

Court No. - 80

Case :- CRIMINAL REVISION No. - 3961 of 2022

Revisionist :- X-Minor

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

Counsel for Revisionist :- Syed Ali Imam, Mohd. Nasim Ahmad

Counsel for Opposite Party :- G.A., Manju Pandey, Ram Krishna Mishra

Hon'ble Subhash Chandra Sharma, J.

Supplementary affidavit filed today is taken on record.

Heard Sri Mohd. Nasim Ahmad, learned counsel for the revisionist as well as learned counsel for the opposite party no. 2 alongwith 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 of Children) Act, 2015 (hereinafter referred to as "J.J. Act, 2015) to allow the present revision and set aside the order dated 02.09.2022 passed by learned Additional Sessions Judge/Special Judge, POCSO Act, Bulandshahar in Criminal Appeal No.162 of 2022 arising out of Case Crime No. 457 of 2022, under Section 302 I.P.C., Police Station-Kotwali City, District-Bulandshahar as well as order dated 29.07.2022 passed by learned Juvenile Justice Board, Bulandshahar by which the Juvenile Justice Board rejected the bail application of the applicant in aforesaid case and further may please to release the revisionist on bail in Case Crime No. 457 of 2022, under Section 302 I.P.C., Police Station-Kotwali City, District-Bulandshahar.

It is submitted that in this case the delinquent/applicant/revisionist was aged about 14 years and was juvenile at the time of alleged incident. Further submitted that three persons were named in the F.I.R. for causing murder of the deceased out of which two accused persons are absconding those were major and said to be relative of the present revisionist. It is further submitted that the revisionist was not caught on the spot by anyone while committing the offence, but on the basis of guess he has been named in the F.I.R. It is also submitted that inquiry against the present revisionist is still pending and it is not possible to be concluded in near future. 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 29.05.2022 (i.e. more than one and 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 counsel for the opposite party no. 2 as well as learned A.G.A. opposed the prayer as aforesaid and contended that the revisionist was named in the F.I.R. along with other co-accused persons. It is also contended that the deceased was assaulted by the revisionist with other co-accused persons brutally as a result he died and in case revisionist is released he will come in association of hardened criminals.

Considering the facts and circumstances of the case, submission made by learned counsel for the revisionist, learned counsel for the opposite party no. 2 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 the revisionist was not caught on the spot by anyone while committing the offence 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 29.07.2022 and the appellate court dated 02.09.2022 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 :- 8.12.2023

Sunil Kr. Gupta