

Court No. - 80

Case :- CRIMINAL REVISION No. - 1822 of 2022

Revisionist :- X (Juvenile)

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Anil Kumar Gupta, Pinky Singh, Santosh Kumar Rai

Counsel for Opposite Party :- G.A., Pankaj Kumar Chaube, Rafeek Ahmad Khan

Hon'ble Subhash Chandra Sharma, J.

Supplementary affidavit filed by learned counsel for the revisionist today is taken on record.

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

Heard Sri Ramesh Kumar Singh assisted by Ms. Pinky Singh, 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 07.03.2022 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Mahoba in Criminal Appeal No.06/2022 (Kalloo Raikwar @ Narendra vs. State of U.P.) as well as order dated 24.02.2022 passed by Juvenile Justice Board, Mahoba arising out of Case Crime No.253/2021, under Sections 452, 376(3), 504, 506 I.P.C. & Section 5i/6 POCSO Act & Section 3(1)(Da), 3(1)(Dha), 3(2)(5) S.C./S.T. Act, Police Station Kulpahar, District Mahoba 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 14 years and was juvenile at the time of alleged incident. Further submitted that age of the victim was found during medical examination between 12-17 years. As per allegation in F.I.R. there is allegation of rape with the victim by the revisionist. The statement of the victim was recorded by the I.O. u/s 161 Cr.P.C. in which she made statement that she fell from machan but she also

added that she made such statement as was instructed by the revisionist. Later on the improvement in her statement was made and allegation of rape was levelled against the present revisionist. It is also submitted that no any sample was taken from the revisionist to examine the presence of semen. The samples were taken from the victim on which presence of semen and blood was found but on the basis of it revisionist cannot be connected with the commission of offence. It is also submitted that since the revisionist was aged about 14 years at the time of alleged incident and is in child care home for a period of more than 2 years whereas in case conviction is mad he is to be in observation home for a period of maximum three years. The enquiry of the case is also not likely to conclude in near future since witnesses are being summoned by the learned J.J. Board but till now it has not been completed and he has filed supplementary affidavit with status of trial in this regard. 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 22.10.2021 (i.e. more than two 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, that no sample was taken from the revisionist for pathological examination 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 24.02.2022 and the appellate court dated 07.03.2022 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 :- 3.11.2023
Ashok Gupta