

Court No. - 80

Case :- CRIMINAL REVISION No. - 4508 of 2023

Revisionist :- X- Juvenile

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

Counsel for Revisionist :- Janardan Prasad Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Subhash Chandra Sharma,J.

Supplementary affidavit filed today by learned counsel for revisionist is taken on record.

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 uncle 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 25.7.2023 passed by learned Additional Sessions Judge/Special Judge (POCSO Act), Court No. 1, Hathras in Criminal Appeal No. 47 of 2023 as well as order dated 7.7.2023 passed by Juvenile Justice Board, Hathras. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 479 of 2022, under Sections 376, 363, 506 IPC & Section 5/6 POCSO Act, Police Station Kotwali Hathras, District Hathras.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 17 years, 8 months and 20 days at the time of alleged offence. F.I.R. was lodged against two unknown persons under Section 363 IPC for enticement of the daughter of the informant. During the course of investigation, the name of present revisionist was brought into light. The statement of the victim was recorded under Section 164 Cr.P.C. before the learned Magistrate in which she stated that she was in friendship with the present revisionist and there was conversation between both of them prior to the alleged incident. On the occasion of birthday of present revisionist she went to the hospital and also consumed whiskey, thereafter the revisionist and his four other friends committed rape with her. Later on he took her to Noida on his bike and then to Ghaziabad at his *bua's* house

and then to the house of his mausi, it shows that she was consensus and willing. Her age was also about 18 years at the time of alleged incident. It is also submitted that during the course of investigation the name of other four friends of the revisionist were exonerated. Charge sheet was submitted against the present revisionist only. 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 10.2.2023 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 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 7.7.2023 and the appellate court dated 25.7.2023 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 (uncle 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/uncle 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 uncle will ensure that the juvenile will not repeat the offence.

(ii) The revisionist/uncle 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/uncle 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 :- 18.10.2023

A. Singh