

Reserved

Neutral Citation No. - 2023:AHC:229351

Court No. - 78

Case :- CRIMINAL REVISION No. - 4694 of 2023

Revisionist :- X- Minor

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

Counsel for Revisionist :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh,J.

1. The present criminal revision has been filed against the judgement and order dated 18.08.2023, passed by the learned Additional Sessions Judge, Court No.03, Ghazipur, in Criminal Appeal No.51 of 2023 (X Juvenile vs. State of U.P.), arising out of case crime no.689 of 2020, whereby, the appeal filed by the revisionist against the order dated 06.06.2023 rejecting bail application by the Juvenile Justice Board, has been dismissed.

2. Heard Sri Upendra Upadhyay, learned counsel for the revisionist and Sri P.C. Srivastava, learned Additional Advocate General along with Sri J.K. Upadhyay, learned A.G.A. for the State and perused the record.

3. It has been argued by learned counsel for the revisionist that impugned order is against facts and law and thus, liable to be set aside. It has been submitted that the revisionist is innocent and he has been falsely implicated in the case in question. At the time of alleged incident, the age of revisionist was about 13 years and thus, he was declared juvenile by the Juvenile Justice Board Ghazipur, vide order dated 18.04.2023. Thereafter, the revisionist/ juvenile has moved an application for bail, which was rejected by the Juvenile Justice Board vide order dated 06.06.2023. The revisionist has preferred the appeal against the order dated 06.06.2023, before the Session Court, which has been dismissed vide impugned order dated 18.08.2023, without considering the facts of the matter and the law applicable thereto. The appellate court below failed to consider the report of

district Probation Officer, who has not made any adverse comment against the revisionist. At present the revisionist juvenile is a Member of Legislative Assembly and thus, the observation of the Juvenile Justice Board and the Appellate Court that in case he is released on bail, he may come in the contact of known criminals is, wholly misplaced. Referring to facts of the matter, it was submitted that no case is made out against revisionist. Further, at the time of alleged incident the age of revisionist/juvenile was only 13 years 2 months and 17 days. The sale-deed of disputed property was registered in the year 2000, whereas, the first information report has been lodged in the year 2020. The revisionist juvenile was not aware whether the sale-deed was illegal or about any consequence of the same. The sale deed was executed through guardian of revisionist now he is being prosecuted after 20 years. Referring to the facts of the matter and positions of law, it was submitted that the impugned orders are against facts and law and thus, liable to be set aside.

4. Learned Additional Advocate General has opposed the revision and submitted that there is no illegality or perversity in the impugned order. It was submitted that the revisionist is a Member of Legislative Assembly but he has long criminal history to his credit and that even his brother, father, mother and uncles are facing several criminal cases hence, there is strong possibility that in case the revisionist/juvenile is released on bail, he may come in association of known criminals. Several family members of revisionist/juvenile are hardened criminals. Referring to facts of the matter, it was submitted that the revisionist and his family members have illegally grabbed the disputed property by committing fraud and forgery. During investigation, sufficient evidence has been collected and revisionist/juvenile has been charge-sheeted. The revisionist/juvenile is a man of criminal nature and if released on bail he may come in association with known criminals and the object of Juvenile Justice Act would be frustrate. Referring to facts of the matter, it was submitted that there is no illegality or perversity in the impugned order and the instant revision has no substance.

5. I have considered the rival submissions and perused the record.

6. It is pertinent to mention that as per the provisions of Section 12 of the Juvenile Justice Act, when any juvenile, who is accused of a bailable or a non-bailable offence, is arrested or detained or is brought before a board, then irrespective of the accusation he shall be released on bail except when :

(1). there appear reasonable grounds for believing that the release is likely to bring him into association with any known criminals or

(2). that it will expose him to moral, physical or psychological danger, or

(3). that his release would defeat the ends of justice.

7. From Perusal of the Section 12 of Juvenile Justice Act, it is clear that a juvenile is entitled to bail, notwithstanding, gravity of the crime and the bail application can be refused only when there are reasonable grounds for believing that the release of the juvenile is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. This Court in a number of judgements has categorically held that bail to juvenile can only be refused, if any of the above-stated grounds existed. It has been held by the Supreme Court in Dr. Subramaniam Swamy Vs. Raju, 2014 (86) ACC 637 that a juvenile has to be released on bail unless the Court has a reasonable ground to believe that his release will bring him into association of some known criminal, or will expose him to moral, physical or psychological danger or his release would defeat the ends of justice.

