

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.257 of 2022

Devraj Gupta

..... Revisionist

Versus

The State of Uttarakhand and another Respondents

Mr. Mani Kumar, learned counsel for the revisionist.

Mr. Kuldeep Singh Rawal, learned A.G.A. along with Mr. D.S. Chauhan, learned B.H. for the State.

Hon'ble R.C. Khulbe, J.

This criminal revision is preferred against the judgment and order dated 14.03.2022 passed by the Juvenile Justice Board, Rudrapur, Udham Singh Nagar in bail application no.14 of 2022 as well as the judgment and order dated 21.04.2022 passed by the Additional Sessions Judge/Special Judge (POCSO), Rudrapur, Udham Singh Nagar in Criminal Bail Appeal No.70/2022, "Devraj Gupta Vs. State of Uttarakhand.

2. Heard learned counsel for the parties.

3. Learned Counsel for the revisionist as well as learned Counsel for the State admitted that the revisionist is a juvenile who is involved in connection with Case Crime /FIR No.32/2022 under Sections 17, 18, 18C of the Drugs and Cosmetics Act, under Sections 420, 120B, 274, 275, 276, 468 IPC, under Sections 103/104 of the Trade Mark Act and under Section 63 of the Copyright Act, registered at P.S. Kunda, Distt. Udham Singh Nagar.

4. The revisionist, being a juvenile, moved the bail application before the Juvenile Justice Board, Rudrapur, which was rejected vide order dated 14.03.2022. Aggrieved by it, the revisionist preferred Criminal Bail Appeal No.70/2022 before the Special Judge, POCSO, which was also dismissed vide judgment and order dated 21.04.2022. Hence, this revision.

5. Admittedly, the revisionist was below 18 years at the time of the incident. From a perusal of the order passed by the Board, it appears that the sole ground, on which the bail was denied, is that the revisionist may again commit an offence and 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 person's release would also effect the society.

6. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with bail to a child in conflict with law which reads 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 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 person's 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.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

7. A plain reading of Section 12(1) of the Act reveals that, any person, who is apparently a child, shall be entitled to 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. The distinction between bailable or non-bailable offence has been done away with in respect of a juvenile. In other words, every juvenile is entitled to be released on bail except in circumstances where his/her release will bring him/her into association with any known criminal or expose him/her to moral, physical or psychological danger or that his release would defeat the ends of justice. As per the Section 2 (12) of the Act, ‘child’ means a person who has not completed eighteen years of age.”

8. Admittedly, the revisionist was below 18 years of age at the time of incident. As per Section 12 of the Act, the bail can be refused if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal. The word ‘known’ has not been used by the Parliament without purpose. By use of the word ‘known’, the Parliament requires that the Court must know the full particulars of the criminal with whom the delinquent is likely to come into association. In the case in hand, there is no such report submitted by the District Probation Officer; both the impugned orders are silent about it. Apart from that, the co-accused, who had similar role have been enlarged on bail.

9. In such view of the matter, this Court has no hesitation in holding that the Courts below had erred in law in not releasing the juvenile on bail.

10. As a result, the Criminal Revision is allowed. The orders, under challenge, are set aside. The juvenile in conflict with law (revisionist) shall be enlarged on bail in the aforesaid crime on furnishing two sureties and personal bond of Rs.30,000/- to be executed by the father of the revisionist to the satisfaction of the Juvenile Justice Board /Court concerned. It is further directed that the custody of the juvenile/revisionist shall be given to his father. The father of the revisionist will file an affidavit, along with a personal bond, to the effect that during trial, the juvenile shall remain in his custody and control, and will produce the juvenile every month before the concerned Juvenile Justice Board. The date of appearance shall be fixed by the concerned board which shall be duly informed to the revisionist for his appearance.

11. All pending applications stand disposed of.

12. Copy within 24 hours.

(R.C. Khulbe, J.)
27.05.2022