

Court No. - 80

Case :- CRIMINAL REVISION No. - 3399 of 2023

Revisionist :- X Minor

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

Counsel for Revisionist :- Shams Uz Zaman, Parvish Kumar

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma, J.

Supplementary affidavit filed today is taken on record.

Heard Shri Parvish Kumar, learned counsel for the revisionist as well as learned A.G.A. for the State and perused the record.

The present criminal revision has been preferred by the revisionist through his father with a prayer to allow this revision and set aside the judgment and order dated 03.06.2023 passed by learned Additional Sessions Judge, Baghpat, in Criminal Appeal No. 32 of 2023 as well as order dated 19.04.2023 passed by Juvenile Justice Board, Baghpat. Further prayed to release the revisionist on bail in Case Crime No. 203 of 2022, under Sections 302, 34 I.P.C., Police Station Chaprouli, District Baghpat.

It is submitted by learned counsel for the revisionist that in this case the delinquent was aged about 14 at the time of alleged incident and he is in Child Care Home since 07.07.2022 i.e., one and half years. It is further submitted that the revisionist was named in the F.I.R., committing murder of the deceased with Nikhil and one unknown culprit. It is next submitted that during the course of investigation, unknown culprit was found to be Deepak but after investigation, he has been exonerated and charge sheet was sent against the present revisionist and co-accused Nikhil. It is also submitted that motive as shown in F.I.R. is against co-accused, Nikhil not the present revisionist. It is further submitted that there was no any eye witness of the incident and no any recovery was made either from the possession or at the instance of the present revisionist. It is further submitted that blood stained knives were recovered from the place of occurrence and blood stains were found on the cloth of co-accused, Nikhil not of the present revisionist. It is also submitted that there is no other material on record to show the complicity of the revisionist in committing murder of the deceased with co-accused except the

confessional statement, in which he is said to have admitted the fact that he also committed murder with the knife that was recovered from the place of incident. It is also submitted that there is no any forensic report showing the fact that the knife was used by the present revisionist. It is further submitted that there is nothing adverse against the interest of the delinquent in the report submitted by D.P.O.

It is further submitted that the provisions as contained u/s 12 of the Juvenile Justice Act had not been considered by the Juvenile Justice Board even the report submitted by Probation Officer was also not considered. The appellate court has also not considered all these facts but rejected the appeal without applying its judicial mind and considering the law as contained u/s 12 of the aforesaid Act. He is in Child Care Home since 07.07.2022 i.e. one and half years and his psychology is being affected adversely, therefore, requested to set aside orders passed by the J.J. Board as well as appellate court and allow the criminal revision.

Learned A.G.A. opposed the prayer as aforesaid. In this regard, the orders passed by the learned J.J. Board as well as learned appellate court cannot be said to be unlawful, therefore, he cannot be said to be entitled for bail and 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. for the State, perusal of record, the provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the Probation Officer, 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 19.04.2023 and the appellate court dated 03.06.2023 are, hereby, set aside and present criminal revision is hereby, **allowed**.

It is directed that delinquent/applicant be released on bail 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 revisionist/ 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 revisionist/ 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 revisionist/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 :- 6.11.2023

Shivangi