

Court No. - 80

Case :- CRIMINAL REVISION No. - 2723 of 2022

Revisionist :- X (Minor)

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

Counsel for Revisionist :- Chandra Bhushan Prasad

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard 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 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 06.04.2022 passed by learned Additional Session Judge/Special Judge (POCSO Act), Bulandshahr passed in Criminal Juvenile Appeal No.15 of 2022 (Pappu vs. State of U.P. & another) filed against the order dated 24.12.2021 passed by Juvenile Justice Board, Bulandshahr in pursuance to Case Crime No.360 of 2021, under Sections 376, 506, 452 I.P.C. readwith Section 5/6 POCSO Act, Police Station Khurja Nagar, District Bulandshahr 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. As per allegation in F.I.R. the revisionist is said to have committed rape with the daughter of the informant aged about 6 years but during medical examination no any injury either external or internal was found on her person to suggest that rape was committed with the victim. The statement of the victim was also recorded u/s 164 Cr.P.C. before the learned Magistrate in which she stated clearly that nothing was done with her by anyone but wrongful information was given to her mother that the revisionist committed with her daughter which shows that that revisionist has not committed any offence with the victim. 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 18.04.2021 (i.e. more than two 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 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, the statement of the victim recorded u/s 164 Cr.P.C. before the learned Magistrate 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 24.12.2021 and the appellate court dated 06.04.2022 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 (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 :- 24.11.2023

Ashok Gupta