

Court No. - 80

Case :- CRIMINAL REVISION No. - 980 of 2023

Revisionist :- X (Minor)

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

Counsel for Revisionist :- Santoshprad Rai, Bhuwan Chandra Mishra, Santosh Kumar Rai

Counsel for Opposite Party :- G.A., Lal Behari Yadav

Hon'ble Subhash Chandra Sharma, J.

Heard learned counsel for the revisionist as well as learned counsel for the opposite party alongwith 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 21.11.2022 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Room No.1, Mau in Criminal Appeal No.110/2023 (C.N.R. No.UPMA) (Rishabh Rai vs. State of U.P. & others) and the judgment and order dated 21.10.2022 passed by learned Juvenile Justice Board, Mau in Case No. 119/2022 (State Vs. R.) arising out of Case Crime No. 468/2022, under Sections 34, 302, 147, 148, 149, 504, 506 I.P.C. and 7 Criminal Law Amendment Act, P.S. Sarai Lakhansi, District-Mau and also prays to release the revisionist/delinquent/applicant on bail in the aforesaid case.

It is submitted that in this case the revisionist/delinquent/applicant was aged about 16 years and was juvenile at the time of alleged incident. It is further submitted the revisionist was not named in the F.I.R., but during investigation his name was also brought into light on the basis of statement made by informant himself, whereas he himself lodged the F.I.R. but did not mention the name of present revisionist, which shows that the complicity of the revisionist was false. It is next submitted that as per allegation made in the F.I.R., all the accused persons were said to be equipped with fire arm and caused injury to the deceased. It is also submitted that the death of the deceased has been said to be caused by fire arm injury, which was caused by co-accused Diwakar Rai, who was major at the time of incident. It is also submitted that co-

accused Kamlesh Rai alias Chunnu Rai and Dimpal Kharwar alias Amarjeet Kharwar have already been granted regular bail by the co-ordinate Benches of this Court in Criminal Misc. Bail Application No. 7253 of 2023 by order dated 20.02.2023 and in Criminal Misc. Bail Application No. 5703 of 2023 by order dated 10.04.2023 respectively and the case of present revisionist cannot be said to be different to that of co-accused persons. The criminal history of two cases one related to year 2019 and other to the year 2021 has been shown, which is trivial and has been explained. 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 05.09.2022 (i.e. more than one year) 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 counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid, but conceded that co-accused Kamlesh Rai alias Chunnu Rai and Dimpal Kharwar alias Amarjeet Kharwar have already been enlarged on bail. It is also contended that the deceased was caused injury by the revisionist with other co-accused persons by fire arm as a result he died and in case revisionist is released he will come in association of hardened criminals.

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, that other co-accused persons have already enlarged on bail by co-ordinate Benches of this Court 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 21.10.2022 and the appellate court dated 21.11.2022 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 :- 22.11.2023

Sunil Kr. Gupta