

A.F.R.

Reserved on- 29.09.2022

Delivered on- 21.10.2022

Court No. - 91

Case :- CRIMINAL REVISION No. - 1036 of 2022

Revisionist :- Mr.X(Minor)

Opposite Party :- State Of U.P.And Another

Counsel for Revisionist :- Satendra Singh

Counsel for Opposite Party :- G.A.,Mukesh Kumar Maurya

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Satendra Singh, learned counsel for the revisionist and learned A.G.A. for the State. None appeared on behalf of the informant/respondent no.2.

2. Perused the record.

3. This criminal revision has been filed under section 102 of the Juvenile Justice Act challenging the order dated 06.12.2021 passed by Juvenile Justice Board, Mainpuri and also challenging the order dated 10.02.2022 passed by Special Judge (POCSO Act), Mainpur in Criminal Appeal No. 24 of 2021 affirming the order of the Juvenile Justice Board and declining bail to the juvenile in a matter arising out of Case Crime No.162 of 2021, under sections 376AB I.P.C. and section- 5M/6 POCSO Act, Police Station- Elau, District- Mainpuri.

4. Contentions of the revisionist are as below:-

The orders impugned are arbitrary, unjust and have been passed against settled principles of law and against the mandate of section 12 of the Juvenile Justice Act; the assumptions of the courts below that in case he is released on bail, he shall be exposed to physical, moral and psychological danger and that the ends of justice shall stand defeated are based on no evidence whatsoever; the bail has been declined without any cogent reasons and on surmises and conjectures; there is nothing on record to show that the juvenile was in company of criminals before the arrest; he himself is having no criminal history; the case against him is false; this conclusion is baseless that the parents are not having any control over the revisionist. The bail has been declined on the basis of gravity of the offence, which is against the settled principles of law.

5. In this case, an F.I.R. was lodged by the mother of the victim with the allegations that when her daughter, aged about 6 years, was playing outside her house below the shed, the accused juvenile, aged about 15 years, lured her on the pretext of giving toffee and took her behind a hut and committed rape on her. Her daughter started bleeding profusely; she was brought to the

house by her cousin; when they went to the parents of the juvenile to complain against him, his mother thrashed him (juvenile), the victim was given first aid and was referred to for higher medical assistance, where she was examined again under sedation. 1 cm tear was found in fourchette and she was bleeding. Finding the accused as juvenile, the matter was brought before the Juvenile Justice Board; his age was found about 12 years and 10 months in an age determination inquiry done on 05.10.2021; the social investigation report was called, wherein it was observed by the District Probation Officer that the boy requires strict control and supervision. The bail to the juvenile was declined by the Juvenile Justice Board and the appeal preferred on behalf of the juvenile was also dismissed.

6. Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the matters of bail to the juvenile:-

“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.”

In continuation thereof, there is a proviso, which says 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.***

7. Thus, it is clear that bail to a juvenile is not must in all cases as it can be denied for certain reasons. The law does not say that once a person is found a juvenile, he should be released on bail notwithstanding other facts and circumstances of the matter. It may be noted that the bail can also be denied if juvenile’s release, in the opinion of the Court, would defeat the ends of justice. The phrase ends of justice is undoubtedly a meaningful phrase bringing within its sweep many factors including the nature of the crime and the merits of the matter, though ordinarily, as has been held in number of cases, the merits of the case or the nature of the accusations are not to be considered. At the same time, there may be other facts and circumstances which cannot simply be passed over by the court concerned. As far as the nature of the offence is concerned, the Juvenile Justice Act itself differentiates between offences falling into three categories, i.e., petty, serious and heinous offences. If the Juvenile Justice Act, 2015 is studied, it

becomes quite clear that the cases falling in different categories on the basis of classification into petty, serious and heinous have been dealt with differently. It can safely be remarked that the scheme of the Act takes into consideration the nature of the offence as well. The need for dealing the matters of heinous offences in a more sensitive manner have been brought into focus by the courts of law, time and again, through various judgements. Infact, the courts as well as the legislature have always been sensitive to this aspect of the matter.

8. Whenever, a Court of law decides to exercise his powers under the provisions of Juvenile Justice Act, 2015, the general principles as enumerated in Section- 3 of the Act have to be kept in mind as guiding factor. On one hand, all decisions regarding the child should be based on primary consideration of best interest of the child, on the other hand, the demands of justice of the other side cannot be simply shrugged off. The concern of the victim's family and the larger interest of the society cannot be dealt with in a contemptuous manner. In succession to aforesaid observations, the policy of the act must be brought into focus. Very importantly it may be noted that the scheme of the Act has a twin approach, i.e., reformatory as well as retributive to certain extent. When dealing with bail grant or refusal thereof, the ends of justice may compel the Court to strike a balance between competing and often conflicting demands of justice of both the sides, i.e., the accused and the victim. When viewing the case from this angle, the nature of the crime, the methodology adopted, the manner of commission and the evidence available may assume ample significance. Moreover, the aim and object of this act, is to achieve not only the welfare and betterment of a juvenile by extending to him services of reformatory nature, so that he can be brought back to main stream of society as a person of healthy mind, but also to address the concerns of society at large at this stage. This aim cannot be achieved unless a holistic view of the matter is taken. In my opinion, to give meaning to the phrase 'ends of justice', the matter of bail has to be seen literally through a prism having three angles, i.e., firstly, the angle of welfare and betterment of the child itself, i.e., best interest of the child, secondly, the demands of justice to the victim and her family and thirdly, the concerns of society at large. And in the end, the court has to depend upon its own robust sense of justice.

8. In this case, a girl of very tender age of 6 years was put to violent sexual assault by a boy of merely 15 years. She was enticed in a well planned manner by offering her sweets. The trauma and shock caused to an innocent girl, who had no understanding and inkling of the act with which she had to go through and the resentment which was caused to the members of her family, can easily be understood.

9. In view of the above, the present criminal revision is **dismissed**. However, the Juvenile Justice Board is directed to expedite the hearing and conclude the same at the earliest.

10. Copy of the order be certified to the court concerned.

Order Date :- 21.10.2022

Saif