

Neutral Citation No. - 2024:AHC-LKO:83361

Court No. - 14

Case :- CRIMINAL REVISION No. - 536 of 2024

Revisionist :- Juvenile Delinquent K Thru. His Father Y

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

Counsel for Revisionist :- Shanker Lal Pandey, Ranjit Singh, Vinay Misra

Counsel for Opposite Party :- G.A., Sushil Kumar Singh

Hon'ble Ajai Kumar Srivastava-I,J.

1. Objection/counter affidavit filed today by learned A.G.A. is taken on record.
2. Heard Ms. Sonam, holding brief of Sri Vinay Misra, learned counsel for the revisionist, learned A.G.A. for the State, Sri Mukesh Dwivedi holding brief of Sri Sushil Kumar Singh, learned counsel for opposite party No.2 and perused the entire record.
3. The instant criminal revision is preferred against the impugned judgment and order dated 01.05.2024 passed by the learned Juvenile Court/ Special Judge (POCSO Act), Pratapgarh in Criminal Appeal No.26/2024 arising out of Case Crime No.386/2023, under Sections 147, 148, 149, 201, 302, 34 I.P.C., Police Station Ashpur Devsara, District Pratapgarh as well as order dated 21.03.2024 passed by the learned Juvenile Justice Board, Pratapgarh.

4. It has been submitted by learned counsel for the revisionist that the innocent revisionist has falsely been implicated in the present case.
5. Her further submission is that revisionist was not named in the first information report whereas his name surfaced during investigation on the basis of such a witness, who was not an eyewitness of the alleged incident. She has further submitted that there was no recovery of any alleged weapon of assault either from the possession of the juvenile or on his pointing out.
6. Her further submission is that both the courts below have been swayed by the alleged seriousness of the offence, whereas for the purposes of enlarging the revisionist on bail under proviso to Section 12(1) of The Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as "**Act of 2015**"*) is significant, which has been overlooked by the court below, therefore, impugned judgment and orders are not sustainable in the eyes of law. She has also submitted that no adverse report against the present revisionist has been given by the District Probation Officer concerned and whatever has been mentioned in the social investigation report against the present revisionist, is not based on any cogent material.
7. Her next submission with vehemence is that the co-accused, Atul Yadav, Ayush Yadav, Sachin Yadav and

Shubham Yadav, who are major, have already been granted bail by a coordinate Bench of this Court vide orders dated 01.07.2024, 11.07.2024, 18.06.2024 and 04.07.2024 passed in Criminal Misc. Bail Application Nos. 6961 of 2024, 5550 of 2024, 6350 of 2024, 5857 of 2024.

- 8.** Her further submission is that revisionist is confined in the Children Reformatory Home since 24.11.2023 in connection with the present crime. Only three years' institutional incarceration is permissible for a juvenile, under Section 18(1)(g) Act of 2015.
- 9.** Per contra, learned A.G.A. for the State as well as learned counsel for opposite party No.2 have submitted that the revisionist, though a juvenile in conflict with law, is a budding criminal. He is involved in an offence, which has serious adverse societal impact. Their further submission is that upon his release, there is every likelihood that he will come into association with known criminals, that would lead to the revisionist facing physical, psychological and moral danger. However, they could not dispute the fact that there is nothing on record to suggest that the case of the revisionist falls into any of the three disentitling reasons postulated under the proviso to Section 12(1) of the Act of 2015.
- 10.** This Court has keenly considered the rival submissions and perused the records.

- 11.** The revisionist was declared a juvenile by the Juvenile Justice Board, Pratapgarh in the aforesaid case vide order dated 06.03.2024. The revisionist is aged about 17 years 04 Months and 06 days on the date of occurrence and this fact remains undisputed.
- 12.** It is trite that the use of the word 'shall' in sub-section (1) of Section 12 of the Act of 2015 is of great significance. The use of the word 'shall' raises a presumption that the particular provision is imperative, but this prima facie inference may be rebutted by other considerations such as the object and scope of the enactment and the consequences flowing from such construction. The word 'shall' has been construed as ordinarily mandatory, but is sometimes not so interpreted if the context or intention otherwise demands.
- 13.** Provisions of Section 12 of the Act of 2015 manifest that ordinarily, the Juvenile Justice Board is under obligation to release the juvenile on bail with or without surety. The juvenile shall not be released in certain circumstances as the latter part of the section also uses the word 'shall' imposing certain mandatory conditions prohibiting the release of the juvenile by the Juvenile Justice Board. If there are any reasonable grounds for believing; (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological

danger and (c) that release of the juvenile is in conflict with law and would defeat the ends of justice.

