

Court No. - 80

Case :- CRIMINAL REVISION No. - 5042 of 2023

Revisionist :- X (Juvenile)

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

Counsel for Revisionist :- Raghvendra Shankar Srivastava

Counsel for Opposite Party :- G.A.,Sunil Kumar I

Hon'ble Subhash Chandra Sharma,J.

Heard learned counsel for revisionist, 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 mother 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 29.8.2023 passed by learned Additional Sessions Judge/Special Judge (POCSO Act)/Children Court, Ghazipur in Criminal Appeal No. 68 of 2023 as well as order dated 26.7.2023 passed by Juvenile Justice Board, Ghazipur. Further prayed to stay the operation of the aforesaid orders and to release the revisionist on bail in Case Crime No. 69 of 2023, under Sections 363, 376 IPC & Section 3/4 POCSO Act, Police Station Jangipur, District Ghazipur.

It is submitted by learned counsel for the revisionist that in this case, the delinquent was juvenile aged about 17 years, 9 months and 6 days at the time of alleged offence. As per allegation in the F.I.R. the victim was enticed away by the revisionist and physical relations were also established with her. Further submitted that the statement of the victim was recorded by the learned Magistrate under Section 164 Cr.P.C. in which she stated that she was taken by the revisionist by train to Varanasi and then to Sikandrabad but no any hue and cry was made by her, it shows that she was volunteer and consenting party. She was brought back by the revisionist to Ghazipur by train though no any hue and cry was made by the victim. During medical examination, no any injury was found on the person of the victim to show that any force or violence was used by the revisionist against her. 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 19.5.2023 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 counsel for opposite party no. 2 as well as 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 26.7.2023 and the appellate court dated 29.8.2023 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 (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 revisionist/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 revisionist/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 revisionist/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 :- 16.11.2023

A. Singh