

Court No. - 84

Case :- CRIMINAL REVISION No. - 5163 of 2024

Revisionist :- Master X Juvenile

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Haya Rizvi, Zia Rizvi

Counsel for Opposite Party :- Desh Ratan Chaudhary, G.A.

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 29.11.2023 passed by learned Additional District and Session Judge/Special Judge, POCSO Act (Exclusive Court), Baghpat in Criminal Appeal No. 51 of 2023 and against order dated 07.07.2023 passed by Juvenile Justice Board, Baghpat in Case Crime No. 189 of 2022, under Sections 307, 396 IPC, Police Station Doghat, District Baghpat whereby the learned Juvenile Justice Board as well as learned appellate court refused the prayer of bail of accused-revisionist.

2- Heard Mr. Amit Kumar Srivastava, learned counsel for the revisionist, Mr. Ajeet Singh learned Additional Government Advocate 1st assisted by Mr. Prashant Kumar Singh, learned Brief Holder representing the State of U.P. and Mr. Desh Ratan Chaudhary, learned counsel for complainant/opposite party no.2.

3- As per prosecution case, in brief, the complainant/informant Ajendra @ Bharat got a first information report lodged on 26.07.2022 against seven accused persons, namely, Ankit, Nikit, Pradeep, Anuj, present revisionist (juvenile), Kalyan, Netrapal and two unknown persons for the offence under Sections 147, 148, 149, 307, 302 IPC alleging inter alia that he was returning on motorcycle with his brother Shubham @ Mrigendra after watching Kanwad. At about 08:30 o'clock, on reaching near Saiyed ahead, the kolhu of Brijendra Pradhan the accused, namely, Ankit, Nikit, Pradeep, Anuj, present revisionist (juvenile), Kalyan, Netrapal and two

unknown persons met, who were having iron bar, lathi (sticks) and country-made pistol in their hands, started beating Shubham @ Mrigendra with intention to kill him. When he raised alarm, Vinod and Yogendra and some other persons came at the spot. Thereafter, accused, who were also holding country-made pistols in their hand, fired gun shots upon Shubham as well as the first informant Ajendra @ Bharat. On account of which, Shubham sustained grievous injuries, whereas the first informant also sustained injuries. The injured Shubham was taken to District Hospital, Baghpat, where he was declared to be brought dead.

4- In the opinion of doctor, who conducted autopsy of the body of deceased, cause of death of deceased was shock and haemorrhage as a result of ante-mortem injuries. The following ante-mortem injuries were found on the body of deceased:-

"Ante mortem injury :

i. Gun shot wound of entry Rt face size 1 X 1 cm in front 3 cm Rt ear margin inverted

ii. Gun shot wound of entry size 1 X 1 cm at Rt face 1.5 cm below injury No.1 margins inverted blackening and tattooing size 10 X 14 cm around both injuries

iii. Incised wound size 5 X 1 cm at 1.5 cm above right ear

iv. Incised wound 4 X 1.5 cm just behind Rt ear

v. Incised wound 1 X 1 above right ear

vi. Gun shot wound of exit size 1.5 X 1 cm just at lateral parietal above ear margins everted

vii. Gun shot wound of entry 5 X 2 cm at Lt chest 6 cm below nipple

viii. Gun shot entry 2 X 1.5 cm below 4 cm injury No.7 margins inverted blackening and tattooing 26 X 20 cm around 6 and 7 injury

ix. Gun shot wound of exit 3.5 X 1.5 cm below 2.5 cm Right nipple

x GS exit wound size 3 X 1.5 at right chest 1 cm below injury 9 lacerated margin

xi. Slip GS wound size 3 X 1 cm, 5 cm below right nipple

xii. Gun shot wound of entry size 1 X 1 cm at right side 11 cm lateral to midline at middle back. Margins inverted blackening and tattooing at 30 X 22 cm area.

xiii. Two abrasions at lower back

xiv. Abrasions size 1X 1 cm just below right elbow

xv. Two lacerated wound at lt. leg anteriorly in area of 6 X 3 cm

xvi. LW size 2 X 2.5 cm at Rt leg

xvii. Abrasion 8 X 2 cm at outer left thigh

Note - Two yellow metallic bullets size 3 cm x 0.7 cm recovered and sealed and handed over to accompanying constable."