- 14.** From a bare reading of the provisions of Section 12 of the Act of 2015, it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the juvenile, and bail can be declined only in such cases where there are reasonable grounds to believe that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The gravity of the offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12(1) of the Act of 2015 is available. A similar view has been taken in cases of **Manoj Singh v. State of Rajasthan**¹, **Lal Chand v. State of Rajasthan**², **Prakash v. State of Rajasthan**³, **Udaibhan Singh @ Bablu Singh v. State of Rajasthan**⁴, **Shiv Kumar @ Sadhu v. State of U.P.**⁵, **Maroof v. State of U.P.**⁶.

1 2004 (2) RCC 995

2 2006 (1) RCC 167

3 2006 (2) RCR (Cri.) 530

4 2005 (4) Crimes 649

5 2010 (68) ACC 616 (LB)

6 2015 (6) ADJ 203

- 15.** The term 'known criminal' has not been defined in "the Juvenile Justice Act" or Rules framed thereunder. It is a well-settled rule of interpretation that in the absence of any statutory definition of any term used in any particular statute the same must be assigned meaning as is commonly understood in the context of such statute as held by Supreme Court in **Appasaheb v. State of Maharashtra**⁷, in para 11 as under:

"11.....It is well settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understand to have a particular meaning in it, then the words are to be construed as having that particular meaning. [See: Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413: AIR 1996 SC 3509 and Chemical and Fibers of India v. Union of India, (1997) 2 SCC 664: AIR 1997 SC 558]..."

- 16.** In **Nand Kishore (in JC) v. State**⁸, Delhi High Court, while considering the first condition of proviso of Section 12 of the Act of 2015, observed that "as regards the first exception, before it can be invoked to deny bail to a juvenile there must be a reasonable ground for believing that his release is likely to bring him into association with any known criminal. The expression known criminal is not without significance when the liberty of a juvenile is sought to be curtailed by employing the exception, the

⁷ (2007) 9 SCC 721

⁸ (2006) 4 RCR (Cri.) 754

exception must be construed strictly. Therefore, before this exception is invoked, the prosecution must identify the 'known criminal', and then the court must have reasonable grounds to believe that the juvenile if released would associate with this 'known criminal'. It cannot be generally observed that the release of the juvenile would bring him into association with criminals without identifying the criminals and without returning a prima facie finding with regard to the nexus between the juvenile and such criminal."

- 17.** Similar view has been taken in **Manmohan Singh v. State of Punjab**⁹, wherein, it was observed as under:

"7....The reasonable grounds for believing that his release is likely to bring 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, should be based upon some material/evidence available on the record. It is not a matter of subjective satisfaction but while declining bail to the juvenile on the said ground, there must be objective assessment of the reasonable grounds that the release of the juvenile is likely to bring him 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..."

8. In Sanjay Kumar's case (supra) it has been held by the Allahabad High Court that every juvenile whatever offence he is charged with, shall be released on bail but he may, however, be refused bail if there appears reasonable

9 (2004) 136 P & H 497

ground for believing that the release is likely to bring him into association with the any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice and that the existence of such ground should not be mere guess work of court but it should be substantiated by some evidence on record."

- 18.** Section 26 of the IPC defines the expression "Reason to believe". It means a person is said to have a "reason to believe" a thing, if he has sufficient cause to believe such thing but not otherwise. In view of Section 26 of I.P.C., if there is sufficient cause to believe, reason to believe exists. The expression "reason to believe" excludes a mere suspicion. The word 'believe' is very much a stronger word than 'suspect'.
- 19.** Section 13(1)(ii) of the Act of 2015 provides that the Probation Officer shall submit a social investigation report within two weeks from when a child is apprehended or brought to the Board, containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry. The "social investigation report" which has been defined in Rule 2(xvii) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, means the report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other

relevant factors, and the recommendation thereon. This report becomes important for the inquiry to be done by the Board while passing such orders in relation to such a child as it deems fit under Sections 17 and 18 of this Act. The purpose behind this provision is to enable the Juvenile Justice Board to get a glimpse of the social circumstances of the child before any order regarding bail or of any other nature is passed.

- 20.** 'Form-6' of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, contains a detailed proforma of the social investigation report. The report has three segments; the first segment requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards religion, the relationship amongst the family members, the relationship with the parents, living conditions, etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report, and school, employment, if any, friends, the child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. The most important part of the report is the third part i.e. the result of inquiry where the Probation Officer is required to

inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer. It is incumbent upon the Juvenile Justice Board to take into consideration the social investigation report and make an objective assessment on the reasonable grounds for rejecting the bail application of the juvenile.

