

**Court No. - 29**

**Case :-** CRIMINAL REVISION No. - 713 of 2023

**Revisionist :-** Anil

**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home, Civil Secrett. Lko. And Another

**Counsel for Revisionist :-** Shailesh Kumar Singh, Amit Kumar Awasthi, Anand Kumar Shukla

**Counsel for Opposite Party :-** G.A., Desh Raj Singh Yadav, Rajesh Kumar Verma

**Hon'ble Mrs. Renu Agarwal, J.**

1. Second supplementary affidavit filed today is taken on record.
2. Learned counsel of the applicant as well as learned AGA for the State are present.
3. Despite service of notice to opposite party No. 2, there is no representation on his behalf.
4. Present criminal revision under Section 53/102 of Juvenile Justice Act is preferred against the judgment and order dated 25.04.2023 passed by the Special Judge Children Court/Additional Sessions Judge, Court No. 11, Lakhimpur Kheri in Criminal Appeal No. 7 of 2023 (Anil Vs. State of U.P. and Ors.) by means of which the criminal appeal filed by revisionist has been rejected and order dated 13.01.2023 passed by the Juvenile Justice Board, Lakhimpur Kheri has been upheld.
5. It is submitted by way of revision that learned Special Judge (POCSO) has passed the order without application of mind and ignoring the facts and motives against the revisionist. Learned Special Judge (POCSO) as well as Juvenile

Justice Board, Kheri has committed manifest error and illegality by means of which they have ignored the provisions and guidelines of the Juvenile Justice Act, wherein, it has not clearly mentioned that if the bail application of juvenile has been moved, the same shall be considered in the light of Section 12 of the Juvenile Justice Act for welfare of the juvenile. It is further submitted that the revisionist has no criminal history to his credit and he is in custody since 28.08.2022. The witnesses produced are all near and dear of the informant. It is contended that the revisionist is innocent and he has been falsely implicated in the instant case. There is no allegation against the revisionist except that he assisted co-accused Kuber in his escape from the place of occurrence. Nothing incrimination has been recovered from his possession. No weapon is recovered either from the possession or from pointing out of the juvenile. It is further contended that at the time of occurrence, the revisionist was minor and he was not in a position to commit such a heinous offence nor he was aware of the consequences of the crime. He is not mentally and physically fit to commit any of the crime. It is also contended on behalf of the revisionist that the bail application of the revisionist has been arbitrarily rejected while the uncle of the revisionist has given undertaking before the court that after the release of the revisionist, he will not indulge himself in any of the criminal activities. The order of the appellate court is beyond the ambit of Section 12 of the Juvenile Justice Act, hence, it is liable to be set-aside.

6. Learned AGA for the State submitted that the judgment and order dated 25.04.2023 passed by the Special Judge Children Court/Additional Sessions Judge, Court No. 11, Lakhimpur Kheri in Criminal Appeal No. 7 of 2023 (Anil

Vs. State of U.P. and Ors.) has been passed on merits and has been passed with application of judicial mind and the appeal preferred by the revisionist has rightly been rejected as the revisionist assisted the main accused in escaping the place of occurrence after the said crime has been committed.

7. I have heard the rival submissions advanced on behalf of the parties and perused the entire materials brought on record.

8. It transpires from the record that revisionist was not named in the F.I.R. and his name surfaced in the statement of co-accused Kuber, who was arrested by the police along with the present applicant Anil. Nothing incriminating article or weapon is recovered from the possession of the present applicant, co-accused Kuber admitted in his statement that he caused death of Puttal Lal (deceased) on 26.08.2022 by Sickle and his cousin Anil was standing at a distance and he escaped on his motorcycle, hence, from the primary investigation, there is no allegation of murder against the present revisionist, nor the murder was committed in presence of the present revisionist. After the incident, co-accused Kuber came to the present revisionist and with the assistance of present revisionist they both escaped from the place of occurrence. Applicant as no criminal history to his credit apart from the present case and he is languishing in jail since 28.08.2022. There is no witness of the alleged incident and there is no evidence against the revisionist except the confessional statement of revisionist and the statement of co-accused-Kuber. The report of District Probation Officer is on record, there is nothing in this report to indicate that revisionist is of criminal mentality, revisionist has no criminal history as per the probation report. It is also evident that parents of revisionist have expired 14 years due to

illness and his real uncle Vidyasagar is bringing up the revisionist. Revisionist has no relationship or any animosity with deceased or his family members, hence there is nothing on record to prove that if revisionist is released from custody then there is any chance of indulging in any of the criminal activities, however, it is suggested in the report that the juvenile needs moral, physical and psychological support.

9. Learned trial court did not consider the fact that revisionist is minor, his parents have expired 14 years ago, there is no animosity between the parties. Co-accused-Kuber has admitted that he alone assaulted the deceased with Sickie. The role of the applicant is merely to assist the co-accused in escaping from the place of occurrence. Revisionist has no criminal history apart from the present case, there is strong possibility that the conduct of revisionist could be ameliorated. The uncle of revisionist is ready to execute bond to the effect that revisionist will not indulge in any of the criminal activities. Learned trial court did not pay any heed to Section 12 of the Juvenile Justice Act. Gravity of offence has no consideration at the time of deciding the bail of the juvenile. The scheme of considering the bail of juvenile is altogether put apart from that of adult accused. Learned Juvenile Justice Board rejected the bail application on the basis of gravity of offence, hence, on the basis of on going reasons, the order of Juvenile Justice Board and Appellate Court suffers from illegality which will lead to miscarriage of justice, hence order of Juvenile Justice Board as well as first Appellate Court is liable to be set-aside.

10. In view thereof, Revision is **allowed** and the order dated 13.01.2023 passed by the Juvenile Justice Board and judgment and order dated 25.04.2023 passed

by the learned Special Judge Children Court/Additional Sessions Judge, Court No. 11, Lakhimpur Kheri in Criminal Appeal No. 7 of 2023 are hereby set-aside.

11. Let the copy of the order of the date be transmitted to the court concerned for follow-up action.

**(Renu Agarwal,J.)**

**Order Date :- 9.1.2024**  
Karan