

Court No. - 16

Case :- CRIMINAL REVISION No. - 1334 of 2023

Revisionist :- Juvenile Delinquents X Case Crime No. 517/2022

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

Counsel for Revisionist :- Yugal Kishor Tripathi, Manoj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. As per the report of the office of date 08.04.2024 the opposite party no.2 has been personally served.

2. Learned A.G.A. during the course of deliberation has also placed before this Court a report of the Police Station Antu, District Pratapgarh of date 21.03.2024, which also suggests that the opposite party no.2/informant/complainant has been served. This report has been taken on record. Even after service on the opposite party no.2, she is not represented.

3. Heard learned counsel for the revisionist/juvenile as well as learned A.G.A. for the State and perused the record.

4. The instant criminal revision under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 read with Section 397/401 of the Cr.P.C. has been preferred by the revisionist/juvenile delinquents against the judgment and order dated 07.11.2023 passed by learned Additional District Judge/Special Judge (POCSO Act)/Juvenile Court, Pratapgarh in Criminal Appeal No. 79 of 2023, "Baal Apchari 'A' vs. State of U.P. and another" and against the impugned judgement and order dated 23.08.2023 passed by the Juvenile Justice Board, Pratapgarh, "Apchari 'A' vs. State of U.P." in Bail Application No. 36 of 2023, Crime No. 517 of 2022, under Sections 341, 504, 506, 376-D I.P.C. & Section 5(G)/6 POCSO Act, Police Station Antu, District Pratapgarh.

5. Learned counsel for the revisionist/juvenile while drawing the attention of this Court towards both the impugned judgments passed by the Juvenile Justice Board, Pratapgarh as well as passed by the appellate court, vehemently submits that both the courts below have committed manifest illegality in appreciating the factual matrix of the case and has rejected the

prayer of bail of the revisionist without adverting to the facts and circumstances of the case in right perspective.

6. It is further submitted that F.I.R. of this case was lodged by the mother of the prosecutrix on 10.10.2022 with regard to the incident occurred on 08.10.2022 with considerable delay with the allegations that on 08.10.2022 at about 06:00am., when the prosecutrix was going by bicycle, she was dragged into a lonely place by the applicant and other accused persons and an attempt was made by them to commit rape on her, however, she was rescued by the villagers.

7. Highlighting the above facts, it is vehemently submitted on behalf of the revisionist that in the F.I.R., which has been lodged by the mother of the prosecutrix, there is no whisper about the commission of rape and even in the statement of the prosecutrix recorded under Section 161 Cr.P.C., there is no allegation of commission of rape and after many days of recording of this statement, statement of the prosecutrix was recorded under Section 164 Cr.P.C., wherein she for the very first time imputed the allegation of rape, therefore, the allegation of rape has been levelled under the influence of her family members.

8. It is further submitted that age of the prosecutrix as per her educational credentials is more than 17 years and 5 months at date and time of the alleged incident and her radio-logical age has been assessed as more than 18 years and thus she was almost major at the date and time of the alleged incident and at first she refused to undergo any medical examination, but later on she was medically examined on 02.11.2023, however, no abnormality or injury etc. has been found on her person. There is no evidence in support of the allegation of sexual assault and there is only and only untrustworthy statements of the prosecutrix, which could not be believed.

9. It is next submitted that juvenile is in jail in this case since 01.07.2023 and he is not having any criminal history, charge-sheet in this case has already been submitted and there is no apprehension that after being released on bail the applicant may flee from the course of law or may otherwise misuse the liberty."

10. It is further submitted that the juvenile in conflict with law has been declared juvenile by the Juvenile Justice Board, Pratapgarh and he has been confined in Rehabilitation Center since 01.07.2023. He is not having any criminal antecedents and there is no apprehension that after being release on bail the juvenile would come in contact with any known or unknown

criminals or would involve himself in illegal activities. Moreover, in the report of the District Probation Officer, there is nothing which may be read adverse to the juvenile and since the co-accused Atul Pandey to whom the role of committing sexual assault has been levelled by the prosecutrix in her statement recorded under Section 164 Cr.P.C., has been granted facility of bail, the similar facility be also granted to the juvenile.