8. In the instant matter, the first information report was lodged on 19.09.2020, alleging that land of Gata No.98 and 99 of Mauza Muhammad Patti, Ghazipur was a public land (banjar/jaman) and in respect of that land names of co-accused Ravindra Nath Sharma, Shree Kant and Nand Lal were got registered in revenue record but the said mutation was cancelled by the District Magistrate vide order dated 22.04.1988 and the land was again registered as banjar land. It was alleged that despite said order dated 22.04.1988, the said Ravindra Nath Sharma, Shree Kant and Nand Lal have

sold some part of the said land by executing registered sale-deed in favour of revisionist and co-accused Umar Ansari through their guardian/mother Smt. Afsa Ansari. In the similar way some part of Gata No.98 and 99 was sold by co-accused Syed Keshar Hussain, Jafar Abbas, Syed Sadiq Hussain to co-accused Afsar Ansari and their names were entered into revenue record. In the similar manner some land of that gata was transferred by co-accused Chandrasen Visvakarma to revisionist by way of registered sale-deed.

9. The case of revisionist is that the alleged sale-deeds were executed in the year 2000 and first information report has been lodged on 19.09.2020 and that at the time of alleged sale-deed, the age of revisionist/juvenile was about 13 years and 2 months. The revisionist was declared juvenile by the Juvenile Justice Board, Ghazipur, vide order dated 18.04.2023 but his bail application was rejected by the Juvenile Justice Board vide impugned order dated 06.06.2023. The revisionist has preferred an appeal against that order but said appeal has also been dismissed by the appellate court below vide order dated 18.08.2023, which is being impugned in the present revision.

10. It is apparent from the aforesaid facts that at the time of alleged incident, the revisionist was aged about 13 years and 2 months and the alleged sale-deed in favour of revisionist was executed through his guardian/mother. The co-accused has already been granted bail. The main objection of prosecution is that the revisionist-accused is having criminal history and that his family members were also having criminal history and if he was released on bail he would come in the association of known criminals, who are none but his family members. It has been shown that revisionist is a member of Legislative Assembly and from the date of alleged incident, a period of about 20 years has passed. After so long period, when the revisionist is in thirties and he is a member of Legislative Assembly, the contention that in case the revisionist is released on bail, he may come in association of known criminals, loses its significance due to efflux of long time and present age of revisionist. Considering the age of the revisionist and fact that he is a member of Legislative Assembly, it can be presumed that he is having

sufficient maturity and understanding to consider his future and welfare. It would be pertinent to mention that the proviso under Section 12 of Juvenile Justice Act that the juvenile may not be released on bail if there are reasons to believe that his release would bring him into association with known criminals or would expose him to moral, physical or psychological danger, have been provided for benefit of juveniles. In the instant matter one important aspect of the case is that after alleged incident a period of two decades has been passed and as stated above at the time of incident, the age of revisionist/juvenile was about 13 years but now he is in thirties and he is stated an elected Member of Legislative Assembly and thus, the objection on behalf of the State that in case the revisionist is released on bail, he would bring into association of known criminals, who are none but his family members, pales into insignificance.

11. Considering the nature of accusations, the long delay in lodging the first information report, and the age of revisionist, the fact that co-accused has already been granted bail and also considering the beneficial provisions of section 12 Juvenile Justice Act, the revisionist deserved to be released on bail. The Appellate Court failed to consider the matter in correct perspective and committed error by dismissing appeal of the revisionist and refusing to grant bail to the revisionist. The impugned order dated 18.08.2023 passed by the Appellate Court, as well as the order dated 06.06.2023, passed by the Juvenile Justice Board, Ghazipur are hereby set aside.

12. Let the revisionist **X** involved in Case Crime No.689 of 2020, under Sections 420, 423, 465, 467, 468, 471, 474, 477A, 120B IPC, P.S. Kotwali, District Ghazipur be released on bail on furnishing a personal bond and two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:

- (a) The revisionist will not tamper with the evidence.
- (b) He shall not pressurize/intimidate the prosecution witnesses and shall cooperate with the trial.

(c) He shall appear on each and every date fixed by the trial court unless personal appearance is exempted by the court concerned.

In case of breach of any conditions mentioned above, the trial court shall be at liberty to cancel the bail of the revisionist.

13. Revision is allowed in above terms.

Order Date :- 04.12.2023

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