Court No. - 91

Case :- CRIMINAL REVISION No. - 1195 of 2022

Revisionist :- X(Minor)
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Sanjay Pandey,Rakesh Kumar Mathur
Counsel for Opposite Party :- G.A.,Vijendra Kumar Mishra

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Sanjay Pandey, learned counsel for the revisionist, Sri Vijendra Kumar Mishra, learned counsel for the informant-respondent no. 2 and Ms. Arti Agarwal, learned AGA for the State-respondent no. 1.

2. This criminal revision has been filed with a prayer to set aside the order of the Juvenile Justice Board, Prayagraj dated 30.09.2021 and to further set aside the order of the Additional District and Sessions Judge/Special Judge, POSCO Act, Allahabad passed on 07.02.2022 in Criminal Appeal No. 136 of 2021 affirming the order of the Juvenile Justice Board, Prayagraj and declining bail to the juvenile in a matter arising out of Case Crime No. 134 of 2021 under Sections 302/34, 376D, 147 and 148 IPC, Police Station-Dhoomanganj, District-Prayagraj.

3. It is contended on behalf of the revisionist that the impugned orders have been passed in an arbitrary manner on the basis of conjectures ignoring the principles of law applicable in the matter of bail to the juveniles, hence are liable to be set aside. The Juvenile Justice Board and the learned appellate Court have declined bail to the juvenile on the basis of observation as if the revisionist had committed the crime and is guilty; there has not been any eye-witness account to show the involvement of the accused in the offence; initially the FIR was registered on the basis of suspicion only. However, the witnesses who included the so called victim changed their versions and dragged in the present revisionist with an ulterior motive; the report of the District Probation Officer on which the courts below depended upon, did not say that the juvenile had any strained relations with his family, friends or in school; the observation that he may come in contact with any criminal or may get exposed to any moral, physical or psychological danger is unfounded; in the end, it is contended that one of the co-accused, who is also a minor, having assigned a similar role, has been granted bail by another Bench of this Court vide order dated 23.09.2022 passed in Criminal Revision No. 1096 of 2022. Hence, this juvenile

also deserves to be released on bail.

4. The bail is opposed by the learned AGA for the State, inter alia on the grounds that there has been enough of material to prima facie show the involvement of the present revisionist in a most heinous crime of killing an Army personnel and committing gang rape on a girl aged about 19 years; one of the witnesses has given an eye witness account of the incident implicating the present revisionist. It is also argued vehemently that the Court cannot entertain reservations and distrust the prosecution version from the very beginning, without good reasons, especially, when the rape victim has clearly supported and stated that not only the juvenile participated in the merciless killing of deceased but he alongwith his other six companions also committed gang rape on her. Considering the nature of matter, his release shall defeat the ends of justice.

5. Admittedly, in this case, the FIR was lodged under Sections 302 and 120B IPC with the allegations that the deceased Ashutosh Kumar Singh, Hawaldar in Army, was mercilessly thrashed by some boys. On receiving this information, his father went to the place of occurrence and found him lying in a seriously injured condition on rear seat of his car; he was declared brought dead by the Military Hospital; as per the postmortem report, eight injuries of different nature viz, total seven injuries of the nature of abraded contusions, multiple contusions, lacerated wounds on his face, skull and other parts of body above the neck and one on the right upper chest were found. During the investigation, this evidence came to light that the juvenile alongwith six other persons committed gang rape on the victim and attacked the deceased, thrashed and killed him by giving him blows from some blunt object when he protested. After collection of evidence, chargesheet was submitted against all of them. This fact is not disputed that on the date of the incident, the accused-revisionist was found of the age of 15 years and 6 months approximately.

6. In **Om Prakash vs. State of Rajasthan and another; (2012) 5 SCC 201**, the Apex Court observed that the Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of juvenile as it was felt that child become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. It was further observed that when an accused is involved in grave and serious offence which he committed in a well planned manner reflecting his maturity of mind the court ought to be more careful. It may be noted that the Apex Court gave aforesaid view in the background of facts that age of the

juvenile determined by the courts below was not free from doubts. In those peculiar circumstances, the Apex Court commanded attention of the Courts that where accused commited grave and heinous offence and thereafter he attempted to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording his age, is not acceptable. Although this observation of the Apex Court, bringing into focus the nature of crime being material one, came in the background of the facts of that case, but nevertheless it highlights the fact that gravity of offence remains an important factor.

7. All said and done, the nature of crime where its grave and heinous cannot be simply passed over. In this context, I choose to mention the observations made by a coordinate Bench of this Court in **Mangesh Rajbhar vs. State of U.P. and Another; 2018 (2) ACR 1941**, which reads as under:-

"15. In the light of above statutory provision bail prayer of the juvenile revisionist has to be considered on the surrounding facts and circumstances. Merely by declaration of being a juvenile does not entitle a juvenile in conflict with law to be released on bail as a matter of right. The Act has a solemn purpose to achieve betterment of juvenile offenders but it is not a shelter home for those juvenile offenders who have got criminal proclivities and a criminal psychology. It has a reformative approach but does not completely shun retributive theory. Legislature has preserved larger interest of society even in cases of bail to a juvenile. The Act seeks to achieve moral physical and psychological betterment of juvenile offender and therefore if, it is found that the ends of justice will be defeated or that goal desired by the legislature can be achieved by detaining a juvenile offender in a juvenile home, bail can be denied to him. This is perceptible from phraseology of section 12 itself. Legislature in its wisdom has therefore carved out exceptions to the rule of bail to a juvenile."

