

Court No. - 80

Case :- CRIMINAL REVISION No. - 797 of 2022

Revisionist :- X - Juvenile

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Alka Upadhyay, Abhishek Mayank, Manish Tiwari, Vikas Srivastava

Counsel for Opposite Party :- G.A., Amit Kumar Malviya, Amresh Malviya, Mukul Pandey

Hon'ble Subhash Chandra Sharma, J.

List revised. None appeared on behalf of the opposite parties even in the revised call.

Heard Sri Vikas Srivastava, learned counsel for the revisionist and learned A.G.A. for the State and perused the material on record.

The present criminal revision has been preferred by the revisionist through his father under Section 102 of the Juvenile Justice (Care and Protection) Act-2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present revision and set aside the impugned judgment and order dated 03.01.2022 passed by learned Additional Sessions Judge/Special Judge (POCSO Act, 2012) Aligarh in Criminal Appeal No.130 of 2021 (Vishal Chaudhary vs. Mohit Singh & another) Case Crime No.137 of 2020, under Sections 302, 201 I.P.C. I.P.C., Police Station Barla, District Aligarh as well as order dated 10.11.2021 passed by learned Principal Magistrate, Juvenile Justice Board, Aligarh in Misc. Case No.127 of 2021 (State of U.P. vs. Vishal Chaudhary) in Case Crime No.137 of 2020, under Sections 302, 201 I.P.C., Police Station Barla, District Aligarh and also prays to release the revisionist/delinquent on bail in the aforesaid case.

It is submitted that in this case the delinquent/applicant was aged about 16 years and was juvenile at the time of alleged incident. Further submitted that F.I.R. was lodged against unknown persons for committing murder of the deceased on 29.10.2020 regarding which missing report was lodged by father of the deceased on 31.10.2020. On 01.11.2020 when decomposed dead body of the deceased was found in a jungle present F.I.R. was lodged. It is

further submitted that the incident cannot be said to have taken place on 29.10.2020 because at the time of post-mortem finding has been recorded by the doctor that incident took place 4-5 days ago whereas the post-mortem was conducted on 02.11.2020. It is also submitted that there is no any evidence on record to show the complicity of the revisionist for committing murder of the deceased except recovery of mobile phone from the house of revisionist on 03.11.2020 which was planted by the police. It is also submitted that about three years have elapsed but trial could not be concluded till now except the examination of PW-2 in view of which conclusion of trial cannot be said to be possible in near future. The report submitted by the D.P.O. is also not adverse for the present delinquent even though the juvenility of the delinquent was not considered either by the J.J. Board or by the appellate court and also the provisions as contained u/s 12 of the aforesaid Act were not considered by the courts below while passing the aforesaid orders. The delinquent is in Juvenile Care Home since 03.11.2020 (i.e. about three years) and his psychology is being affected adversely, therefore, requested to set aside the orders passed by the J.J. Board as well as appellate court and allow the present criminal revision as the orders passed by the courts below cannot be said to be in conformity with law.

Learned A.G.A. opposed the prayer as aforesaid.

Considering the facts and circumstances of the case, submission made by learned counsel for the revisionist as well as learned A.G.A., perusal of record, the provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the District Probation Officer, non-possibility of trial being concluded in near future and the period present delinquent remained in child care home, it appears that Juvenile Justice Board as well as the appellate court had not considered the relevant provisions and the material on record in well manner but passed the orders without applying their judicial mind. In this way, there appears ground in this revision and the orders passed by the Juvenile Justice Board as well as learned appellate court are liable to be set aside.

Accordingly, the orders passed by Juvenile Justice Board dated 10.11.2021 and the appellate court dated 03.01.2022 are, hereby, set aside and the present criminal revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail in the aforesaid case on executing person bond by the revisionist (father of the delinquent) and two sureties each in the like amount to the satisfaction of the Juvenile Justice Board concerned on following

conditions :-

(i) The natural guardian/father will furnish an undertaking that upon release on bail the revisionist will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence.

(ii) The natural guardian/father will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not be allowed to waste his time in unproductive and excessive recreational pursuits.

(iii) Juvenile and the natural guardian/father will report to the Probation Officer on the first Monday of every calendar month.

(iv) The Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board concerned on such a periodical basis as the Juvenile Justice Board may determine.

Order Date :- 8.11.2023

Ashok Gupta