

Court No. - 84

Case :- CRIMINAL REVISION No. - 670 of 2023

Revisionist :- Juvenile-X

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Girish Kumar Singh, Satya Dheer Singh Jadaun

Counsel for Opposite Party :- G.A., Neha Rajput, Parmeshwar Kr. Chaudhary

Hon'ble Sanjay Kumar Singh, J.

1-The present criminal revision under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 has been preferred against the judgment and order dated 05.12.2022 passed by Special Judge (POCSO Act), Court No.1, Kushinagar in Criminal Appeal No. 23/2022 and against order dated 22.09.2022 passed by Juvenile Justice Board, Kushinagar in Case Crime No. 285 of 2019, under Sections 302, 376 I.P.C. and 3(2)(v) SC/ST Act, Police Station Kasya, District Kushinagar, whereby the learned Juvenile Justice Board as well as learned appellate court refused the prayer of bail of accused-revisionist.

2-Heard Mr. Satya Dheer Singh Jadaun, learned counsel for the revisionist, Mr. Deepak Mishra, learned Additional Government Advocate representing the State of U.P. and Mr. Parmeshwar Kumar Chaudhary, learned counsel for the complainant / informant and perused the record.

3-As per prosecution case, in brief, the informant who is father of the deceased got a first information report lodged on 09.05.2019 against the revisionist alleging inter alia that his daughter aged about 22 years, was lured and trapped by revisionist and after booking a hotel in Kasya and spending time with her there, she was murdered. The information about the said incident was given by the hotel owner to police.

Thereafter police informed the informant.

4-Learned counsel for the revisionist, assailing the impugned orders, submits that the revisionist was a juvenile on the date of the alleged incident dated 09.05.2019 and he has been declared juvenile vide order dated 10.02.2021 of Juvenile Justice Board treating the age of revisionist as 17 years 4 months and 14 days on the date of alleged incident. The revisionist has remained confined in juvenile home since 15.05.2019.

5-As to the offence alleged, it is submitted that there was love affair between the revisionist and deceased and the family members of the deceased was annoyed therefore they have committed her murder. The revisionist has falsely been implicated in the case with ulterior motive. In this regard, it is further stated that proper investigation was not conducted by the police and thus the revisionist had wrongly been charged with the offence. The revisionist was not present at the alleged place of incident at the alleged time. The deceased had not gone to the said hotel room with the revisionist, nor was she present in the hotel room with the revisionist. She had no connection with the revisionist. It is further submitted that Om Prakash Giri, who was manager of Asha Royal Hotel, for the first time gave information about the incident to the police, but he, in his statement under Section 161 Cr.P.C. dated 09.05.2019, did not take the name of the revisionist whereas he narrating the entire incident stated inter-alia that one boy and one girl both had come together in his hotel, but when his second statement under Section 161 Cr.P.C. was recorded, he had taken the name of the revisionist. The statement of Brij Kishore, who is owner of the hotel, was recorded after two months and twenty one days, in which he has taken the name of the revisionist whereas at the time of incident, he was not present in the hotel. It is

also argued that injuries found on the body of the deceased as mentioned in the post mortem report do not correspond with the injuries noted in the inquest report.

6-It is further being emphasized that the revisionist does not have any criminal antecedent to his credit. Lastly, it is submitted that there is no material on record for believing that the release of revisionist is likely to bring him into association with any known criminal or expose him to moral, psychological danger, therefore, aforesaid impugned orders are not sustainable and liable to be set aside and revisionist is entitled to be released on bail in view of Section 12 of Juvenile Justice (Care and Protection of Child) Act, 2015.

7-Learned Additional Government Advocate for the State and learned counsel for the complainant vehemently opposed the present revision by contending that merely because the revisionist is a juvenile, it would not entitle him to bail without going into the gravity of the offence and the nature of the crime. So far as merit of the case is concerned, it is pointed out that the revisionist at the time of booking a room in hotel gave photostat copy of his Aadhar Card as his identity proof and also made required entries about him in the visitor register of the hotel in his own handwriting. As per statement of Om Prakash, the revisionist came to the hotel with the deceased on 09.05.2019 at about 12:40 pm and stayed in room no. 223 and after committing rape and murder of the deceased, he left the hotel at about 03:40 pm. After the incident when they looked into in the room, they found condoms and viagra wrappers in the room. Much emphasis has been given by contending that the revisionist is a person of hardened criminal mind and is also an imminent danger to the public at large. It is also contended that the bail sought for has been rightly refused in

view of Section 12(1) of Juvenile Justice (Care and Protection of Child) Act, 2015.

8-Having considered the arguments so advanced by learned counsel for the parties, this Court is of the view that a juvenile offender who is above 16 years of age and below 18 years of age is not entitled as of right to be enlarged on bail. The Court has to see whether the opinion of the learned appellate Court as well as Juvenile Justice Board recorded in the impugned judgment and 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 aforesaid Act lays down three contingencies in which bail could be refused to juvenile. They are:-

- (i) if the release is likely to bring him into association with any known criminal, or
- (ii) expose him to moral, physical or psychological danger, or
- (iii) that his release would defeat the ends of justice.

9-Having gone through the record, I find that considering the report of the District Probation Officer, Kushinagar dated 28.06.2022 and after assessment of the revisionist under Section 15 of Juvenile Justice (Care and Protection of Child) Act, 2015, his case was transferred under Section 18(3) read with Section 2(20) of the said Act to the children Court vide order dated 30.06.2021 of the Juvenile Justice Board observing that at the time of alleged incident, revisionist was physically and mentally capable of understanding and bearing the consequences of the incident. In the opinion of the Board, there does not appear to be proper environment of education in the house of the revisionist. The charge of rape and committing murder of the deceased in a hotel has been levelled

against him, which is most heinous crime. Since the age of revisionist is above 16 years and below 18 years and the offence is heinous in nature, his trial is going on as an adult, therefore, in view of the legal position applicable to the present case, in case of conviction of the revisionist, he can be sentenced more than three years except life or death. In case, the revisionist is released on bail, there is a strong possibility of his being in danger morally, physically or psychologically and he may again get involved in criminal activities. Under the facts and circumstances of the case, in case revisionist is released on bail, then his release would defeat the ends of justice.

10-In view of the above, the findings recorded by the learned Courts below are not erroneous and cannot be said to be unsustainable. The aforesaid impugned orders are not liable to be interfered with, which are wholly impeccable.

11-As a fall out and consequence of the above, the present criminal revision lacks merit and is accordingly ***rejected***.

Order Date :- 21.10.2024

Saurabh