

Court No. - 80

Case :- CRIMINAL REVISION No. - 4391 of 2023

Revisionist :- X- Juvenile

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

Counsel for Revisionist :- Parmeshwar Kr. Chaudhary, Neha Rajput

Counsel for Opposite Party :- G.A., Chandra Bhushan Prasad, Dharendra Kumar Srivastava

Hon'ble Subhash Chandra Sharma, J.

Counter affidavit filed today by learned counsel for opposite party no. 2 is taken on record.

Heard learned counsel for revisionist, Sri Dharendra Kumar Srivastava, learned counsel for opposite party no. 2 as well as learned A.G.A. for State and perused the 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 judgment and order dated 5.7.2023 passed by learned Special Judge (POCSO Act), Chandauli in Criminal Appeal No. 95 of 2023 as well as order dated 23.12.2022 passed by Juvenile Justice Board, Chandauli. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 296 of 2021, under Sections 147, 148, 149, 302, 323, 504, 120-B IPC & Section 3(2)V S.C./S.T. Act, Police Station Alinagar, District Chandauli.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 16 years, 4 months and 3 days at the time of alleged offence. As per version in the F.I.R. 10 named and some unknown persons were said to have made assault on the deceased with lathi-danda and iron rod as a result the deceased succumbed to injuries. No any specific role was assigned to the present revisionist except general role with other co-accused persons, those were major. Further submitted that eye witnesses Pradeep and Deepak has also not assigned any specific role to the present revisionist. The recovery was made at the instance of co-accused Brijesh and Ram Lakhan but no any

such recovery was made either from the possession or at the instance of present revisionist. He was student of class 10th but on account of village rivalry, he was also named in the F.I.R. with other co-accused person for the purpose of spoiling his career. It is also submitted that prior to the revisionist being declared to be juvenile, his bail application was moved as major before the learned court concerned that was rejected but till then claim of juvenility was not made due to none availability of any persons from his family to pursue the case. It is also 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 16.11.2021 i.e. about two years 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 counsel for opposite party no. 2 as well as A.G.A. opposed the aforesaid prayer and urged that the revisionist was also involved in the commission of murder of the deceased with other co-accused persons those were major. Further urged that regular bail application was moved on his part before the learned court concerned which was rejected and also appeal was filed before the learned court concerned which was also rejected then he made claim of juvenility to get the remedy on the basis of being juvenile, therefore, he cannot be granted relief on the basis of juvenility and in view of gravity of the offence.

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 Child Care Home, 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 23.12.2022 and the appellate court dated 5.7.2023 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 (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 :- 17.10.2023

A. Singh