

Court No. - 12

Case :- CRIMINAL REVISION No. - 408 of 2023

Revisionist :- Puneet Kashyap Thru. Smt. Shashi Kashyap

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And 4 Others

Counsel for Revisionist :- Ravindra Pandey, Ram Kushal Tiwari, Ravindra Pandey

Counsel for Opposite Party :- G.A., Kaushal Kishore Tewari

Hon'ble Rajeev Singh, J.

1. Heard learned counsel for the revisionist, learned A.G.A. for the State and perused the record.

2. This Criminal Revision has been filed for quashing the impugned order dated 1.3.2023 passed by Special Judge, Children/Addl. Session Judge, Court No.11, Lakhimpur Kheri in Criminal Appeal No.09/2023, "*Puneet Kashyap Vs. State of U.P. and Ors.*" and impugned order dated 15.2.2023 passed by the Juvenile Justice Board, Lakhimpur Kheri, arising out of Case Crime No.946 of 2022 under Section 363, 366, 376, 342 I.P.C. and Section 3/4 POCSO Act, Police Station Kotwali Sadar, District Lakhimpur Kheri.

4. Learned counsel for the revisionist has contended that revisionist has falsely been implicated in the present case on the basis of incorrect facts and charge sheet was submitted. He also submitted that during the course of trial, informant as well as victim was examined but they categorically denied the prosecution story. He further submitted that bail application was rejected by the Juvenile Justice Board, then appeal was also rejected by the appellate court without considering the D.P.O. report as well as facts of the case. He also submitted that it was obligatory on the part of the court to consider the D.P.O. report. He next submitted that revisionist is in jail since 24.8.2022, charge sheet has already been filed and he is ready to cooperate in the trial and there is no possibility of conclusion of trial in near future, therefore, impugned rejection order passed by the Juvenile Justice Board and Appellate Authority are liable to be set aside.

5. Learned A.G.A. has opposed the above contentions.

6. The submission of learned counsel for the revisionist is that it

is not in dispute that the revisionist is a juvenile and is entitled to the benefits of the provisions of Juvenile Justice (Care and Protection of Children) Act, 2000. It has been submitted that under Section 12 of the Juvenile Justice Act, prayer for bail of a juvenile can be rejected 'if there appears 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'.

7. 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?

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

9. It has further been submitted that 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. There is nothing on record to show that the revisionist is exposed to any moral, physical or psychological danger.

10. In para 33 of the judgment rendered in the case of ***Om Prakash Vs. State of Rajasthan and another [(2012) 5 SCC 201]***, Hon'ble Apex Court has held that:

"statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him, otherwise would amount to subverting the course of justice".

.....the Court observed that this would clearly be treated as an effort to weaken the justice dispensation system."

11. Learned trial court as well as appellate court quoted the case law ***Virendra Vs. State of U.P. in Criminal Revision No. 345 of 2011*** but did not discuss as to how the case law will apply in this case. In case of Virendra, the accused/juvenile is in conflict with law committed rape with murder and that was found heinous in nature. The fact of this case altogether are different with the case of ***Virendra (supra)***.

12. Learned trial court as well as appellate court did not discuss the case law of ***Virendra (supra)*** in the light of the factual matrix of this case. In this case, revisionist has no criminal antecedents.

13. In view of the above, the present revision is **allowed** and the impugned order dated 1.3.2023 passed by Special Judge, Children/Addl. Session Judge, Court No.11, Lakhimpur Kheri in Criminal Appeal No.09/2023, "***Puneet Kashyap Vs. State of U.P. and Ors.***" and impugned order dated 15.2.2023 passed by the Juvenile Justice Board, Lakhimpur Kheri, arising out of Case Crime No.946 of 2022 under Section 363, 366, 376, 342 I.P.C. and Section 3/4 POCSO Act, Police Station Kotwali Sadar, District Lakhimpur Kheri, are hereby **set aside**.

14. Let revisionist, namely, **Puneet Kashyap Thru. Smt. Shashi Kashyap**, be released on bail in Case Crime No.946 of 2022 under Section 363, 366, 376, 342 I.P.C. and Section 3/4 POCSO Act, Police Station Kotwali Sadar, District Lakhimpur Kheri on furnishing of a personal bond alongwith an undertaking on behalf of revisionist by his legal guardian/grand father to the effect that he will not permit the revisionist to come in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice and provide no occasion to the revisionist whereby his release on bail would defeat the ends of justice, by his legal guardian/grand father and two sureties each in the like amount to the satisfaction of the Court concerned subject to following conditions:-

(1) Revisionist will not try to influence the witnesses or tamper with the evidence of the case or otherwise misuse the liberty of bail.

(2) Revisionist will fully cooperate in expeditious disposal of the case and shall not seek any adjournment on the dates fixed for evidence when witnesses are present in the Court.

(3) Revisionist shall remain present, in person, before the Board on the dates fixed for (a) opening of the case; (b) framing of charge; and (c) recording of statement under Section 313

Cr.P.C. If in the opinion of the Board that absence of the revisionist is deliberate or without sufficient cause, then it shall be open for the Board to treat such default as abuse of liberty of bail and proceed against him in accordance with law.

15. Any violation of above conditions will be treated misuse of bail and Board will be at liberty to pass appropriate orders in the matter regarding cancellation of bail.

Order Date :- 9.11.2023

Gaurav/-