5- The injured, namely, Ajendra @ Bharat (first informant) was also medically examined on 27.07.2022. As per the medico legal report, he sustained following injuries:-

"i. Contusion (bluish in colour) 15 x 11 cm over lateral side of right thigh (upper 1/3)

ii. Abraded contusion 1 x 3 cm over just below right elbow.

iii. Complaining of pain over left side front region of abdomen without any visible injury (USG abdomen)

iv. Complaining of pain over left side ribs without any visible injury (X- Ray advised left lateral)."

In the opinion of the Doctor, the injured had

sustained simple injuries, which could have been caused by hard and blunt object. The duration of injuries was said to be fresh.

6- During investigation, the investigating Officer arrested the following named accused.

(i). Accused-Anuj was arrested on 29.07.2022 and a 315 bore country made pistol and one live cartridge, which was stuck in the barrel, was recovered from his possession.

(ii). Present revisionist (juvenile) was arrested on 31.07.2022, who in his inculpatory confessional statement under Section 161 Cr.P.C. before the Investigating Officer has stated that all the named accused assaulted the deceased. However, Anuj and his associates were assigned the role of firing, whereas he assigned to himself the role of assault upon injured and deceased by a Danda.

(iii). Accused-Ankit was arrested on 04.08.2022 and from his possession, a country made pistol of 315 bore along with two live cartridges and a bag containing the purse and other missing articles of deceased were recovered. He in his statement recorded under Section 161 Cr.P.C. by the Investigating Officer, has stated that the mobile phone of deceased was taken out by co-accused Anuj and thereafter, taken away to Delhi.

(iv). Accused Nikhit @ Aditya and Netrapal surrendered before the Court of C.J.M, Baghpat on 17.12.2022. These accused in their confessional statements have narrated the same story as disclosed by present revisionist.

(v). Accused-Kalyan was arrested on 02.09.2022. No recovery was made from his possession.

7- After culmination of investigation, investigating officer submitted following police report (charge sheet) under Section 173(2) Cr.P.C. :-

(i). Charge Sheet No. 209 of 2022 dated 26.10.2022, whereby named accused, i.e., present revisionist has

been charge-sheeted under Sections 307, 396 IPC. Since the present revisionist was found to be a juvenile, therefore, aforementioned police report was submitted before the concerned Juvenile Justice Board.

(ii). Charge Sheet No. 209-A of 2022 dated 26.10.2022, whereby three named accused Ankit, who has been charge sheeted under Sections 307, 396, 412 IPC, named accused Anuj and Kalyan, who have been charge-sheeted under Sections 307 and 396 IPC.

(iii). Charge Sheet No. 209-B of 2022 dated 24.02.2023, whereby Nikhit @ Aditya and Netrapal have been charge sheeted under Sections 307 and 396 IPC.

8- Subsequently, named accused Pradeep was arrested on 01.04.2023, whereas no recovery was made from his possession.

9- Investigating Officer submitted the police report No. 209-D of 2023, whereby named accused Nikhit @ Aditya was exculpated in the concerned case crime number (C.D. Parcha No. 79 dated 25.11.2023).

10- Subsequently, Smt. Bramhlata Devi wife of Netrapal moved an application dated 10.08.2022 for further investigation. Investigating Officer, thereafter, obtained the leave of Court in terms of Section 173(8) Cr.P.C. After further investigation, he came to the conclusion that complicity of named accused Nikhit @ Aditya is not established in the crime in question. He, accordingly, submitted the police report dated 25.11.2023, whereby named accused Nikhit @ Aditya was exculpated in the crime in question.

