relied on the decisions rendered by this Court in the case of **Re-A Juvenile -Vrs.- State : (2009) 42 OCR 315** and **Kuna - Vrs.- State : 1993(II) OLR 536** and the decision of the Hon'ble Supreme Court in **Suo Motu Writ Petition (Civil) No. 4 of 2020 (in Re Contagion on Covid-19 virus in Children Protection Homes)** in support of his prayer for bail.

Ms. Pattnaik, learned Addl. Government Advocate vehemently opposes the prayer for bail stating that the appellant was aged more than 17 years on the date of occurrence and will be treated as an adult and tried by the Children's Court. Referring to the statement of the informant Mochia Nayak and neighbor Karuna Swain she has further submitted that the appellant had come to the house of the deceased armed with a knife and stabbed the deceased causing a number of bleeding injuries which resulted in his death. He has given recovery of the weapon of offence-the knife and his blood stained wearing apparel. Chargesheet dated 12.02.2020 has been filed against the appellant for commission of offences under Section 302/294/323/ 324/380 I.P.C. She objects to the grant of bail stating that the CICL has committed a heinous offence in a pre-planned manner by entering the house of the deceased armed with a sharp cutting weapon and his institutional care is necessary for his reformation which will not be possible if he is released on bail.

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In the case of **RE A Juvenile vs State : (2009)**

**42 OCR 315** where the accused was involved in a case under section – 302 IPC and other sections ,this Court held that the mandate of section 12 of the JJ Act is that a juvenile is to be released on bail however heinous the crime may be and the only restriction is availability of reasonable grounds that his release is likely to bring him in association with known criminals or expose him to any moral, physical or psychological danger or his release would defeat the ends of justice. Referring to the allegations against the petitioner, it was held that there was scope of psychological danger if he was not released on bail and the CCIPL was granted bail.

The Hon'ble Supreme Court in its decision rendered in **Re: Contagion Of Covid 19 Virus In Children's Homes** reported in **(2020) 15 SCC 280** has interalia held as follows:-

*...“In this regard, JJBs and Children's Courts are directed to proactively consider whether a child or children should be kept in the CCIPL considering the best interest, health and safety concerns. These may include:*

- (i) Children alleged to be in conflict with law, residing in Observation Homes, JJB shall consider taking steps to release all children on bail, unless there are clear and valid reasons for the application of the proviso to Section 12, JJ Act, 2015.*
- (ii) Video conferencing or online sittings can be held to prevent contact for speedy disposal of cases.”*

In the case of **Kuna vs State : 1993(II) OLR 536**, this Court considered whether the petitioner aged about 15 years 2 months and 7 days is entitled to benefit under Section 18 of the Juvenile Justice Act 1986. This decision is not relevant to this case and should not have been cited.

This Court in the case of **Naresh Naik vs State : (2008) 41 OCR 553** referred to the ratio in the case of **Abraham Kristian vs State : 1989( 1) OLR 89** that release of a juvenile on bail is the rule unless there appear reasonable grounds for believing that his release is likely to bring him in association with known criminals or expose him to moral danger and relying on the favourable report of the Superintendent Probation Hostel, directed for release of the juvenile on bail.

In the case of **Ashik Kumar Sahu vs State : (2012) 52 OCR 356**, who was an accused in case registered under section – 376 ( 2) (g) I.P.C , this Court referring to Section 12 of the Juvenile Justice ( Care and Protection of Children ) Act , 2000 directed the JCL to be released on bail.

In the case of **Chittaranjan @ Biswajit Sahoo vs State : 2018 (II) OLR 377** , the CCL had been chargesheeted for an offence under Section – 306 I.P.C . Referring to the provisions of section 12 of the Act, it was held that gravity of the offence is not to be considered but the circumstances in which the offence was committed and whether his environment is conducive is to be considered.

From a careful reading of Section 12 JJ Act, it is clear that a delinquent juvenile has to be released on bail irrespective of nature of the offence alleged to have been committed by him unless it is shown that if he is released on bail there are reasonable grounds to believe that the release of the CICAL 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. The nature of offence and the merits of the

case do not have any relevance but can be considered to some extent if they are of such a nature as would defeat the ends of justice if the CICL is released on bail . But materials have to be produced by the prosecution to make out any of the grounds provided in the Section 12(1) of the JJ Act of 2015, in order to persuade the Courts not to release the CICL on bail. But in this case, the social investigation / background report is not available in the case diary for which it is not possible to consider whether the release of the petitioner is likely to bring him into association with any known criminal or expose to moral, physical or psychological danger or that his release would defeat the ends of justice.

It is also necessary to state here that although a distinction has been carved out among two categories of CICLs - (i) The CICLs aged below 16 years and (ii) CICLs above 16 years as regards enquiry by the JJ Board or trial by the Children's Court as per the provisions of Section 15 and Section 18 ( 3) of the Act , but there is no distinction as regards the consideration of their prayer for bail and hence the prayer for bail of both categories of CICLs is to be considered as per the mandate of Section 12 of the JJ Act .

The Children's Court has dismissed the appeal interalia holding that there is rivalry in the locality, and his release may expose him to moral, physical, or psychological danger and also defeat the ends of justice as per Section 12(1) of the JJ(CPC) Act.

The decision of the Hon'ble Apex Court in **Re: Contagion Of Covid 19** (supra) has not been considered and nor has the social background/ investigation report in

respect of the CICAL been referred to in the impugned order. A prayer for bail of CICAL cannot be considered *de hors* this report. The non consideration of the report renders the rejection illegal. The impugned order refusing to grant bail to the CICAL, is therefore set aside.

Considering the nature of allegations against the CICAL, the mandate of Section 12 of the Act, the decisions of this Court and the Hon'ble Supreme Court referred to above, absence of the social investigation / background report and in view of the threat of infection and complications posed by the resurgence of Covid 19, I am inclined to release the CICAL on interim bail for a period of four months.

Let the appellant -CICAL represented through his natural guardian-father be released on interim bail for a period of four months to the satisfaction of the Court in seisin of the case on such terms and conditions as deemed just and proper including the following conditions:-

(i) His father-natural guardian shall furnish an undertaking that after release, the CICAL will not be allowed to come in contact with any criminals and will not indulge in any criminal activity.

(ii) The concerned Child Probation Officer / Child Welfare Officer shall maintain general supervision over the CICAL by visiting his house time-to-time as may be deemed necessary, to ensure that he is not exposed to any moral, physical or psychological danger

(iii) After the expiry of the period of four months, the CICAL shall surrender before the Children's Court and move for bail afresh which shall be considered in

accordance with law, taking into consideration the facts of the case alongwith the mandate of Section 12 of the Act, the social investigation / background report, the report of the concerned Child Probation Officer / child Welfare Officer and the decision of Hon'ble Apex Court in **Re: Contagion** (supra) if the Covid 19 pandemic is still raging.

The CRLA is accordingly disposed of.

As the restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the petitioner may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587 dated 25<sup>th</sup> March, 2020 as modified by Court's Notice No.4798 dated 15<sup>th</sup> April 2021.

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**Savitri Ratho,**  
**Justice.**

