

Neutral Citation No. - 2024:AHC-LKO:43063

A.F.R.

Reserved on 10.06.2024

Delivered on 14.06.2024

Court No. - 13

Case :- CRIMINAL REVISION No. - 835 of 2023

Revisionist :- Juvenile 'Xyz' Thru. His Father

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 3
Others

Counsel for Revisionist :- Mohammad Alishah Faruqi, Mohd. Suhail

Counsel for Opposite Party :- G.A.

Hon'ble Shamim Ahmed, J.

This revision is directed against the judgment and order dated 01.06.2023 passed by Additional Sessions Judge/learned Special Judge (POCSO) Act No. 1, Lucknow passed in Criminal Appeal No. 259/2022: Vs. State of U.P.), whereby the criminal appeal filed on behalf of the revisionist has been dismissed and for quashing of the order dated 22.08.2022 passed by Juvenile Justice Board, Mohan Road, Lucknow, in Misc. Case No. 159 of 2022, arising out of the Case Crime no. 613 of 2021, Under Sections 376 DB, 323, 504, 506 IPC & 5m/6 POCSO Act of Police Station Mohanlalganj, District Lucknow, whereby the Juvenile Justice Board has rejected the bail application of the revisionist.

In spite of time being granted to opposite party No.2 and after service of notice neither anyone has put in appearance nor any counter affidavit has been filed on behalf of opposite party No.2. It appears that opposite party No.2 is not interested to file counter affidavit or to contest the case.

Learned A.G.A. has filed counter affidavit, in reply thereto learned counsel for the revisionist has filed the rejoinder affidavit denying the averments made in the counter affidavit.

Heard Sri Mohammad Alishah Faruqi, learned counsel for the revisionist and Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.

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

Learned counsel for the revisionist further submits that as per the prosecution case the complainant, Sudama, a resident of Gram Ganshkherha, Police Station Mohanlalganj, Lucknow, filed a complaint on 30.12.2021 stating therein that sister-in-law of his son Sonu, namely, aged 11 years, daughter of the late Babu Lal, resident of Koyali ka Purwa, Police Station Nagram, Lucknow, who lives at his house, on 30.12.2021 at about 5.00 p.m. went to the forest to collect wood. At that time, two boys from the village, and , caught her and committed rape and assaulted her. When the girl started screaming, they beat her and threatened to kill her before fleeing the scene. When the girl returned home, she narrated the entire incident, and the complainant dial at 112 to call the police.

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

Learned counsel for the revisionist further submits that the medical of the victim was done on 31.12.2021 in which there was no external injuries/no internal injuries were found on the person of the alleged victim.

Learned counsel for the revisionist further submits that against the order dated 30.03.2022 passed by the Juvenile Justice Board, Lucknow, by which the revisionist was declared juvenile, neither the

informant nor the State Government has preferred any appeal, revision before any court of law.

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 has already been declared juvenile by Juvenile Justice Board, Lucknow vide order dated 30.03.2022. The revisionist was a juvenile aged 13 years 02 months on the date of occurrence. He is in jail since 02.01.2022 in connection with the present crime and has completed substantial period of the 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, Lucknow upon which a report from the District Probation Officer was called for. The bail application was rejected vide order dated 22.08.2022, being aggrieved, the revisionist preferred an appeal under Section 101 of the Act, which was also dismissed vide order dated 01.06.2023. Hence the present criminal revision has been filed

before this Hon'ble Court mainly on the following amongst other grounds:

(i) That the bail application of the revisionist was rejected by the court below in a very cursory and arbitrary manner.

(ii) That the revisionist, who is juvenile, is wholly innocent and has been falsely implicated by the first informant in the present case.

(iii) That the courts below have not appreciated the report of the District Probation Officer in its right perspective.

(iv) That the impugned judgment and orders passed by the learned courts below are apparently illegal, contrary to law and based on erroneous assumption of facts and law.

(v) That there was absolutely no material on record to hold that the release of the Juvenile would likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or his release would defeat the ends of justice, yet the courts below have illegally, arbitrary and on surmises refused the bail of juvenile.

(vi) That the courts have erred in law in not considering the true import of Section 12 of the Act, 2015 and thus, the impugned orders passed by the courts below suffer from manifest error of law apparent on the face of record.

(vii) That the courts below have acted quite illegally and with material irregularity in not properly considering the case of juvenile in proper and correct

perspective which makes the impugned orders passed by the courts below non est and bad in law.

