

Court No. - 80

Case :- CRIMINAL REVISION No. - 975 of 2021

Revisionist :- X (Juvenile)

Opposite Party :- State Of U.P.And Another

Counsel for Revisionist :- Satendra Tirpathi,Naveen
Tiwari,Shikher Trivedi

Counsel for Opposite Party :- G.A.,Ramesh Kumar Saxena

Hon'ble Subhash Chandra Sharma,J.

Two supplementary affidavits filed by learned counsel for the revisionist today are taken on record.

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 25.11.2020 passed by Additional Sessions Judge, Court No.13/Special Judge POCSO Act, Kanpur Dehat in Criminal Appeal No.44/2020 (C.N.R. No. UPRNO 1-005506-220) (Suraj Updhyay vs. State of U.P.) arising out of Case Crime No.61/2020 under Sections 147, 323, 302, 342 I.P.C., Police Station Baraur, District Kanpur Dehat 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 he was not named in the F.I.R. but in the statement of the deceased his name was brought into light with other co-accused persons those were Shubham Updhyay, Praveen Updhyay, Akhilesh Updhyay and Satyam. It was stated by the deceased that present revisionist and Shubham Updhyay assaulted with danda, Praveen Updhyay tied his legs and Akhilesh Updhyay pressed his neck, thereafter, Subham Updhyay and Satyam poured kerosene oil and Subham Updhyay set him ablaze with match stick and then all of them went away. Further submitted that Akhilesh

Updhyay and Praveen Updhyay have already been enlarged on bail by co-ordinate Benches of this Court in Criminal Misc. Bail Application Nos.36174 of 2023 and 525 of 2021 vide orders dated 28.10.2023 & 16.03.2021. The role of present revisionist was only to the extent of making assault with danda but no any injury was found on the person of the deceased during post-mortem except burn injuries which falsifies the story of assault with danda by the revisionist. The role of pouring kerosene oil and setting him ablaze was assigned to co-accused Shubham Updhyay and Satyam and not to the present revisionist, therefore, this case is on different footing to that of Subham Updhyay & Satyam. It is also submitted that the doctor who issued certificate of fitness at the time of recording dying declaration, has also been examined before the learned trial court who denied the fact of his verification of fitness. 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 07.06.2020 (i.e. more than 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 counsel for the opposite party as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case the dying declaration was recorded by the Additional City Magistrate after taking fitness certificate from the doctor concerned. The present revisionist and other co-accused person also participated in the commission of offence in furtherance of common intention of all and the bail application of co-accused Shubham Updhyay & Satyam has already been rejected by co-ordinate Benches of this Court, therefore, the present revisionist is also not entitled for bail. Therefore, the orders passed by learned J.J. Board as well as learned appellate court cannot be said to be illegal and inappropriate but this revision being devoid of merit is liable to be dismissed.

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, the role of the present revisionist with other co-accused

Praveen Updhyay & Akhilesh Updhyay who were granted bail 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 31.10.2020 and the appellate court dated 25.11.2020 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 :- 31.10.2023

Ashok Gupta