

Court No. - 27

Case :- CRIMINAL REVISION No. - 1294 of 2023

Revisionist :- Juvenile 'A' Thru. His Father Kishun @ Banshu @ Ram Kishun

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Deptt. Lucknow And Another

Counsel for Revisionist :- Prem Prakash Singh

Counsel for Opposite Party :- G.A.,Rehan Ahmad Siddiqui

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Prem Prakash Singh, the learned counsel for the revisionist, Sri Arvind Kumar Pandey, the learned A.G.A appearing on behalf of the State and Sri Rehan Ahmad Siddiqui, the learned counsel for the opposite party no. 2 and perused the record.

2. The instant criminal revision has been filed under Section 102 of the Juvenile Justice (Care and Protection) Act, 2015, challenging the validity of order dated 12.06.2023 passed by the Juvenile Justice Board rejecting the bail application of the applicant and the judgment and order dated 25.09.2023 passed by the Additional Session Judge/ Special Judge (POCSO Act), Ambedkar Nagar, dismissing the Criminal Appeal No. 20/2023 filed by the revisionist against rejection of his bail application.

3. Briefly stated the facts of the case are that an F.I.R No. 169 of 2022, lodged on 12.09.2022 under Section 364 I.P.C and 3(2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, against the revisionist and two other named persons alleging that the informant's elder daughter, whose date of birth was 06.07.2004, had gone away on 26.08.2022 after informing the informant's younger daughter, that she was going to get some medicine. She used to talk to the revisionist and co-accused Vimlesh and she

apprehended that they had made her disappear. The victim's skeleton was found on 12.09.2022 on the bank of the canal and she was identified on the basis of some remains of clothes lying nearby. The post mortem examination report mentions that death took place more than one month ago and the cause of death could not be ascertained.

4. In the statement of the informant recorded under Section 161 Cr.P.C., she stated that her daughter was pregnant and she had not lodged the report earlier apprehending her defamation.

5. In the statement of the deceased's sister recorded by the investigating officer, she stated that the deceased used to talk to the revisionist, who lived in her neighborhood and she also used to talk to a co-accused person, who is a resident of another village. She stated that she and her parents had come to know about the pregnancy of the deceased but they had not made its mention to any person. She further stated that the deceased had told her that the revisionist had administered some medicine to the deceased on one occasion. She further stated that her sister had taken a mobile phone with her and she had told telephonically on the date of the incident at about 03:00 pm that she would come back on the following day. The deceased was taken to a hospital where she died.

6. The deceased's father stated in his statement that the skeleton was identified on the basis of some remains of clothes lying nearby and she had told the doctor that the clothes, the bones and the skull belonged to her daughter but the doctor had stated that the skeleton could be identified only through DNA test and it could not be identified through clothes only.

7. In their custodial statement, all the three co-accused persons stated that they had taken the deceased to a hospital for getting

her pregnancy aborted and she died in the hospital.

8. I have considered the aforesaid facts and circumstances of the case, what prima facie appears from the material placed before this court at this stage is that the victim had gone away from her home on 26.08.2022 and she had taken a mobile phone with her, through which she had communicated in the evening that she would return on the following day. The victim did not return yet the F.I.R was lodged on 12.09.2022 i.e. after 17 days of the incident. A skeleton was recovered on 16.09.2022 after examination of which, the doctor opined that the death had taken place more than one month ago. The informant has identified the skeleton on the basis of some remains of clothes lying nearby whereas the doctor stated that the skeleton could be identified only on the basis of DNA test examination. The prosecution claims that the deceased died in a hospital where she was taken for her abortion. The doctor who carried out the victim's abortion had also been made an accused and the learned A.G.A has informed that he is in custody.

9. Apparently, the act of causing death has been attributed to the doctor who caused abortion of the deceased, which resulted in her death. Besides having taken the deceased to the hospital there is no allegation of any act committed by the revisionist. The revisionist was aged 17 years 11 days on the date of the incident and he was having no criminal history. The revisionist was languishing in jail since 13.09.2022 and the complainant has been examined by the trial court. Therefore, in case of his release on bail, the revisionist will not be in a position to influence the complainant, who has already been examined by the trial court.

10. In view of the aforesaid facts, the revision is **allowed**. The impugned order dated 12.06.2023 passed by the Juvenile Justice

Board, Ambedkar Nagar rejecting the revisionist's application for his release on bail in Case Crime No. 169/2022 under Sections, under Section 364 I.P.C and 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, registered at Police Station Bheeti, District- Ambedkar Nagar and the order dated 25.09.2023 passed by the Additional Session Judge/ Special Judge (POCSO Act), Ambedkar Nagar, dismissing the Criminal Appeal No. 20/2023 are set aside.

11. Let the revisionist- **Juvenile 'A' Thru. His Father Kishun @ Banshu @ Ram Kishun** be released on bail in the aforesaid case upon his guardian furnishing a personal bond with two solvent sureties of his relatives, each in the like amount to the satisfaction of the Juvenile Justice Board, Pratapgarh subject to the following conditions:-

(i) the natural guardian 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 guardian will ensure that the juvenile will not indulge in any criminal activity;

(ii) natural guardian will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do.

(iii) juvenile accompanied by his natural guardian, will report to the Probation Officer on the first working day of every calendar month. The D.P.O. shall maintain a diary recording their attendance.

(iv) The District Probation Officer will keep strict vigil on the activities of the juvenile and regularly draw up his social

investigation report that would be submitted to the Juvenile Justice Board, Pratapgarh.

12. It is made clear that the observations made in this order are limited to the purpose of determination of this bail application and will in no way be construed as an expression on the merits of the case. The trial court/J.J.Board shall be absolutely free to arrive at its independent conclusions on the basis of evidence led, uninfluenced by any finding or observation whatsoever in this order.

(Subhash Vidyarthi,J.)

Order Date :- 2.1.2024
Preeti.