

Court No. - 12

Case :- CRIMINAL REVISION No. - 171 of 2023

Revisionist :- Gautam Rawat Thru. His Father Sri Naresh

Opposite Party :- State Of U.P. Thru. Secy. Home Deptt. Lko. And 3 Others

Counsel for Revisionist :- Amit Kumar, Narendra Kumar, Prashant Dubey

Counsel for Opposite Party :- G.A., Vivek Shukla

Hon'ble Rajeev Singh, J.

1. Supplementary affidavit filed by the learned counsel for the revisionist is taken on record.
2. Heard learned counsel for the revisionist and learned A.G.A. for the State.
3. This revision has been filed for quashing the order dated 03.11.2022 passed by the Juvenile Justice Board, Unnao in Case Crime No. 460 of 2021, under Section 376 I.P.C. and Section 3/4 of POCSO Act, P.S. Ganga Ghat, District Unnao as well as order dated 12.01.2023 passed by Additional District & Sessions Judge/Special Judge POCSO Act, Unnao in Appeal No. 69 of 2022.
4. Learned counsel for the revisionist submits that it is undisputed that the revisionist was juvenile at the time of the alleged incident. It is further submitted that during the course of investigation, statement of the victim was recorded, in which, she has not supported the prosecution story in relation to the revisionist, but even then the charge sheet was filed by the Investigating Officer. The Juvenile Justice Board also wrongly rejected the bail application of the revisionist merely on the basis of presumption, in mechanical manner, which is contrary to the D.P.O. report. Relying on the report of the D.P.O., learned counsel for the revisionist submits that it is observed in the report that nothing specific adverse is found against the revisionist. It is also submitted that no specific or strong objection has been made by the D.P.O. in his report and only general

observations have been made. Learned counsel for the revisionist vehemently submits that the provisions of Section 12 of the Juvenile Justice Act were not considered by the Juvenile Justice Board while passing the impugned order dated 03.11.2022 and the appellate court has also wrongly dismissed the appeal filed against the said order. Further, the conduct of the revisionist was not so bad and there is no evidence that, in case, he is released on bail, then he shall be associated with the criminals.

5. Learned counsel for the revisionist submits that the gravity of the offence could not be relevant for refusing grant of bail to the juvenile, as has been held by this Court in **Shiv Kumar alias Sadhu Vs. State of U.P., 2010 (68) ACC 616** and it has been a consistent view of various courts. It has also been submitted that there exists no material to justify rejection of bail on the grounds envisaged by Section 12 of the Act.

6. Learned A.G.A., while opposing the prayer of the revisionist, submits that Juvenile Justice Board has rightly rejected the bail application of the revisionist, as in the D.P.O. report, it is observed that it is not proper for the society to release the revisionist on bail. However, learned A.G.A. could not demonstrate from the record that there existed any of the grounds on which bail application of a juvenile could be rejected keeping in view the provisions of Section 12 of the Juvenile Justice Act.

7. After considering the arguments advanced by the learned counsel for the revisionist, learned A.G.A. and going through the contents of the revision, impugned order as well as D.P.O. report, it is not in dispute that the revisionist is a juvenile and is entitled to the benefits of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015. Under Section 12 of the Juvenile Justice Act, prayer for bail of a juvenile can be rejected 'if there appear 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'.

8. This Court has to see whether the opinion of the appellate Court as well as Juvenile Justice Board recorded in the impugned orders are in consonance with the provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 12 of the Act lays down three contingencies in which bail could be refused to juvenile, which are as follows:

*“(1) if the release is likely to bring him into association with any known criminal, or
(2) expose him to moral, physical or psychological danger, or
(3) that his release would defeat the ends of justice?”*

9. Admittedly, gravity of the offence has not been mentioned as a ground for rejection of bail under Section 12 of the Act.

10. In view of the above, the revision is allowed.

11. The impugned order dated 03.11.2022 passed by the Juvenile Justice Board, Unnao in Case Crime No. 460 of 2021, under Section 376 I.P.C. and Section 3/4 of POCSO Act, P.S. Ganga Ghat, District Unnao as well as order dated 12.01.2023 passed by Additional District & Sessions Judge/Special Judge POCSO Act, Unnao in Appeal No. 69 of 2022, are hereby set aside.

12. Let the revisionist, Gautam Rawat involved in the aforesaid case crime be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The revisionist shall not tamper with the evidence or threaten the witnesses;

(ii) The revisionist through guardian shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this

condition, it shall be open for the trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(iii) The revisionist through guardian shall remain present before the trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial Court may proceed against him under Section 229-A of the Indian Penal Code.

Order Date :- 6.12.2023

VKS