

Court No. - 49

Case :- CRIMINAL REVISION No. - 713 of 2018

Revisionist :- Mangal Yadav

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Devendra Mohan Singh

Counsel for Opposite Party :- G.A.,Janardan Yadav

Hon'ble Saumitra Dayal Singh,J.

Learned counsel for the applicant has placed the mention slip served on learned counsel for the opposite party no. 2.

Heard learned counsel for the applicant and learned A.G.A. for the State.

The present criminal revision has been filed to quash the order dated 16.02.2018 passed by the learned Addl. Session Judge, Court No. 1, Azamgarh in Criminal Appeal No. 133 of 2017 (State of U.P. Vs. Mangal Yadav) as well as order dated 30.10.2017 passed by the Juvenile Justice Board in Case Crime No. 356 of 2017, under Sections- 302/34 I.P.C., Police Station- Kotwali, District- Azamgarh.

Learned counsel for the applicant submits that admittedly, the applicant was a juvenile on the date of alleged incident being 17 years of age. It is then stated that the applicant was not named in the FIR. The applicant's name first surfaced two days thereafter when five accused were named. Further, it is submitted that in the statement of opposite party no. 2 recorded under Section 161 Cr.P.C., it has been alleged that the assailant had covered their faces with cloth. In such circumstances, it has been submitted that the applicant has been falsely implicated owing to old rivalry between the parties.

It is then submitted that the applicant has remained confined in the child observation home since 16.08.2017 and that there is no specific objection raised in the DPO report other than general and vague observations.

Further, submission of learned counsel for the applicant is that it is not in dispute that the applicant is a juvenile and is entitled to the benefits of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (here-in-after referred to as 'Juvenile Justice Act'). It has been submitted that under Section 12 of the Juvenile Justice Act prayer for bail of a juvenile can be rejected 'if there appear reasonable grounds for believing that the release of the juvenile is likely to bring him 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'. It has been submitted that no such grounds are available on record to deny bail to the applicant.

This court is 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, 2000 (hereinafter referred to as the Act). Section 12 of the Act lays down three contingencies in which bail could be refused to juvenile. They are:-

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

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

(3) that his release would defeat the ends of justice?

Gravity of the offence has not been mentioned as a ground for rejection of bail in Section 12 of the Act.

It has been submitted that gravity of the offence is not relevant consideration for refusing grant of bail to the juvenile as has been held by this Court in ***Shiv Kumar alias Sadhu Vs. State of U.P.*** reported in **2010 (68) ACC 616(LB)** and it has been a consistent view of various courts. It has been submitted that there exist no material to justify rejection of bail on the grounds envisaged by Section 12 of the Act.

Learned AGA has opposed prayer for bail but he could not demonstrate from the record that there existed any of the grounds on which bail application of a juvenile could be rejected keeping in view the provisions of Section 12 of the Juvenile Justice Act.

Considering the above, it appears that the findings recorded by the learned Court below are erroneous and cannot be sustained. The order dated 16.02.2018 passed by the learned Addl. Session Judge, Court No. 1, Azamgarh as well as order dated 30.10.2017 passed by the Juvenile Justice Board in the aforesaid case are hereby set aside. Accordingly, the present criminal revision is **allowed**.

Let the applicant **Mangal Yadav** involved in the aforesaid case crime be released on bail on his furnishing a personal bond with two sureties each in the like amount to the satisfaction of the court concerned with the following conditions:

(i) The applicant shall not tamper with the evidence or threaten the witnesses;

(ii) The applicant through guardian shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(iii) The applicant through guardian shall remain present before the trial Court on each date fixed, either personally or through his counsel. In case of his absence, without sufficient cause, the trial Court may proceed against him under Section 229-A of the Indian Penal Code.

Order Date :- 31.8.2018

Abhilash