

Court No. - 83

Case :- CRIMINAL REVISION No. - 6725 of 2023

Revisionist :- X Minor

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

Counsel for Revisionist :- Rakesh Kumar Verma, Sameer Khan

Counsel for Opposite Party :- Adil Khan, G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

Heard Sri Sameer Khan, learned counsel for the revisionist, learned A.G.A. for the State-respondent and perused the material available on record.

As per office report dated 05.02.2024 notice has personally been served on first informant and subsequent Sri Adil Khan, Advocate put in appearance on behalf of respondent No.2.

No counter affidavit has been filed, as yet on behalf of the informant.

The instant Criminal Revision has been filed against the impugned judgment and order dated 18.11.2023, passed by learned Additional District and Session Judge/ Special Judge (POCSO Act), 1st Amroha in Criminal Appeal No.54 of 2023, arising out of impugned judgment and order dated 22.09.2023, passed by learned Juvenile Justice Board, Amroha in Case No.34 of 2023, under Sections 328, 354, 376 IPC, Police Station Naugawan Sadat, District Amroha, arising out of Case Crime No.215 of 2023.

Learned counsel for the revisionist submitted that revisionist is a juvenile in conflict of law, aged about 17 years is innocent and has falsely been implicated in the present case due to ulterior motive. According to prosecution version, the revisionist is brother-in-law (devar) of the victim (Shahrin) who has been married with Asif, the elder brother of the revisionist in the year 2022. On 03.05.2023 at around 09:00 the revisionist engaged in Marpeet with his sister-in-law (bhabhi), molested her and threatened her with life. The FIR was initially lodged under Sections 354, 323 and 506 IPC, but during the course of investigation the victim developed her case in her statements under Sections 161 and 164 Cr.P.C. and stated that on 02.05.2023 when she was alone in the house in her matrimonial home, her brother-in-law (devar) offered her a glass of water, in which some tranquilizing substance was mixed and after drinking

the adulterated water she fell unconscious and thereafter he committed rape on her. Her husband was in Delhi at that time and her mother-in-law was out of home and on the basis of statement of victim Section 376 /328 IPC was added in penal section during investigation.

He further submitted that in medico legal examination of the victim 28 weeks foetus was found in her uterus, no signs of injury on any part of the body including buttocks, abdomen, upper and lower part of thighs, no mark of injury on private parts was present at the time of examination which was carried out on 12.05.2023 at District Hospital Amroha. He also submitted that in FIR the date of incident is shown as 03.05.2023, wherein statement of the victim the date of incident is shown as 02.05.2023. The FIR is itself highly belated and was lodged on 10.05.2023. Victim died on 27.05.2023 during treatment in a Delhi Hospital due to head injuries.

The learned Juvenile Justice Board, rejected the bail application of the revisionist mainly on the ground of gravity of the offence and his bail application was rejected after simply narrating the grounds mentioned in Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015, in which grounds of rejection of bail are mentioned. The learned Juvenile Justice Board has not given its satisfaction that there is some material in support of the grounds mentioned in Section 12 of the Act which could have justify the denial of the juvenile. Chargesheet has already been filed against the revisionist under Sections 328, 354 and 376 IPC.

Co-accused Smt. Vakila, mother-in-law of the victim has already been granted anticipatory bail in the present case under Sections 323, 304B and 506 IPC and Section 3/4 of Dowry Prohibition Act, at Police Station Naugawan Sadat, District Amroha.

Learned Additional District and Session Judge/ Special Judge (POCSO Act) (Children Court) Amroha has also dismissed the juvenile appeal preferred by the revisionist under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 in mechanical manner without considering the grounds taken in appeal, despite the fact that in social investigation report filed by District Probation Officer, it is categorically stated that he is not having prior criminal history. He takes interest in academic activities and sports, his behaviour is stated to be normal by neighbours, he resides with his parents and siblings, inspite that learned Additional Session Judge concluded that keeping in view the serious nature and the allegations against the juvenile, it cannot

be denied that in case release of bail is likely to come in association of bad elements. He is alleged to have administered some obnoxious substance in water to the sister-in-law (bhabhi) and has committed rape on her when she became unconscious.

Per contra, learned A.G.A. for the State opposed the prayer for bail and stated that there are serious allegations against the revisionist and offence attributed to him are of heinous nature and in case release of bail he is likely to come in association with bad elements and he is released would expose him to moral physical or psychological danger. Section 12 of Juvenile Justice (Care and Protection of Children) Act provides as under:-

"(1) When any person, who is apparently a child and is alleged to have committed a available or non - bailable offence, is apprehended or detained by the police or appears or brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety or placed under the supervision of a probation officer or under the care of any fit person: Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the persons release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision.

(2) When such person having been apprehended is not released on bail under sub - section (1) by the officer - in - charge of the police station, such officer shall cause the person to be kept only in an observation home or a place of safety, as the case may be in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub - section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfil the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail."

The order passed by the appellate court as well as the Juvenile Justice Board would not disclose any concrete reason for coming to a conclusion to bring him into association with any unknown criminal or expose him to moral physical or psychological danger, or that his release would defeat the ends of justice; as provided under Section 12 of the Act.

Gravity of the offence has not been mentioned as a ground to reject the bail. It is not a relevant factor while considering to grant bail to the juvenile. It has been so held by this Court in the cases of **Shiv Kumar alias Sadhu Vs. State of U.P. 2010 (68) ACC 616(LB); Abdullah @ Abdul Hassan Vs. State of U.P. and Others [2015 (90) ACC 204]; Maroof Vs. State of U.P. and Another [2015 (6) ADJ 203]; Criminal Revision No. 112 of 2015 (Suraj @ Ashok Sukla Thru. Father Mahendra Shukla Vs. State of U.P. and Another) and Amit Kumar Vs. State of U.P. 2010(71) ACC 209** decided on 02.07.2015.

It is evident that there is no satisfactory material on record to conclude that the release of juvenile would expose him to moral, physical or psychological danger or that it would defeat the ends of justice or would bring him into association of known criminals. In the circumstances, I am of the opinion that revisionist deserves to be released on bail to his parents or legal guardians in absence thereof.

Accordingly, this criminal revision is **allowed**. The impugned judgments/orders passed by the courts below are hereby set aside.

Let revisionist- **X (Juvenile)** be enlarged on bail in Case Crime No.215 of 2023, under Sections 328, 354, 376 IPC, Police Station Naugawan Sadat, District Amroha, on furnishing a personal bond by either of his parents and in absence by his legal guardians two sureties each in the like amount to the satisfaction of the Court concerned and subject to following conditions:-

(i) That the natural guardian of the revisionist 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 natural guardian will ensure that the juvenile will not repeat the offence.

(ii) The revisionist and his natural guardian will report to the District Probation Officer on the first Wednesday of every calendar month commencing with the first Wednesday of December, 2024 and if during any calendar month the first Wednesday falls on a

holiday, then on the next following working day.

(iii) The District Probation Officer will keep strict vigil on the activities of the revisionist and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board concerned on such periodical basis as the Juvenile Justice Board may determine.

Order Date :- 16.4.2024

Ashish/-