

**Court No. - 80**

**Case :-** CRIMINAL REVISION No. - 5067 of 2023

**Revisionist :-** Juvenile -X

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

**Counsel for Revisionist :-** Udai Shankar Chauhan

**Counsel for Opposite Party :-** G.A.

**Hon'ble Subhash Chandra Sharma,J.**

Heard learned counsel for the revisionist and 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 29.08.2023 passed by learned Additional Session Judge/Special Judge, POCSO Court/Child Court, Ghazipur in Juvenile Criminal Appeal No.69/2023 (Juvenile Delinquent Diwakar Kumar vs. State of U.P. and another) as well as order dated 01.08.2023 passed by learned Juvenile Justice Board, Ghazipur in Case Crime No.106/2023, under Sections 376(2)h, 323, 450, 506 I.P.C., Police Station Kasimabad, District Ghazipur 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 16 years and was juvenile at the time of alleged incident and the victim was also married lady aged about 23 years. As per the allegation in F.I.R. on 03.05.2023 at about 11:30 P.M. in the night revisionist entered in the house of the victim and committed rape with her. The revisionist made assault on her abdomen as a result she was subjected to miscarriage. Her jeth and jethani came there after hearing the noise and police was called on Dial 112 and in the meantime the revisionist while threatening to kill went away. On the next day the victim fell from the roof on account of giddiness regarding which an F.I.R. was lodged on 17.05.2023 after delay of 14 days without any explanation thereto. It is further submitted that the statement of the victim was recorded before the learned Magistrate u/s 164 Cr.P.C. in which she stated clearly that her husband was not present at home but her jeth and jethani were sleeping in the adjacent room and she was sleeping with her child.

When the revisionist came into the room he bolted it from inside and incident was seen by her jeth and jethani through window as a result Dial 112 was called but the revisionist fled away which shows that the room of the victim is said to be opened and also the gate of the house in the night whereas the room of her jeth and jethani was closed which shows that it was kept open by the victim herself and she was willing and consenting party. The revisionist was not caught by the jeth and jethani of the victim as well as by the other villagers those came on the spot. She has also stated that on 05.05.2023 she went on the roof from where she fell on the ground on account of giddiness as a result foetus in her womb was disturbed and later on it was aborted at the instance of her jethani who was nurse. In this way, offence u/s 313 I.P.C. cannot be said to be made out. During medical examination no any injury was found on her person to suggest that rape was committed with her or any injury was caused to her but only on the basis of police rivalry he was named in the F.I.R. which was lodged after delay of 14 days. The report submitted by the D.P.O. is also not adverse for the present delinquent even though the juvenility of the delinquent was not considered either by the 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 18.05.2023 (i.e. more than six months) and his psychology is being affected adversely, therefore, requested to set aside the orders passed by the 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 A.G.A. opposed the prayer as aforesaid.

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 provisions as contained u/s 12 of Juvenile Justice Act, the report submitted by the District Probation Officer, that victim was willing and consenting party and the role of present applicant, it appears that Juvenile Justice 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 01.08.2023 and the appellate court dated 29.08.2023 are, hereby,

set aside and the present criminal revision is hereby, ***allowed***.

It is directed that delinquent/applicant be released on bail in the aforesaid case on executing person 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 natural guardian/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 natural guardian/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 natural guardian/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 :- 23.11.2023**

Ashok Gupta