

Court No. - 28

Case :- CRIMINAL REVISION No. - 69 of 2023

Revisionist :- Juvenile 'X' (Minor) Thru. His Father

Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home, Lko. And Another

Counsel for Revisionist :- Pradeep Kumar Rai,Prakarsh Pandey,Praveen Kumar Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

Heard learned Counsel for the revisionist, learned A.G.A. for the State and perused the material placed on record.

This instant revision has been filed with a prayer to allow the revision and set aside the impugned judgment & order dated 23.12.2022 passed by Additional District & Sessions Judge, POCSO Court, Lucknow in Criminal Appeal No. 206/2022 arising out of case crime no. 337 of 2022 under Section 302 IPC registered at Police Station - PGI, District - Lucknow.

As per the prosecution story, the First Information Report was lodged by the grandmother alleging that the grandson who is 16 years 8 months 7 days and the granddaughter who is of 10 years were living with their mother and once the mother was trying to restrain the present revisionist for using mobile phones, the revisionist opened fire and caused death of the daughter-in-law.

Learned Counsel appearing for the revisionist submits that the revisionist is innocent and has falsely been implicated in the present case. He next added that the learned Juvenile Justice Board while dealing with the matter did not consider the fact that none has seen the incident, as even informant on the basis of hearsay has lodged FIR and has alleged with the allegation that the grandson has opened fire and murdered the daughter-in-law. He also added that even the witnesses who were produced by the prosecution are not the eye-witnesses and they also on hearsay and speculation have stated with respect to the incident. The learned Board has also failed to consider the mandate of Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015.

Section 12 of Juvenile Justice (Care and Protection of Children) Act, 2015 is quoted hereunder:-

"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 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 sub-section (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 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."

Referring the aforesaid, the Counsel appearing for the revisionist submits that the proviso clause of Section 12 specifically says that the person shall not be released if there appears a reasonable ground for believing that his release is likely to bring that person in association with any known criminal or expose the said person to moral, physical or psychological danger or it would defeat the ends of justice. He further adds that the DPO report is evident that no such grounds have been mentioned while giving the report. He next added that the Juvenile Justice Board as well as the Court of Sessions without considering the DPO report in its right perspective has passed the order and rejected the bail of the revisionist. He further contends that the father of the revisionist who is the guardian of the revisionist is posted in Army and he has been transferred to Lucknow and he undertakes that he will take care of the conduct and behaviour of the revisionist and further added that the revisionist will observe good conduct and behaviour behave in future. He thus submits that the revisionist may be released on bail. In support of his contention, learned Counsel has placed reliance on a judgment rendered in the case of **Juvenile 'X' through his father Vs. State of U.P. & Anr. passed in Criminal Revision No. 2318 of 2021** and referred Paragraph 14 to 16 of the said judgment. Paragraph 14 to 16 of the aforementioned judgment are quoted hereunder:-

"14. Provisions of Section 12 of "JJ Act, 2015" manifest that ordinarily, the Juvenile Justice Board is under obligation to release the juvenile on bail with or without surety. The juvenile shall not be so released in certain circumstances as the latter part of the section also uses the word 'shall' imposing certain mandatory conditions prohibiting the release of the juvenile by the Juvenile Justice Board. If there appear reasonable grounds for believing; (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological

danger and (c) that release of juvenile in conflict of law would defeat the ends of justice.

15. *The term 'known criminal' has not been defined in "the Juvenile Justice Act" or Rules framed thereunder. It is a well- settled rule of interpretation that in the absence of any statutory definition of any term used in any particular statute the same must be assigned meaning as in commonly understood in the context of such statute as held by Supreme Court in **Appasaheb v. State of Maharashtra, (2007) 9 SCC 721** in para 11 as under:*

(SCC p. 726 para 11)

*"11.....It is well settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understand to have a particular meaning in it, then the words are to be construed as having that particular meaning. [See: **Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413: AIR 1996 SC 3509** and **Chemical and Fibers of India v. Union of India, (1997) 2 SCC 664: AIR 1997 SC 558**]..."*

16. *From a bare reading of the provisions of Section 12 of "JJ Act, 2015", it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the juvenile, and bail can be declined only in such cases where there are reasonable grounds to believe that the release is likely to bring the juvenile into an association of any known criminal or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The gravity of offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12(1) of "JJ Act, 2015" is available. A similar view has been taken in cases of **Manoj Singh v. State of Rajasthan, 2004 (2) RCC 995**, **Lal Chand v. State of Rajasthan, 2006 (1) RCC 167**, **Prakash v. State of Rajasthan, 2006 (2) RCR (Cri.) 530**, **Udaibhan Singh @ Bablu Singh v. State of Rajasthan, 2005 (4) Crimes 649**, **Shiv Kumar @ Sadhu v. State of U.P., 2010 (68) ACC 616 (LB)**, **Maroof v. State of U.P., [2015 (6) ADJ 203]**."*

Placing reliance on the aforesaid, he submits that the case of the present revisionist is squarely covered with the ratio of the judgment aforesaid. Concluding his argument, he submits that the revisionist may be released on bail.

On the other hand, learned Counsel appearing for the State has vehemently opposed the contentions aforesaid and submits that from the DPO report it is evident that the revisionist is having anger issues and he himself has stated so. He further added that the DPO report does not support and squarely covers the case of the present revisionist so that the mandate of Section 12 could be applied in the matter of the revisionist. He further contends that there is serious allegation and heinous crime has been committed by the present revisionist and thus he is not entitled for any relief.

Having heard the learned Counsel for the parties and after perusal of record, it transpires that admittedly, the revisionist was 16 years 8 months and 7 days at the date of the incident and that is evident from the impugned order of the Juvenile Justice Board. Thus, it is established that the revisionist is a juvenile. This Court has noticed the fact that the DPO report does not disclose the fact that the release of the revisionist shall bring him in association with any unknown criminal or expose the

revisionist to moral, physical or psychological danger. Further, so far as the merit of the case is concerned, the FIR has been lodged by the grandmother of the revisionist and she is not an eye witness. The other witnesses are also not the eye witnesses in the instant matter and only on hearsay basis, the bail of the revisionist has been rejected.

The co-ordinate Bench of this Court in case of Juvenile 'X' through his father in **Criminal Revision No. 2318 of 2021** has also settled the law and this Court finds that the case of the present revisionist is also covered with the ratio of the judgment aforesaid.

It has also been considered that the revisionist is in child protection home since 08.06.2022 and it has been undertaken by the father of the revisionist who is the guardian that he will keep vision over the revisionist and the revisionist will observe good conduct and behaviour.

In view of the aforesaid, the impugned judgment and order dated 23.12.2022 is set aside and the revision is **allowed**.

Let the revisionist, Juvenile 'X' through his father, in Criminal Appeal No. 206/2022 arising out of case crime no. 337 of 2022 under Section 302 IPC registered at Police Station - PGI, District - Lucknow be released on bail after furnishing of a person bond by his father with two sureties of his relatives each in the like amount to the satisfaction of the Juvenile Justice Board subject to the following conditions.

(i) Natural guardian/father will furnish an undertaking that upon release on bail juvenile 'X' will not be permitted to go 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) Natural guardian/father will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not allowed to waste his time in unproductive and excessive recreational pursuits.

Order Date :- 26.4.2023

Lokesh Kumar