11. It is further submitted that the revisionist, who is the father and natural guardian of the juvenile-delinquent is ready to furnish sufficient sureties as well as undertaking with regard to the fact that he will take care of the juvenile and would not allow him to involve in any criminal activity and would take his care.

12. Learned A.G.A. on the other hand submits that juvenile after being released on bail may come in the contact of known and unknown criminals and, therefore, having regard to his welfare also his release on bail is not in his interest.

13 Having heard learned counsel for the parties and having perused the record, it is evident that the juvenile in conflict with law of the instant case has been declared so by the J.J. Board, Pratapgarh. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2012 is the relevant section which governs the release of a juvenile on bail and relevant part of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2012 is reproduced as under:

"12. Bail to a person who is apparently a child alleged to be in conflict with law.- (1) When any person, who is apparently a child and is alleged to have committed a bailable 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."

14. The above mentioned provision regulating the bail of the juvenile in conflict with law would sufficiently reveal that the facility of bail may only be denied to a juvenile in conflict with law if there appears reasonable grounds for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological

danger or the juvenile's release would defeat the ends of justice.

15. The Juvenile Justice Board, Pratapgarh as well as the revisional court while not granting the facility of bail to the juvenile in conflict with law has stated that the juvenile is required to be placed in screening so that he may not be involved in any incident of like nature.

16. Perusal of the record would sufficiently demonstrate that a report of the District Probation Officer, Pratapgarh was also called by the J.J. Board, Pratapgarh, a copy of which has also been placed at Page No. 73, (Annexure No.9) of the paper book, wherein it is mentioned that the parents of the juvenile in conflict with law are of good nature and enjoying good reputation and not having any criminal history to their credit and they are also not associated with any known or unknown criminals.

17. Thus, the report of the District Probation Officer, Pratapgarh prepared on the basis of the statements and information collected from at least 22 persons is in terms that the juvenile has been wrongly involved in this case and it is on the basis of the statement of these persons an opinion has been given by the District Probation Officer that the character of the juvenile is not in doubt.

18. Thus, in the considered opinion of this Court, when there was no positive evidence before the Juvenile Justice Board, Pratapgarh pertaining to the bad conduct of the juvenile in conflict with law, his observation that the association of the juvenile in conflict with law with any known or unknown criminals, after his release on bail, is not on the basis of any evidence or material.

19. It is to be recalled that gravity of the offence so far as the bail of the juvenile is concerned, is not to be gone into and the only consideration is the welfare of the minor or juvenile in conflict with law and when there was no positive evidence that after being released on bail the juvenile may be associated with any known or unknown criminals or otherwise may be exposed to the moral, physical or psychological danger, his plea of bail may not be denied by the courts below.

20. Thus, having regard to all the facts and circumstances of the case, the impugned judgment and orders dated 07.11.2023 passed by the learned Additional District Judge/Special Judge (POCSO Act)/Juvenile Court, Pratapgarh and the order dated 23.08.2023 passed by the Juvenile Justice Board, Pratapgarh, may not sustain and is, hereby, **set-aside/quashed**.

21. In result, the instant revision filed on behalf of the juvenile-revisionist is **allowed**.

22. The Juvenile-revisionist is directed to be released on bail, in the above mentioned case on executing a personal bond by his natural guardian/father with two reliable sureties each in the like amount to the satisfaction of the Court/Board concerned and on submission of undertaking on affidavit by his father that he will take due care of the juvenile, will not allow him to indulge in any unlawful or criminal activity or join the company of unlawful elements, will keep him under strict control, shall not attempt or tamper with the evidence or threaten the witnesses; shall not seek any adjournment on the date fixed for evidence, shall remain present before the trial Court on each date fixed, either personally or through his counsel failing which the facility of bail granted to Juvenile may be cancelled.

23. Juvenile-revisionist along with his guardian shall remain present before the District Probation Officer, Pratapgarh once in a month on a date to be specified by the District Probation Officer for one year from his/her release from the Child Welfare Home.

Order Date :- 2.5.2024

Praveen