

Court No. - 29

Case :- CRIMINAL REVISION No. - 133 of 2022

Revisionist :- Revisionist 'A' Through His Father

Opposite Party :- State Of Up Thru. Prin. Secy. Home And
And Another

Counsel for Revisionist :- Gyanendra Mishra, Arvind Kumar
Mishra, Vaibhav Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

1. No one has put in appearance on behalf of first informant/victim despite the sufficient service of notice.
2. Heard learned counsel for revisionist, learned A.G.A. for the State and perused the record.
3. In compliance of the previous order, the medical report of the victim in photostat form is placed by the learned A.G.A.
4. This Criminal revision has been filed against the order dated 28.01.2021 whereby the Appeal No. 01 of 2021 against the order of Juvenile Justice Board dated 09.12.2020 was dismissed and impugned order dated 09.12.2020 was confirmed.
5. The order dated 09.12.2020 is the order of Juvenile Justice Board whereby the bail application of the present revisionist was rejected.
6. It is argued by learned counsel for revisionist that in the FIR there is the allegation of rape against the revisionist with 16 years old minor daughter of first informant. There is no eyewitness of the incident. In the medical report, neither any injury has been found by the doctor on the person or the genital of the victim nor any opinion regarding rape with the victim has been given by the doctor. As per statement of the victim under

Section 161 Cr.P.C. as she was seen in an objectional condition with the revisionist by her mother in the latrine of Ram Pal, she was left in the house of the revisionist but mother of juvenile refused to keep her there. When she was sitting in Shiv Temple at 8:00 p.m., it was the revisionist, who took her in his home and she stayed in there for the whole night. In the morning, her parents took her to the Police Station and FIR was registered. As per her statement under Section 161 Cr.P.C. the victim was in love with the revisionist and she wanted to live with him. In the statement of victim under Section 161 Cr.P.C. there is no allegation of rape. There is no criminal history to the credit of the present applicant. As per DPO report, for moral physical or psychological development of this juvenile, there was need to keep him in the better protection. As the applicant is said to have been languishing in jail since last three years, hence, the prayer for bail is made.

7. Learned A.G.A. has opposed the prayer and submitted that the age of the present revisionist at the time of incident was 17 years, 11 months and 4 days.

8. From the perusal of record, it is found that in the FIR there is an allegation of rape against the present revisionist but neither in the statement under Section 161 Cr.P.C of the victim that is allegation of rape nor in the medical report of the victim, any opinion is given by the doctor to support the allegation of rape with the victim by the applicant. Though as per paragraph no. 6 of the counter affidavit filed by learned A.G.A., on the basis of sexual relations between the revisionist and the victim mentioned in the medical report, the statement of the victim under Section 164 Cr.P.C. was not considered appropriate to be recorded. Hence there is no statement of victim under Section 164 Cr.P.C. In her statement under Section 161 Cr.P.C., the

victim has not alleged rape by the revisionist rather she has stated that she was in love with the revisionist and wanted to get married with him. As per medical report on record, there is no opinion regarding rape with the victim.

9. As per DPO report, the better protection was needed for the moral, physical and psychological development of the juvenile. There is nothing on record to show that the release of the revisionist would defeat the ends of justice or that his release would bring him into association with any known criminal or expose him to moral, physical or psychological danger. The revisionist is in custody since last more than three years.

10. In the opinion of the Court, the revision deserves to be allowed. The revision is allowed. The order dated 28.01.2021 passed by the trial appellate court is hereby set aside. The order dated 09.12.2020 passed by the Juvenile Justice Board is also set aside.

11. Let the revisionist, Juvenile Delinquent 'X' son of 'Y' through his father resident of village- Sherwaghat Mahboobganj, Police Station Gosainganj, District Ayodhya be released on bail in Case Crime No. 268 of 2020, under Section 376 & 506 I.P.C. and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 P.S. Gosainganj, District Ayodhya, upon his guardian furnishing a personal bond with two solvent sureties of his relatives, each in the like amount to the satisfaction of the Juvenile Justice Board, Unnao subject to the following conditions:-

(i) the natural guardian will furnish an undertaking that upon release on bail the juvenile will not be permitted to come into contact or association with any known criminal or allowed to be exposed to any moral, physical or psychological danger and further that the guardian will ensure that the juvenile will not indulge in any criminal activity;

(ii) natural guardian 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.

(iii) juvenile accompanied by his natural guardian, will report to the Probation Officer on the first working day of every calendar month commencing with the month of January, 2024. The D.P.O. shall maintain a diary recording their attendance.

(iv) The District Probation Officer will keep 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, Faizabad.

12. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court/J.J.Board shall be absolutely free to arrive at its independent conclusions on the basis of evidence led, uninfluenced by any finding or observation whatsoever in this order.

Order Date :- 11.12.2023

Virendra