

Court No. - 78

Case :- CRIMINAL REVISION No. - 1355 of 2025

Revisionist :- X Juvenile

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Ganesh Kumar Verma, Jayant Rai

Counsel for Opposite Party :- G.A.

Hon'ble Sanjay Kumar Singh, J.

1-The present criminal revision under Section 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 has been against the judgment and order dated 08.01.2025 passed by learned Additional District Judge / Special Judge, POCSO Act / Children Court, Mirzapur in Criminal Appeal No. 64 of 2024 and against order dated 28.11.2024 passed by Juvenile Justice Board, Mirzapur in Case No. 92 of 2024 arising out of Case Crime No. 158 of 2024, under Sections 376 DA, 506 I.P.C., Section 67 I.T. Amendment Act and Section 5g and 6 POCSO Act, Police Station Adalhaat, District Mirzapur, whereby, the learned Juvenile Justice Board as well as learned appellate court refused the prayer of bail of accused-revisionist.

2-Heard learned counsel for the revisionist, learned Additional Government Advocate representing the State of U.P. and perused the record.

3-Brief facts of the case, which are required to be stated are that the complainant, who is father of victim lodged a first information report on 08.08.2024 against the revisionist stating *inter-alia* that on 30.05.2024, his daughter aged about 16 years had gone to the house of his brother-in-law (sonu) for a wedding ceremony, where on 31.05.2024 at around 3:00 am, revisionist called his daughter on some pretext and forcibly made physical relation with her in a room and after doing so, he threatened her by saying that if she tells anyone, she will lose her life. He also made her video, which was made viral.

4-Learned counsel for the revisionist, assailing the impugned orders, submits that the revisionist was a juvenile on the date of the alleged incident dated 31.05.2024 and he has been declared juvenile by the Juvenile Justice Board treating the age of revisionist as 16 years, 04 months and 30 days, on the date of alleged incident. The revisionist has remained confined in juvenile home since 23.08.2024.

5-It is argued by learned counsel for the revisionist that the revisionist has been falsely implicated in this case. The statement of the informant and victim has been recorded before the trial court as PW-1 and PW-2 on 13.1.2025 and 23.1.2025 respectively, in which they have been declared hostile. It is further being emphasized that the revisionist does not have any criminal antecedent to his credit. Lastly, it is submitted that there is no material on record for believing that the release of revisionist is likely to bring him into association with any known criminal or expose him to moral, psychological danger, therefore, aforesaid impugned orders are not sustainable and liable to be set aside and revisionist is entitled to be released on bail in view of Section 12 of Juvenile Justice (Care and Protection of Child) Act, 2015.

6-Learned Additional Government Advocate for the State vehemently opposed the present criminal revision by contending that merely because the revisionist is a juvenile, it would not entitle him to bail without going into the gravity of the offence and the nature of the crime. It is pointed out that the victim, in her statement under Section 180 of BNSS, has clearly stated that on 31.05.2024, co-accused Ashraf asked her for water. When she went into the room to get water, he locked the room from inside, Aaqib (revisionist) was already present there. Ashraf committed rape on her in the room, then Aaqib (revisionist) also did same. When Aaqib (revisionist) was committing rape, Ashraf was making her video from the phone. On trying to raise alarm, they covered her mouth. It is also pointed out that witness Zubair Khan, in his statement, has stated that said obscene video was forwarded by Ashraf from mobile

number 6388685913 to his mobile number 9026263639. Thereafter, Zubair Khan forwarded the said video to the father of victim. The said obscene video was given by the father of victim to the investigating officer, in which it was found that victim was being raped by Aaqib (revisionist) and her rape video was being made by Ashraf. It is next submitted that as per statement of victim recorded during investigation, Ashraf also committed rape on her. The said obscene video has been made part of case diary and same has been submitted along-with charge sheet to the concerned court below. So far as statement of informant and victim recorded before the trial court is concerned, it is submitted that tone and tenor of their statements clearly reflect that they have been won over from the side of the accused. Lastly it is submitted that material evidence on record cannot be ignored, hence the bail application of the applicant is liable to be rejected. Much emphasis has been given by contending that the revisionist is a person of hardened criminal mind and is also an imminent danger to the public at large. It is also contended that the bail sought for has been rightly refused in view of Section 12(1) of Juvenile Justice (Care and Protection of Child) Act, 2015.

7-This Court is of the view that a juvenile offender who is above 16 years of age and below 18 years of age is not entitled as of right to be enlarged on bail. The informant before the trial court has stated inter alia that he came to know about the obscene video of his daughter on 07.08.2024, when Zubair Khan forwarded the said video to him. The rape video of victim is also on record. From the statement of victim recorded during investigation and trial, it cannot be said that there is no evidence of rape on minor victim. After going through the statement of the minor victim recorded before the trial court, I find that she, in her statement, has also stated inter alia that she is giving her statement after arriving at settlement / compromise with Ashraf. Hence it is apparent on record that she has been won over from the side of accused-Ashraf. This Court is of the view that conclusion from the statement of any witness shall be drawn considering his/her statement as a

whole not in isolation. This Court is also of the view that rape is the most heinous, hated, morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the helpless victim. It also shakes the spirit and very core of the life of the victim and leaves a permanent scar on her life.

8-The Court has to see whether the opinion of the learned appellate Court as well as Juvenile Justice Board recorded in the impugned judgment and orders are in consonance with the provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 12 of the aforesaid Act lays down three contingencies in which bail could be refused to juvenile. They are:-

(i) if the release is likely to bring him into association with any known criminal, or

(ii) expose him to moral, physical or psychological danger, or

(iii) that his release would defeat the ends of justice.

9-Having gone through the record, this Court finds that since the age of revisionist is above 16 years and below 18 years and the offence of rape is heinous in nature, his trial is going on as an adult, therefore, in view of the legal position applicable to the present case, in case of conviction of the revisionist, he can be sentenced for more than three years' except life or death. In case, the revisionist is released on bail, there is a strong possibility of his being in danger morally, physically or psychologically and he may again get involved in criminal activities. In the matter of bail of juvenile, the Court has to see literally through a prism having three angles, i.e. firstly, the angle of welfare and betterment of the child itself, secondly, the demands of justice to the victim and her family and thirdly, the concerns of society at large. Under the facts and circumstances of the case, in case revisionist is released on bail, then his release would defeat the ends of justice.

10-The prayer for bail of co-accused Ashraf has been rejected by this Court vide order dated 24.02.2025 in Criminal Misc. Bail Application No. 39114 of 2024.

11-In view of the above, the findings recorded by the learned Courts below are not erroneous and cannot be said to be unsustainable. The aforesaid impugned orders are not liable to be interfered with, which are wholly impeccable.

12-As a fall out and consequence of the above, the present criminal revision lacks merit, and is accordingly, ***rejected***.

Order Date :- 16.5.2025

Saurabh