

Court No. - 93

Case :- CRIMINAL REVISION No. - 1990 of 2021

Revisionist :- Ajay Singh

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- P.K. Singh

Counsel for Opposite Party :- G.A.,Susheel Kumar

Hon'ble Shamim Ahmed,J.

This revision is directed against the judgment and order dated 05.08.2021 passed by learned Additional District and Sessions Judge, Court No. 13/ Special Judge (POCSO Act), Kanpur Dehat, dismissing Criminal Appeal No. 36 of 2021 (Ajay Singh versus State of U.P.), filed under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act') and affirming an order of Juvenile Justice Board, Kanpur Dehat dated 15.07.2021, refusing bail plea to the revisionist in Case Crime No. 131 of 2021, under Section 302 IPC, Police Station Akbarpur, District Kanpur Dehat.

List revised. None appears on behalf of opposite party No. 2 despite the name of Shri Susheel Kumar, Advocate, has been shown in the cause list.

Vide order dated 10.03.2022 this Court, on the request made by Shri Susheel Kumar, the learned counsel for the opposite party No. 2 has given a last opportunity to file counter affidavit, but till date neither any counter affidavit has been filed on behalf of opposite party No. 2, nor the learned counsel for the opposite party No. 2 is present today. It appears that opposite party No. 2 and his counsel are simply lingering the matter and are not interested to contest the same. Therefore, this Court has no option but to proceed with the case to hear and decide it finally.

Counter affidavit filed on behalf of State and in reply thereto rejoinder affidavit filed by the learned counsel for the revisionist are on the record.

Heard Shri P. K. Singh, the learned counsel for the revisionist, Shri Abhishek Shukla, the learned A.G.A.-I for the State and perused the record.

Learned counsel for the revisionist submits that revisionist is innocent and has falsely been implicated in the case.

Learned counsel for the revisionist further submits that as per the prosecution version a dispute arose regarding wearing of underwear on 25.02.2021 and the revisionist stabbed the deceased. It has been argued that though this allegation is taken to be true, it was not intentional rather it was sudden provocation.

Learned counsel for the revisionist further submits that on 26.02.2021 at about 7:15 p.m. an F.I.R. was registered against the revisionist with regard to the incident dated 25.02.2021 of 11:00 a.m. The inquest was conducted on 25.02.2021. The death occurred due to sudden quarrel. The autopsy of the deceased was conducted on 26.02.2021 wherein a single stab wound was found on the body of the deceased and cause of death found haemorrhage and shock due to hard and blunt object.

Learned counsel for the revisionist further submits that revisionist was arrested on 28.02.2021 and recovery of knife and underwear was made from his pointing out. The recovery was planted as there is no independent witness of the said recovery. The revisionist was neither employed nor distant relative of the deceased. It was dispute between the co-workers and the revisionist, and he has been dragged in at the behest of witnesses.

Learned counsel further submits that as per the postmortem report of the deceased cause of death was haemorrhage and shock

due to ante mortem heart injury and manner of causation of injuries are ante mortem caused by hard and pointed object.

Learned counsel for the revisionist further submits that the revisionist is juvenile and there is no apprehension of reasoned ground for believing that the release of the revisionist is likely to bring him in association with any known criminals or expose him to mental, physical or psychological danger or his release would defeat the ends of justice. He further submits that except this the revisionist has no previous criminal history. The father of the revisionist is giving his undertaking that after release of the revisionist on bail, he will keep him under his custody and look after him properly. Further, the revisionist undertakes that he will not tamper the evidence and he will always cooperate the trial proceedings. There was no report regarding any previous antecedents of family or background of the revisionist. There is no chance of revisionist's re-indulgence to bring him into association with known criminals.

Learned counsel for the revisionist further submits that it is not in dispute that the revisionist is a juvenile as he already been declared juvenile by Juvenile Justice Board, Kanpur Dehat vide order dated 24.06.2021. The revisionist was a juvenile aged 13 years, 11 months and 21 days on the date of occurrence. He was, thus, clearly below 14 years of age. He is in jail since 28.02.2021 in connection with the present crime and has completed a substantial period of sentence out of the maximum three years institutional incarceration permissible for a juvenile, under Section 18(1)(g) of the Act.

Learned counsel for the revisionist further submits that thereafter the revisionist applied for bail before the Juvenile Justice Board, Kanpur Dehat, upon which a report from the District Probation Officer was called for. The bail application was rejected vide order dated 15.07.2021, being aggrieved, the revisionist

preferred an appeal under Section 101 of the Act, which was also dismissed vide order dated 05.08.2021. Hence the present criminal revision has been filed before this Hon'ble Court mainly on the following amongst other grounds:

(i) That the revisionist is innocent and has been falsely implicated in the present case due to rivalry/village partibandi.

(ii) That the revisionist is juvenile and there is no apprehension of reasoned ground for believing that the release of the revisionist is likely to bring him in association with any known criminals or expose him to mental, physical or psychological danger or his release would defeat the ends of justice.

(iii) That the revisionist has no criminal history except the present case.

(iv) That the law has been laid down by this Court as well as the Apex Court that the seriousness of the offence is no ground to reject the bail of the juvenile and only three contingencies have been provided to be considered at the time of consideration of the bail application and those are if the release is likely to bring him into association with any known criminal or would expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(v) That the father of the revisionist is giving his undertaking that after release of the revisionist on bail, he will keep him under his custody and look after him properly.

(vi) That the revisionist undertakes that he will not tamper the evidence and he will always cooperate the trial proceedings.

(vii) That both the courts below have committed gross illegality by rejecting the revisionist's bail prayer after declaring him juvenile.

(viii) That both the courts below have given wrong findings without any material available on record.

