

Court No. - 80

Case :- CRIMINAL REVISION No. - 3785 of 2023

Revisionist :- X Juvenile

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

Counsel for Revisionist :- Dharmendra Kumar Shukla, Shiv Ram Dubey

Counsel for Opposite Party :- G.A., Amit Kumar Rajput

Hon'ble Subhash Chandra Sharma, J.

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

Heard learned counsel for the revisionist as well as 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 02.05.2023 passed by Additional District and Sessions Judge, POCSO Act-First, Gorakhpur in Criminal Appeal No.67 of 2023 (Ravi Kumar Vs. State of U.P.) and order dated 18.04.2023 passed by learned Juvenile Justice Board, Gorakhpur in Case Crime No.36 of 2023 under Sections 376, 323, 506 I.P.C. & Section 3/4 POCSO Act, Police Station Belghat, District Gorakhpur 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 15 years and was juvenile at the time of alleged incident. Further submitted that as per version in F.I.R. there is allegation of molestation against him in the night of 05.02.2023 with the victim aged about 13 years who was out of her house regarding birthday function in the neighbours house. In the meantime, she was taken away by the revisionist in the jungle and assault was made, thereafter, the incident was narrated by her to her father as a result present F.I.R. was lodged. The medical examination of the victim was also conducted but no any injury either external or internal was found on her person. Even in the pathological examination no any positive report was found. The statement of the victim was also recorded u/s 164 Cr.P.C. before the learned Magistrate in which she made improvement regarding commission of rape with her but no any fresh injury was found on her private part though medical examination was done promptly. In this way, the prosecution story cannot be said to be reliable. 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 20.02.2023 (i.e. about 10 months) 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 nothing was found in the medical examination report as well as pathological report 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 18.04.2023 and the appellate court dated 02.05.2023 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 :- 16.10.2023/Ashok Gupta