

Court No. - 29

Case :- CRIMINAL REVISION No. - 826 of 2023

Revisionist :- Delinquent Child Thru. His Father Mewa Lal
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lko And 3 Others

Counsel for Revisionist :- Santosh Kumar Srivastava

Counsel for Opposite Party :- G.A.

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

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

This revision has been filed against the order dated 12.04.2023 passed by the Juvenile Justice Board, Ambedkar Nagar rejecting the bail application of the applicant and order dated 20.06.2023 passed by the Special Judge, POCSO Act, Ambedkar Nagar in Criminal Appeal No.14 of 2023, Delinquent Child Versus State of U.P. and another affirming the order of J.J. Board declining bail to the juvenile in Case Crime No. 185 of 2022, under Sections 376, 504 I.P.C. and 5/6 of the Protection of Children from Sexual Offences Act, 2012, P.S. Bewana, District Ambedkar Nagar.

It is argued by the learned counsel for the revisionist that the victim is 3 year old child. She is unable to state anything. In the medical report, no injury is found on the private part of the victim. As per the DPO report, everything is found normal with the juvenile. The revisionist has not committed any wrong. He has been falsely implicated, hence, the prayer is made accordingly.

Learned A.G.A., however, opposed the prayer.

From the perusal of the record, it is found that as per the FIR lodged on 14.12.2022 at 1:30 PM 4 year old daughter of the first informant came home crying. When she was asked, she replied that the revisionist aged 15 years had committed rape with her. When a oral complaint was made in this regard the juvenile refused from doing any wrong. He also hurled abuses and became ready to fight.

At the time of medical examination, the date of birth of the victim was mentioned as 24.01.2018 while the incident is dated 14.12.2022. Thus, as per this date of birth the age of the victim

on the date of incident becomes four year 11 months, while in the FIR the age of the victim is mentioned as 4 year.

In the medical examination of the victim done on 15.12.2022 at 2:04 PM, only the mother of the victim has given the statement that after coming from school the victim went in the neighborhood for playing. After sometime she came back crying. She was holding papaya in her hand. Her pant was slipped down. There was shit on her person. It is clearly mentioned in the report that the child did not made any statement before the doctor. As per this report, on the whole person of the victim no external or internal injury was found. Hymen was found intact. The statement of the victim under Section 164 Cr.P.C. is also on record, wherein her age is shown to be 3 year. She has stated therein that when she was playing in the house of Palak the revisionist (juvenile) came. He pulled down the pant of the victim and did some obscene activity on her vagina. He was touching her private part. She went to her home and complained the same. The mother noticed some redness on the private part of the victim. Some shit was also there on her private part. When the mother of the victim made complaint to the mother of the revisionist they started quarrel with her. The same statement has been given by the mother of the victim under Section 161 Cr.P.C., wherein it is said that when her daughter came home crying and said that the revisionist had committed rape on her. She took the victim in her lap and made a complaint about the incident. There was some shit in the pant of the victim.

At the time of medical examination neither there is any version of redness on the private part of the victim nor any redness is found on the private part of the victim. As per the DPO Report everything about juvenile was found normal.

If we go through Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, it is found that as per this provision bail is the rule and the rejection of bail is an exception. The exception appended to the section is that the bail shall not be granted if there appears reasonable ground for believing that the release is likely to bring that person 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 and reasons for denying the bail shall be recorded in the order.

If we go through the order of the Juvenile Justice Board appended at page-20 of the paper book the Juvenile Justice Board has rejected the bail application of the juvenile on the basis of the D.P.O report that juvenile is needed a fair

upbringing. The appellate court also concurred this finding.

The victim is only 3-4 year child and the allegation is of rape against her. In the medical report after medical examination on the next day of the incident, nothing abnormal or redness or any internal or external injury is found on the private part of the victim. Her hymen is found intact. The revisionist is languishing in jail since 19.12.2019.

There is nothing on record to show that the granting bail to the revisionist would defeat the ends of justice or that it would bring the juvenile into association with any known criminal or expose the said person to moral, physical or psychological danger.

In view of the above, especially, in view of the period of incarceration already undergone, the revision is **allowed**. The judgment and order dated 12.04.2023 passed by the Juvenile Justice Board, Ambedkar Nagar and order dated 20.06.2023 passed by the Special Judge, POCSO Act, Ambedkar Nagar are hereby set aside.

Let the revisionist, Delinquent Child through his Father Mewa Lal, resident of village- Siswa, Police Station Bewana, District Ambedkar Nagar, be released on bail in Case Crime No. 185 of 2022, under Sections 376, 504 I.P.C. and 5/6 of the Protection of Children from Sexual Offences Act, 2012, P.S. Bewana, District Ambedkar Nagar, upon his guardian Mewa Lal furnishing a personal bond with two solvent sureties of his relatives, each in the like amount to the satisfaction of the Juvenile Justice Board, Ambedkar Nagar subject to the following conditions:

(i) the natural guardian Mewa Lal 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, Ambedkar Nagar.

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 :- 30.11.2023

Radhika