

Court No. - 12

Case :- CRIMINAL REVISION No. - 1175 of 2023

Revisionist :- Nitin Kumar Verma Thru. His Father Rakesh Verma

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

Counsel for Revisionist :- Prashant Dubey, Vidhi Pandya

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Singh, J.

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

2. The criminal revision has been filed with the following prayer:-

"To allow the present criminal revision and set-aside the impugned judgment and order dated 21.09.2023, passed by the learned Children Court. Faizabad /Ayodhya in criminal appeal (Juvenile) no.42/2023, Computer Register No. 45/2023, Abhay Verma (changed name) Vs State of U.P. & others and impugned the bail rejection order dated 03.08.2023 passed by the learned Juvenile Justice Board, Faizabad, arising out of case crime no. 172/2022, under section-363, 366, 376-D, 506 IPC & Section-3/4 POCSO Act, Police Station- Haiderganj, District Ayodhya, in the interest of justice."

3. Learned counsel for the revisionist submitted that undisputedly revisionist was minor at the time of incident and she was falsely implicated in the present case as the victim and revisionist were in association and both were willing to enter into marriage as a result she left her house and went with the revisionist to Ludhiyana, Punjab and stayed there.

4. In the meantime due to annoyance FIR of case in question was lodged when this case came into the notice of the victim and the revisionist they tried to come back to the house of victim but on the way they were taken into custody and during the course of investigation statement of victim under Section 161 CrPC was recorded wherein she categorically stated that

she was neither abducted and nor enticed away. Thereafter, she was handed over to her parents afterwards she was tutored by her parents and she developed a case of rape implicating the revisionist as well as his uncle. He further submitted that the revisionist applied for bail before the Juvenile Justice Board which was rejected in the most mechanical manner as in the DPO report nothing adverse was reported by the Probation Officer and thereafter an appeal was filed which was also rejected.

5. As the revisionist is in jail since 04.08.2022 and the co-accused has already been granted bail by this Court in bail application No. 13775 of 2022 and there is no possibility of conclusion of trial of case in question in the near future therefore the impugned order passed by the Juvenile Justice Board as well as the order of the appellate authority is liable to set aside.

6. Learned AGA opposed the prayer of the applicant submitted that after detailed investigation chargesheet was filed but he does not dispute the fact that in the statement of victim recorded under Section 161 CrPC, she did not support the prosecution version and also nothing adverse was reported by the DPO in his report.

7. 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 of 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. 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.

11. 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."

12. 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)**.

13. 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.

14. In view of the above, the present revision is allowed and the impugned judgment and order dated 21.09.2023, passed by the learned Children Court. Faizabad /Ayodhya in criminal appeal (Juvenile) no.42/2023, Computer Register No. 45/2023, Abhay Verma (changed name) Vs State of U.P. & others and impugned the bail rejection order dated 03.08.2023 passed by the learned Juvenile Justice Board, Faizabad, arising out of case crime no. 172/2022, under section-363, 366, 376-D, 506 IPC & Section-3/4 POCSO Act, Police Station- Haiderganj, District Ayodhya are hereby set aside.

15. Let revisionist, namely, Nitin Kumar Verma Thru. His Father Rakesh Verma be released on bail in *case crime no. 172/2022, under section-363, 366, 376-D, 506 IPC & Section-3/4 POCSO Act, Police Station- Haiderganj, District Ayodhya* on furnishing of a personal bond alongwith an undertaking on behalf of revisionist by his legal guardian 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.

16. 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 :- 2.12.2023/Vipul