

Court No. - 80

Case :- CRIMINAL REVISION No. - 1102 of 2021

Revisionist :- Neetu @ Nitesh

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

Counsel for Revisionist :- Dileep Singh Yadav, Bharat Singh, Ram Babu Singh, Vipin Chandra Pandey, Vishwa Ratna Dwivedi

Counsel for Opposite Party :- G.A., Mohit Singh

Hon'ble Subhash Chandra Sharma, J.

Heard learned counsel for the revisionist as well 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 mother 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 28.01.2021 passed by Special Judge (POCSO Act)/Additional Session Judge, Kannauj in Criminal Appeal No.03 of 2021 (Neetu @ Nitesh through his mother Sushma Devi vs. State) and judgment and order dated 05.01.2021 passed by Juvenile Justice Board, Kannauj regarding bail in Case Crime No.202/2020 under Sections 302/34, 147, 148, 506 I.P.C., Police Station Chhibramau, District Kannauj 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 17 years and was juvenile at the time of alleged incident. Further submitted that the revisionist was named in the F.I.R. alongwith five other co-accused persons those were major with allegation that all of them made assault on the father of Pradeep who was lying beside the deceased. After hue and cry made by Pradeep other members of the family ran towards the place of the incident in the night where they saw that all the accused persons were running away while hurling the knife. It is further submitted that F.I.R. was lodged by the informant Dhruv Singh on the basis of statement made before him by the eye-witness Pradeep who was lying there but no specific role was given to the present revisionist except general role to all but when statement of Pradeep was recorded by the I.O. he

assigned the role to the present revisionist for stabbing with knife which shows that he made improvement in his statement later on and assigned the specific role. It is also submitted that incident took place on 11.03.2020 at about 11:30 P.M. in the night but F.I.R. was lodge on 12.03.2020 at about 11:43 A.M. after delay of 24 hours. After 17 days of the alleged incident recovery of knife form the garden at the instance of the present revisionist was shown by the police. It is further submitted that other co-accused persons have already been enlarged on regular bail. 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. It is also submitted that there was no any previous criminal history against the revisionist but the cases shown against him were registered subsequent to the present incident and there is also no possibility of conclusion of trial in near future. The delinquent is in Juvenile Care Home since 17.03.2020 (i.e. more than three and a half 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 counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that specific role was assigned to the present revisionist by the eye-witness Pradeep though he could not specify his role at the time of lodging F.I.R. because he was in distress. Further contended that in case revisionist is released on bail he will come in association with the known 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 no specific role was assigned to the present revisionist 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

05.01.2021 and the appellate court dated 28.01.2021 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 (mother 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/mother 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 mother will ensure that the juvenile will not repeat the offence.

(ii) The natural guardian/mother 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/mother 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 :- 17.10.2023

Ashok Gupta