- 21.** Section 3 of the Act of 2015 provides that the Central Government, the State Government, the Board, and other agencies, as the case may be, while implementing the provisions of the Act, shall be guided by the fundamental principles of care and protection of children. Some of the principles are as under:

"(i) Principle of presumption of innocence: Any child shall be presumed to be an innocent of any mala-fide or criminal intent up to the age of eighteen years.

(ii) Principle of dignity and worth: All human being shall be treated with equal dignity and rights.

(iii) Principle of best interest: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(iv) Principle of family responsibility: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(v) Principle of non-stigmatising semantics: Adversarial or accusatory words are not to be used in the process pertaining to a child.

(vi) Principle of right to privacy and confidentiality: Every child shall have a right to protection of his privacy and confidentiality, by all means and through out the judicial process."

- 22.** From the perusal of the F.I.R. and the overall facts and circumstances of the present case, it is revealed that the revisionist had no criminal history prior to the present case. There is nothing on record to suggest that the case of the revisionist falls into any of the three disentitling reasons postulated under the proviso to Section 12(1) of the Act of 2015.
- 23.** Having heard learned counsel for the parties and upon perusal of record, it transpires that the Case Crime No.386 of 2023 came to be lodged against various named accused persons wherein revisionist juvenile was not named. His name admittedly surfaced during investigation on the basis of statement of some witness. The fact that there was no recovery of any alleged weapon/article of assault has also not been disputed by the State or the counsel appearing for the opposite party No.2 though there are some mention of possibility of the

juvenile falling to the bad societal element, however, learned counsel for the revisionist submits that the same has been mentioned without there being any material to support such finding. She has further submitted that such fact has been mentioned by D.P.O. without there being any material. It is also admitted by learned counsel for the opposite party No.2 that co-accused Atul Yadav, Ayush Yadav, Sachin Yadav and Shubham Yadav, who are major, have already been granted bail by a coordinate Bench of this Court vide orders dated 01.07.2024, 11.07.2024, 18.06.2024 and 04.07.2024 passed in Criminal Misc. Bail Application Nos. 6961 of 2024, 5550 of 2024, 6350 of 2024, 5857 of 2024 respectively.

- 24.** A perusal of the impugned orders passed by the learned Juvenile Justice Board and the learned trial court show that the both courts below have been swayed by the fact that the nature of offence is heinous and therefore, they have concluded that the case of revisionist falls in the three disentitling exceptions postulated under under the proviso to Section 12(1) of the Act of 2015. This Court in the case of **Shiv Kumar alias Sadhu vs. State of U.P.**¹⁰ has held that the gravity of the offence is not relevant consideration for refusing grant of bail to the juvenile. There is nothing on record which substantiates the aforesaid findings/conclusion of

¹⁰ 2010 (68) ACC 616 (LB)

the courts below. The aforesaid finding of the courts below is thus, based on surmises and conjunctures only. Therefore, the impugned orders 01.05.2024 and 21.03.2024 deserve to be set aside.

- 25.** In view of the overall facts and circumstances of the case and the mandate of the proviso to Section 12(1) of the Act of 2015, this Court is of the considered opinion that there is nothing on record on the basis of which it can be inferred that the revisionist's case is one that falls into any of three exceptions postulated under the proviso to Section 12(1) of the Act of 2015. Therefore, while passing the impugned orders dated 01.05.2024 and 21.03.2024, the Courts below have acted with material irregularity.
- 26.** The instant revision, thus, deserves to succeed for the reasons mentioned herein above.
- 27.** In the result, the instant criminal revision succeeds and is **allowed**. The impugned judgment and order dated 01.05.2024 passed by the learned Juvenile Court/ Special Judge (POCSO Act), Pratapgarh in Criminal Appeal No.26/2024 arising out of Case Crime No.0386/2023, under Sections 147, 148, 149, 201, 302, 34 I.P.C., Police Station Ashpur Devsara, District Pratapgarh as well as order dated 21.03.2024 passed by the learned Juvenile Justice Board, Pratapgarh, are hereby, set aside and

reversed. The bail application of the revisionist stands allowed.

- 28.** Let the revisionist, through his natural guardian/ father be released on bail in the aforesaid case upon his natural guardian/ father furnishing a personal bond with two solvent sureties of his relatives in the like amount to the satisfaction of the Juvenile Justice Board, Pratapgarh subject to the following conditions:

(i) The natural guardian/father 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 father will ensure that the juvenile will not repeat the offence.

(ii) The revisionist and his natural guardian/father will report to the District Probation Officer on the first Monday of every calendar month, commencing with the **first Monday of January, 2025** and if during any calendar month the first Monday falls on a holiday, then on the 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,

Pratapgarh on such periodical basis as the Juvenile Justice Board may determine.

(Ajai Kumar Srivastava-I, J.)

Order Date :-11.12.2024

Shubhankar