

Court No. - 80

Case :- CRIMINAL REVISION No. - 4132 of 2022

Revisionist :- X- Juvenile

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

Counsel for Revisionist :- Shyam Sundar, Abhinav Prasad, Madhuker Kushwaha, Shesh Nath Singh Yadav, Sikandar Raza

Counsel for Opposite Party :- G.A., Dharmendra Kumar Dwivedi

Hon'ble Subhash Chandra Sharma, J.

Affidavit of compliance filed by learned A.G.A. today is taken on record.

Heard learned counsel for the revisionist as well as learned counsel for the opposite party 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 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 31.08.2022 passed by Additional Sessions Judge/Special Judge, POCSO Act (Ananya), Jaunpur in Criminal Appeal No.60 of 2022 (Reg. No.61/2022) C.N.R. UPJP010036282022 (X (Juvenile) vs. State of U.P. through District Magistrate, Jaunpur) as well as judgment order dated 17.06.2022 passed by learned Principal Magistrate, Juvenile Justice Board, Jaunpur in Misc. Case No.44 of 2022 (State vs. Antim Sonkar) arising out of Case Crime No.153 of 2022, under Section 147, 302 I.P.C., Police Station Jalalpur, District Jaunpur 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 17 years, 7 months, 11 days at the time of alleged incident. Further submitted that there is general allegation against the present revisionist and other co-accused persons in the F.I.R. for making assault with danda to the deceased Mithilesh Yadav who succumbed to injuries later on. It is submitted that Abhijit and Nilesh are said to be eye-witnesses and sustained injuries during the course of dispute between the deceased and revisionist but

their medical examination was not conducted promptly and it was done on the next day which shows that the injuries found on the injured persons were concocted and manipulated and they were not present on the place of incident. It is further submitted that in C.C.T.V. footage the presence of present revisionist is shown by the I.O. but on that basis only it cannot be concluded that he also participated in making assault on the deceased with co-accused for causing death of the deceased. Learned J.J. Board as well as learned appellate court did not consider all these facts while deciding the bail application and appeal of the revisionist. It is also submitted that learned Board based the order on the fact of possibility of revisionist coming in association with hardened criminals has not been reported by the Probation Officer but it is presumptive and not based on the facts of the case. It is also submitted that co-accused Kanchan Sonkar, Aditya Thathera & Jaikumar Sonkar have already been enlarged on bail by co-ordinate Benches of this Court and the case of present revisionist is on similar footing. All these facts were not taken into consideration either by the learned 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 03.05.2022 (i.e. about one and a half years) and his psychology is being affected adversely, therefore, requested to set aside the orders passed by the learned 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 as well as learned A.G.A. opposed the prayer as aforesaid and contended that in this case the revisionist was above 17 years, 7 months on the date of occurrence, therefore, he cannot be placed in the category of a juvenile in conflict with law below the age of 16 years. It is further contended that the co-accused persons those were enlarged on bail were not named in the F.I.R. and no any kind of recovery was shown either form their possession or at their instance but on the other hand present revisionist was named in the F.I.R. and recovery of danda was also made at his instance. There is allegation of making assault on the deceased with danda with other named co-accused persons as a result he succumbed to injuries. The injured eye-witnesses of the incident, Abhijit & Nilesh both were present on the place of occurrence and also sustained injuries, have stated clearly about the participation of the present revisionist in causing injuries to the deceased. The present revisionist was not the student of the school but was outsider and was called there to

cause injuries to the deceased in prosecution of common object of other co-accused persons. It is also contended that the case of the present revisionist is distinguished with that of other co-accused persons those were enlarged on bail. The post-mortem report shows 9 injuries on the person of the deceased which cannot be said, not likely to cause murder of the deceased. The C.C.T.V. footage was also collected by the I.O. in which the presence of present revisionist is also clear alongwith other co-accused persons, therefore, his participation in causing the incident cannot be denied. In case, the revisionist is released on bail he will come in association with hardened criminals.

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 age of the revisionist, the statements of the injured witnesses, the participation of the revisionist as shown in C.C.T.V. footage and he being outsider from the school, there appears no ground to make any interference in the orders passed by the learned J.J. Board as well as the appellate court but this criminal revision being devoid of merit is liable to be dismissed.

Accordingly, this criminal revision is ***dismissed*** with direction to the learned court concerned to make its endeavour to conclude the trial as expeditiously as possible, in accordance with law.

Order Date :- 7.11.2023

Ashok Gupta