8. Ordinarily, the merits of the matter may not be unduly important where the Courts are inclined to give benefit of bail as envisaged in Section 12 of the Juvenile Justice Act. This is not to say that once a person is found a juvenile, it is mandatory to grant him bail and that gravity and the merits of matter shall have no relevance. In my view, the nature of the crime and factors connected thereto never went into oblivion and this particular aspect have been usefully illuminated by the Courts time and again. I am of the view that in fact nature of the offence and merits of the matter may assume ample significance when the Court has to form an opinion about the ends of justice. It may be noted that the phrase **'ends of justice'**, cannot exist in a vacuum. Unarguably and undeniably, the Courts are under obligation to address the concerns of both the sides and strike a delicate balance between competing and often conflicting demands of justice of the two sides. When viewing the matters of bail from this particular angle of deciphering the ends of justice, not only the nature of crime, but also the manner of commission thereof, methodology applied, the mental state, the extent of involvement, the evidence available shall be the

factors to reckon with. To my mind, from this particular point of view, no artificial line can be drawn to differentiate cases of juvenile above 16 years from those who are found just below 16, in ordinary circumstances. Incidentally, the accused in this case was found marginally below 16.

9. This Court in ***Criminal Revision 2808 of 2019, Sonu (Minor) vs. State of U.P.***, clearly opined that the gravity and heinous nature of offence is relevant while judging the entitlement of a juvenile to bail under last of the three disentitling categories under Section 12(1) of the Act.

10. Though cases of juveniles who have allegedly committed a heinous crime and are of the age of above 16 years have been treated differently from those who are found to be of the age of below 16 years in the Juvenile Justice Act, 2015, however, by no stretch of imagination, it can be said that the Courts are bound to release the juvenile below the age of 16 years once he is found to be of that age and no more.

11. The vastness of the ends of justice may pull within its sphere facts and circumstances, which may otherwise seem quite irrelevant and not so important at first glance for the purpose of the applicability of proviso to Section 12 of the Juvenile Justice Act. It may be reiterated that the provisions of the Juvenile Justice Act though largely enacted with a reformative theories in mind, do not obliterate streaks of retributive justice in them and this aspect of the scheme of the Act cannot be glossed over. In the end, the Court may have to depend on its own judicial discretion and objective assessment of the things while still going strictly according to the provisions of law as to bail and also keeping in mind that the Act has intertwined approach reformatory as well as retributive. At this stage, it may be noted that the interest of the child finds mention under the head 'Principle of best interest' as described in Chapter IV, Section 3 (iv) of the Juvenile Justice Act, 2015. And this principle also underlines the matters to be dealt with under the provisions of the Act including matters of bail. And undeniably and unarguably keeping in mind the reformative goals of the Act, the bail can definitely be denied, where there are circumstances to arrive at a conclusion that bail should be declined because of the fact that juvenile shall not get such conducive atmosphere as may be needed for **his own welfare and betterment**, if released to his family or parents.

12. The social investigation report submitted by the D.P.O. says that the juvenile keeps company of bad elements; that persons of the locality do not entertain good opinion about him; that he needs counseling.

13. In my view, the aim and object of the Juvenile Justice Act cannot be achieved if crimes committed by the juveniles are not viewed with an angle to address the concerns of the society at large. For this purpose, the social investigation report, may find some utility despite lot of imperfections and infirmity with which it is ordinarily prepared. The D.P.O. in its report, as mentioned earlier, has hinted at the company he keeps and his criminal inclinations and therefore, the need for counseling. Definitely, impressionable young minds can be diverted towards positive direction by extending him services as available under the scheme of the Act. This is no less service to the society.

14. The learned AGA recalled that this incident caused a public resentment and flutter in the minds of people at that point of time, therefore, as per her submission, there is a greater need to keep him in a protective custody.

15. This thing should be kept in mind that aim and object of the Act is to ensure proper care, protection, development treatment and social reintegration of child, in difficult circumstances by adopting child friendly procedures. Under the 'Act' the moment child alleged to be in conflict with law is apprehended (not arrested), he is to be placed under the charge of the child welfare police officer (not merely a police officer) and is not be lodged in police lockup or jail and if required may be sent to 'observation home'. Even while the Board chooses to exercise its power (of bail) under Section 12(1), it may place such child under the supervision of probation officer and may not release him on surety bonds. In my view, in certain circumstances, the protective custody in observation home may be better than any other custody or release.

16. The juvenile is allegedly involved in a crime of heinous nature where an Army personnel was mercilessly thrashed by him and his six other associates and a girl of 19 years was gang raped. The real facts came into light when the victim herself disclosed the incident and gave an eye-witness account. The eye-witness account of a criminal incident cannot be taken lightly and brushed aside. In my view, the gravity and nature of the offence, the manner of its commission, the extent of involvement of a boy, who is about to attain the age of merely 16 years coupled with the fact that he may be in a real need of counseling and reformatory services, not only for his own betterment but also in the interest of society, no interference is required in the impugned orders. It cannot be denied that the juvenile if released, may fall in the same hands and in the same environs from which he needs to be rescued for his own welfare.

17. The revision is, accordingly, **dismissed**.

18. The Court/concerned Board is directed to expedite the hearing and conclude the same at the earliest without getting influenced by any of the observations made in this order.

19. Copy of the order be certified to the Court concerned.

Order Date :- 12.10.2022
Vik/-Asha/-