

Court No. - 80

Case :- CRIMINAL REVISION No. - 2707 of 2023

Revisionist :- X (Juvenile)

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

Counsel for Revisionist :- Akhilesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for revisionist, learned A.G.A. for State and perused the 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 judgment and order dated 16.2.2023 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Sant Kabir Nagar in Criminal Appeal No. 05 of 2023 as well as order dated 11.1.2023 passed by Juvenile Justice Board, Sant Kabir Nagar. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 205 of 2022, under Sections 363, 376-D, 506 IPC & Section 5/6 POCSO Act, Police Station Bakhira, District Sant Kabir Nagar.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 17 years and 20 days at the time of alleged offence. Further submitted that as per allegation in the F.I.R. the victim was taken away by the revisionist and five other co-accused persons and rape was committed with her. When incident is said to have been taken place on 16.6.2022 but F.I.R. was lodged after delay of one and half months on 4.8.2022 on the basis of an application under Section 156(3) Cr.P.C. which was moved after one month. There is nothing on record to show that rape was committed with her by the revisionist and other co-accused persons. It is also submitted that the statement made by the victim herself before the learned Magistrate under Section 164 Cr.P.C. does also not support the allegation but this statement was made under pressure of her parents. She was taken to Jaipur, Rajasthan by train but no where she made any hue and cry, it shows she was willing and consensus. It is next submitted that there is nothing on record to show the complicity of present delinquent. There is nothing adverse to the present delinquent in the report as submitted by the District Probation Officer. The provisions as contained under Section 12 of the Juvenile Justice Act had not been considered by the Juvenile Justice Board as well as appellate court while rejecting the appeal which cannot be said to be in conformity with the law. The delinquent is in Juvenile Care Home since 19.09.2022 and his psychology is being affected

adversely, therefore, requested to set aside the order passed by the J.J. Board as well as appellate court and allow the criminal revision.

Learned A.G.A. opposed the aforesaid prayer.

Considering the facts and circumstances of the case, submissions made by learned counsel for the revisionist as well as learned A.G.A., perusal of record, the period of delinquent remained in jail the provisions as contained u/s 12 Juvenile Justice Act and report submitted by the D.P.O. it appears that J.J. 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 11.1.2023 and the appellate court dated 16.2.2023 are, hereby, set aside and present Criminal Revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail on executing personal 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 revisionist/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 revisionist/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 revisionist/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 :- 12.10.2023

A. Singh