

Court No. - 50

Case :- CRIMINAL REVISION No. - 1566 of 2020

Revisionist :- Sahib @ Budla

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

Counsel for Revisionist :- Vivek Kumar Srivastava, Anand Kumar Mishra, Birendra Singh Khokher, Dipendra Kumar, Laxmi Kant Bhatt, Pradeep Kumar Rai, Rajiv Kumar Mishra, Satya Prakash Singh

Counsel for Opposite Party :- G.A., Ajay Kumar Mishra

Hon'ble Ram Manohar Narayan Mishra, J.

Matter taken up on being mentioned by learned counsel for the revisionist. He produced screenshot of Whatsup message given to Sri Ajay Kumar Mishra, learned counsel for the respondent no. 2, which has been received at 11:03 hours today. However, none appeared on behalf of first informant at the time of hearing of revision.

The instant criminal revision has been filed on behalf of the revisionist against the order dated 28.1.2020 passed by Juvenile Justice Board, Meerut by which, the bail application moved by the revisionist was dismissed and order dated 5.3.2020 passed by Sessions Judge, Meerut in Criminal Appeal No. 17/2020 (Sahib @ Budla vs. State of U.P.) arising out of Case Crime No. 442 of 2019, under Sections 376D, 506 IPC and Section 3/4 of POCSO Act, P.S. Bhawanpur, District Meerut by which, appeal filed by the revisionist against the order dated 28.1.2020 was dismissed.

Heard learned counsel for the revisionist and learned AGA for the State.

According to prosecution version, informant, who is father of prosecutrix, lodged F.I.R. on 28.9.2019 at 15:16 hours stating that on same day at around 12:10 hours, his minor daughter was coming towards home by carrying soil, the accused Ajhar, Usman, Shahib and Chand took her forcibly to an agricultural field and committed rape on her. F.I.R. was lodged under Sections 376-D, 506 IPC and 3/4 POCSO Act. The statement of the victim was recorded in which she stated that on the date of incident she was coming back to home from forest. Accused persons were standing on the way. Accused Budla pressed her mouth and all four persons took her inside a room and committed bad thing with her one by one and left her in a field. They also threatened her of dire consequences if she discloses this incident to anyone. She narrated the incident to her grandmother. Medico legal examination conducted on 28.9.2019 at 15:53 hours.

Learned counsel for the revisionist submitted that revisionist has been falsely implicated in the case. He has been declared juvenile by the Juvenile Justice Board. But the bail application was rejected by the court mainly on the ground of gravity of offence, his appeal under Section 101 of Juvenile Justice (Care and Protection of Children) Act, 2015 has also been dismissed by learned Sessions Judge by the impugned order. In present case, four accused are named in the offence, out of whom, accused Ajhar was found major and his

trial proceeding is going on in regular court and three accused Usman, Chand and Sahib were declared juvenile in conflict with law, out of whom, bail application of accused Chand was allowed by order of this Court dated 16.12.2021 in Criminal Revision No. 1418 of 2020 and that of co-accused Usman was also directed to be released on bail vide order dated 15.11.2022 passed in Criminal Revision no. 455 of 2021. Case of present revisionist lies on same footing and present revisionist also deserves to be released on bail on the ground of parity as well as under the provision of Juvenile Justice Act, 2015. No prior criminal history has been attributed to the revisionist. He is held in observation home since 4.10.2019 i.e. for more than four years. His bail application has been dismissed by the courts below on the ground of gravity of offence and both courts below have failed to appreciate statutory provision of Section 12 of Juvenile Justice (Care and Protection of Children) Act.

Per contra, learned AGA opposed the prayer for bail on the ground that offence is of very serious nature and act and behaviour of the revisionist is not like an immature person. Revisionist and co-accused committed gang rape on minor victim. Report of District Probation Officer dated 26.11.2019 is not substantially adverse to the revisionist except general averment has been made therein that accused belongs to lower social and economic strata and there is lack of proper supervision, education and guidance. Father of the accused juvenile undertakes to take care of juvenile properly in case he is enlarged on bail. He will ensure that he will not indulge in any criminal activity and he is not associated with any bad elements in the society.

I have considered the submissions made by the parties' counsel and perused the impugned orders passed by the learned courts below along with entire material on record as well as the provisions of the Act.

The provisions of bail to a juvenile is given in Section 12 of the said Act, which provides as follows:-

" 12. (1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person:

Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

The aforesaid provision provides that a juvenile accused has to be released on bail unless there are reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. There is no such very convincing basis or material which may bring the case of the revisionist within the exceptions provided in Section 12 of the Act.

In view of this Court there does not appear any such justifiable material or evidence on record to show that by releasing the revisionist on bail, the revisionist would come in association with any known criminal or his release would expose him to moral, physical or psychological danger. There is also nothing substantial on record to show that the release of the revisionist on bail would defeat the ends of justice.

In these circumstances, the Board was not quite justified in rejecting the bail application of the revisionist. Learned Sessions Judge also does not appear to have considered the provisions of Section 12 of the Act in its proper perspective. Thus, both the impugned orders are not sustainable and are liable to be set-aside.

Let revisionist- **Sahib @ Budla** be released on bail in case crime no. 442 of 2019, under Sections 376-D, 506 IPC and Section 3/4 POCSO Act, Police Station Bhawanpur, District Meerut on his furnishing a personal bond and two reliable sureties each in the like amount to the satisfaction of the court/Board concerned during the pendency of his trial.

The instant revision stands allowed.

Order Date :- 12.10.2023

Dhirendra/