(viii) That bare perusal of the impugned orders demonstrate that the same have been passed on flimsy grounds which have occasioned gross miscarriage of justice.

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 further argued that the revisionist has already undergone substantial period of imprisonment/institutional incarceration and has placed reliance of Hon'ble Apex Court judgment in the case of **Kamal Vs. State of Haryana, 2004 (13) SCC 526** and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under :-

"2. This is a case in which the appellant has been convicted u/s 304-B of the India Penal Code and sentenced to imprisonment for 7 years. It appears that so far the appellant has undergone imprisonment for about 2 years and four months. The High Court declined to grant bail pending disposal of the appeal before it. We are of the view that the bail should have been granted by the High Court, especially having regard to the fact that the appellant has already served a substantial period of the sentence. In the circumstances, we direct that the bail be granted to the

appellant on conditions as may be imposed by the District and Sessions Judge, Faridabad."

Learned counsel for the revisionist has also placed reliance of Hon'ble Apex Court judgment in the case of **Takht Singh Vs. State of Madhya Pradesh, 2001 (10) SCC 463**, and submitted that the Hon'ble Apex Court was pleased to observe in paragraph no. 2 of the judgment as under:-

"2. The appellants have been convicted under Section 302/149, Indian Penal Code by the learned Sessions Judge and have been sentenced to imprisonment for life. Against the said conviction and sentence their appeal to the High Court is pending. Before the High Court application for suspension of sentence and bail was filed but the High Court rejected that prayer indicating therein that the applicants can renew their prayer for bail after one year. After the expiry of one year the second application was filed but the same has been rejected by the impugned order. It is submitted that the appellants are already in jail for over 3 years and 3 months. There is no possibility of early hearing of the appeal in the High Court. In the aforesaid circumstances the applicants be released on bail to the satisfaction of the learned Chief Judicial Magistrate, Sehore. The appeal is disposed of accordingly."

Learned AGA 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 16 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."

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.

In the present case_it is also taken note of by this Court that the revisionist has by now done substantial period 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. Both the courts below have passed the impugned judgment and orders in cursory manner without placing due reliance on the report submitted by the District Probation Officer as well as facts and circumstances of the case. This Court, thus, finds that the impugned orders cannot be sustained and are liable to be set aside and reversed.

A perusal of the said provision show that bail for a juvenile, particularly, one who is under the age of 16 years, is a matter of course and it is only in the event that his case falls under one or the other disentiing 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 disentiing 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 16 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 disentiing 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. Both the courts below have also overlooked the statement of the victim recorded under Section 161 and 164 CrPC and further the courts below have also not considered the radiological age of the victim as per the medical report.

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 on the ground of parity 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 **Kamal Vs. State of Haryana (supra)**, **Takht Singh Vs. State of Madhya Pradesh (supra)**, **Dharmendra (Juvenile) vs. State of U.P. and others (supra)**, **Japani Sahoo vs. Chandra Sekhar Mohanty (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 order dated 01.06.2023 passed by Additional Sessions Judge/learned Special Judge (POCSO) Act No. 1, Lucknow passed in Criminal Appeal No. 259/2022: (Vs. State of U.P.), and the order dated 22.08.2022 passed by Juvenile Justice Board, Mohan Road, Lucknow, in Misc. Case No. 159 of 2022, arising out of the Case Crime no. 613 of 2021, Under Sections 376 DB, 323, 504, 506 IPC & 5m/6 POCSO Act of Police Station Mohanlalganj, District Lucknow are hereby **set aside** and **reversed**. The bail application of the revisionist stands **allowed**.

Let the revisionist, through his natural guardian/father Ram Das be released on bail in Case Crime no. 613 of 2021, Under Sections 376 DB, 323, 504, 506 IPC & 5m/6 POCSO Act of Police Station Mohanlalganj, District Lucknow upon his natural guardian

furnishing a personal bond with two solvent sureties of his relatives each in the like amount to the satisfaction of the Juvenile Justice Board, Lucknow subject to the following conditions:

- (i) That the natural guardian/father Ram Das of the revisionist 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 natural guardian will ensure that the juvenile will not repeat the offence.
- (ii) The revisionist and his natural guardian/father Ram Das will report to the District Probation Officer on the first Wednesday of every calendar month commencing with the first Wednesday of July, 2024 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 concerned 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 six months from today without granting unnecessary adjournments to either of the parties.

Order Date :- 14.06.2024

Arvind

(Shamim Ahmed, J.)