(ix) That there was no report regarding any previous criminal antecedents of the family or background of the revisionist.

(x) That there is no chance of revisionist's re-indulgence to bring him into association with known criminals.

(xi) That the impugned orders passed by the courts below are totally arbitrary, illegal and bad in law.

(xii) That the findings given by the courts below are based on conjectures and surmises.

Several other submissions in order to demonstrate the falsity of the allegations made against the revisionist have also been placed forth before the Court. The circumstances which, according to the counsel, led to the false implication of the accused have also been touched upon at length. It has been assured on behalf of the revisionist that he is ready to cooperate with the process of law and shall faithfully make himself available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit to impose upon him. It has also been pointed out that in the wake of heavy pendency of cases in the Court, there is no likelihood of any early conclusion of trial.

Learned counsel for the revisionist has pointed out that the revisionist has by now done a substantial period of of institutional incarceration. The maximum period for which a juvenile can be incarcerated in whatever form of detention, is three years, going by the provisions of Section 18(1)(g) of the Act. In support of his contention, learned counsel for the revisionist has placed reliance of Hon'ble Apex Court judgments in the cases of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that ratio of law applicable in those cases is also applicable to the case of the revisionist.

Learned A.G.A. has opposed the revisionist's case with the submission that the release of the revisionist on bail would bring him into association of some known criminals, besides, exposing him to moral, physical and psychological danger. It is submitted that his release would defeat the ends of justice, considering that he is involved in a heinous offence.

This Court has carefully considered the rival submissions of the parties and perused the impugned orders. The juvenile is clearly below 14 years of age and does not fall into that special category of a juvenile between the age of 16 and 18 years whose case may be viewed differently, in case, they are found to be of a mature mind and persons well understanding the consequences of their actions. The provisions relating to bail for a juvenile are carried in Section 12 of the Act, which reads as under:

"(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 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 subsection (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 fulfil 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."

A perusal of the said provision show that bail for a juvenile, particularly, one who is under the age of 14 years, is a matter of course and it is only in the event that his case falls under one or the other disentitling categories mentioned in the proviso to sub-Section (1) of Section 12 of the Act that bail may be refused. The merits of the case against a juvenile acquire some relevance under the last clause of the proviso to sub-section (1) of Section 12 that speaks about the ends of justice being defeated. The other two disentitling categories are quite independent and have to be evaluated with reference to the circumstances of the juvenile. Those circumstances are to be gathered from the Social Investigation Report, the police report and in whatever other manner relevant facts enter the record.

What is of prime importance in this case is that the juvenile, who is a young boy, less than the age of 14 years, has no criminal history. There is nothing said against the juvenile, appearing from the Social Investigation Report that may show him to be a desperado or misfit in the society. The two courts below have held the juvenile disentitled to bail on account of his case falling under each of the three exceptions enumerated in the proviso to sub section (1) of Section 12, for which no reason has been indicated. That finding, in both the orders impugned, is based on an ipse dixit, in one case of the judge and in the other of the Board. Even if it be assumed that the offence was committed in the manner alleged, it would be rather strained logic to hold that release of the juvenile on bail would lead to the ends of justice being defeated.

This Court in the case of **Shiv Kumar alias Sadhu Vs. State of U.P. 2010 (68) ACC 616(LB)** was pleased to observe that the gravity of the offence is not relevant consideration for refusing grant of bail to the juvenile.

After perusing the record in the light of the submissions made at the bar and after taking an overall view of all the facts and circumstances of this case, the nature of evidence, the period of detention already undergone, the unlikelihood of early conclusion of trial and also in the absence of any convincing material to indicate the possibility of tampering with the evidence and in view of the larger mandate of the Article 21 of the Constitution of India and the dictum of Apex Court in the case of **Dataram Singh vs. State of UP and another, (2018) 3 SCC 22** and the view taken by the Apex Court in the cases of **Kamal Vs. State of Haryana (supra)**, **Takht Singh Vs. State of Madhya Pradesh (supra)** and **Shiv Kumar alias Sadhu Vs. State of U.P. (supra)**., this Court is of the view that the present criminal revision may be allowed and the revisionist may be released on bail.

In the result, this revision **succeeds** and is **allowed**. The impugned judgment and orders dated 15.07.2021 and 05.08.2021 are hereby **set aside** and **reversed**. The bail application of the revisionist stands **allowed**.

Let the revisionist, **Ajay Singh**, through his natural guardian/ father Mahesh Singh, be released on bail in Case Crime No. 131 of 2021, under Section 302 IPC, Police Station Akbarpur, District Kanpur Dehat, upon his father furnishing a personal bond with two solvent sureties of his relatives each in the like amount to the satisfaction of the Juvenile Justice Board, Kanpur Dehat subject to the following conditions:

- (i) That the natural guardian/ father, Mahesh Singh 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 father will ensure that the juvenile will not repeat the offence.

(ii) The revisionist and his father, Mahesh Singh will report to the District Probation Officer on the first Wednesday of every calendar month commencing with the first Wednesday of August, 2022 and if during any calendar month the first Wednesday falls on a holiday, then on the next following working day.

(iii) The District Probation Officer will keep strict vigil on the activities of the revisionist and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board, Kanpur Dehat on such periodical basis as the Juvenile Justice Board may determine.

(iv) The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad or the certified copy issued by the Registry of the High Court, Allahabad.

(v) The computer generated copy of such order shall be self attested by the counsel of the party concerned.

(vi) The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

However, considering the peculiar facts and circumstances of the case, the court below is directed to make every possible endeavour to conclude the trial of the aforesaid case within a period of four months from today without granting unnecessary adjournments to either of the parties.

Order Date :- 31.5.2022

Mustaqeem.