11- At the time of considering the bail application No. 10488 of 2024 (Nikhit @ Aditya Vs. State of U.P.) of co-accused-Nikhit @ Aditya, it was noticed that there are two contradictory police reports under Section 173(2) Cr.P.C. against named accused i.e. Nikhit @ Aditya. Under the circumstances of the case, the

court concerned was directed to take a decision in the light of law laid down in Vinay Tyagi Vs. Irshad Ali @ Deepak and others, (2013) 5 SCC 762. Accordingly the Court below considered the question of discharge of named accused Nikhit @ Aditya and ultimately, vide order dated 13.05.2024 concluded that sufficient material exists on record to proceed against him.

12- So far as case of the revisionist is concerned, vide order dated 17.05.2023, the revisionist was declared juvenile and after preliminary assessment order by the Juvenile Justice Board, Baghpat, the case of the revisionist was referred to the Children Court in view of Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 and as such, trial of the revisionist is going on as Session Trial No. 521 of 2023 in the Court of Sessions Judge, Baghpat.

13- Main substratum of arguments of learned counsel for the revisionist is that in the first information report, general role of assault and firing has been assigned to seven accused persons named in the F.I.R. There is no recovery of any incriminating article from the possession of the revisionist and there is no adverse report of District Probation Officer against the revisionist.

14- Learned counsel for the revisionist, assailing the impugned orders, submits that the revisionist was a juvenile on the date of the alleged incident dated 26.07.2022 and he has been declared juvenile vide order dated 17.05.2023 of Juvenile Justice Board treating the age of revisionist as 17 years, 06 months and 20 days on the date of alleged incident. The revisionist has remained confined in juvenile home since 27.07.2022.

15- 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 Children) Act, 2015.

16- Learned A.G.A. for the State and learned counsel for the complainant/opposite party no. 2 vehemently opposed the present revision by contending that it is a case of indiscriminate firing by all the accused persons causing injury to the informant as well as 09 gunshot wounds to one Shubham, who, later on, succumbed to injuries on the way to the hospital, therefore, on reaching the hospital, he was declared as brought dead. It is also pointed out that bail application of co-accused Kalyan has been rejected vide order dated 08.02.2023 by coordinate Bench of this Court in Criminal Misc. Bail Application No. 1541 of 2023. Thereafter, bail application of co-accused Netrapal and Nikhit @ Aditya have also been rejected by the coordinate Bench of this Court vide common order dated 31.08.2024 in Criminal Misc. Bail Application Nos. 16452 of 2024 and 10488 of 2024 considering all aspects of the matter. So far as trial of the revisionist is concerned, it is submitted that in the trial of the revisionist, charges were framed against him on 09.11.2023 by the Children Court, Baghpat and thereafter examination-in-chief of PW-1 has been recorded on 27.09.2024 but despite repeated calls and opportunities given by the trial Court, counsel for the revisionist did not appear for cross-examination. Later on, an application was moved on behalf of the revisionist but the said application was rejected and further opportunity of cross-examination was closed. On the strength of the said facts, it is argued that the revisionist is not cooperating with the trial Court. It is further contended 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. Much emphasis has been given by contending that role of the revisionist is similar to the role of other co-accused. 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 Children) Act, 2015.

17- 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.

18- Having gone through the record, this Court finds that bail applications of co-accused, namely, Kalyan, Netrapal and Nikhit @ Aditya against whom similar role was attributed have been rejected by the coordinate Bench of this Court. Since the age of revisionist is above 16 years and below 18 years and the offence of committing murder 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 for 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. In the matter of bail of juvenile, the Court has to see literally through a prism having three angles, i.e. firstly, the angle of welfare and betterment of the child itself, secondly, the demands of justice to the victim and

her family and thirdly, the concerns of society at large. Under the facts and circumstances of the case, in case revisionist is released on bail, then his release would defeat the ends of justice.

19- 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.

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

Order Date :- 2.12.2024
Shubham