

AFR
Reserved

Case :- CRIMINAL REVISION No. - 182 of 2020

Revisionist :- Sanjay Chaudhary

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

Counsel for Revisionist :- Bipin Kumar Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Kumar Gupta,J.

This revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act') has been preferred by Sanjay Chaudhary (minor) through his father, natural guardian for being enlarged on bail in Case Crime No.186 of 2019 u/s 363, 366, 376, 342 IPC and Section 3/4 Protection of Children from Sexual Offence Act, 2012, P.S. Thodhibari, district Maharajganj.

The Juvenile Justice Board, Maharajganj by order dated 29.11.2019 in Bail Application No.76 of 2019 has rejected the bail application. The Sessions Judge, Maharajganj by order dated 20.12.2019 in Criminal Appeal No.62 of 2019 has dismissed the appeal upholding the order passed by the Juvenile Justice Board.

The facts giving rise to the instant revision in brief are that a First Information Report was lodged on 14.9.2019 at 16:40 hour by opposite party no.2 Virendra Chaudhary alleging that on 22.8.2019 between 4-5 hour, the revisionist enticed away his minor daughter Km. Gunja aged 16 years; that when he went to the house of the revisionist to complain to his parents, they abused him and also threatened to kill him; that he made serious attempts to search out his daughter, but when she could not be found, he lodged the First Information Report in question. The police got the statement of the victim recorded under Section 164 Cr.P.C. on 5.10.2019, in which she stated that she was married to one Sonu in May, 2016; that her gaunah had not taken place; that the accused belongs to her village; that the accused took her to his bua's place at Nautanava; that they kept roaming from one place to another for about 10-15 days; that the accused established physical relationship with her; that she was released only after her father lodged the First Information

Report. The police submitted charge sheet against the revisionist u/s 363, 366, 376, 342 IPC and Section 3/4 Protection of Children from Sexual Offence Act, 2012.

The Juvenile Justice Board, after taking evidence, by order dated 19.11.2019, declared the accused a juvenile in conflict with law as envisaged under Section 2 (13) of the Act.

Counsel for the revisionist submitted that the charges against the revisionist are absolutely false and fabricated; that there was no credible evidence against the revisionist. The revisionist and the prosecutrix were in love with each other. She was married with one Sonu against her will; that she wanted to marry the revisionist; that they had also applied before the Marriage Officer, Maharajganj for court marriage; that the relationship between them was consensual; that the prosecutrix is major aged about 20 years; that her husband had applied for divorce by filing Suit No.491 of 2019 Sonu Chaudhary Vs. Smt. Gunja Devi on 11.10.2019 in the court of Principal Judge, Family Court, Maharajganj on the ground of illicit relationship with the revisionist. It is vehemently submitted that there was no reliable evidence that may bring the case of the juvenile revisionist within the exceptions carved out under Section 12 (1) of the Act; that the only evidence was the report of the District Probation Officer, which was in favour of the revisionist; that the said report was based on enquiry made by the District Probation Officer from members of the family and neighbours whose statements were also recorded, but the Juvenile Justice Board ignored the statement of the neighbours recorded by the District Probation Officer in not relying on the said report and thus, committed a manifest error of law; that the Juvenile Justice Board on pure assumptions, without even an iota of evidence, held that in case the revisionist is enlarged on bail, there is likelihood of his absconding to the neighbouring country Nepal on mere saying of the Investigating Officer. The appellate court committed the same mistake and without referring to any evidence held on pure conjectures, that the release of the revisionist on bail would defeat the ends of justice.

Per contra, learned A.G.A. submitted that the revisionist has been

charged of serious offence committed against a minor girl and in case he is released on bail, there is every likelihood of his absconding to the neighbouring country and that it would also have adverse impact on the prosecutrix.

I have considered the submissions advanced by learned counsel for the parties and have gone through the material on record. The provision for bail to a person, who is apparently a child alleged to be in conflict with law is governed by Section 12 of the Act, which is reproduced below:-

“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 be 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 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 close reading of the above provision reveals that bail should invariably be granted to a juvenile accused alleged to be in conflict with law unless his case falls under one of the exceptions engrafted by the *proviso* to

sub-section (1). In other words, a bail to a juvenile accused shall not be granted “*if there appear reasonable ground for believing that the release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.*” It is also well settled now that the gravity of offence or its seriousness could not be made sole ground divorced from the legislative intent in denying bail to a juvenile in conflict with law. The legislature itself has enumerated the exceptional reasons where discretion should not be exercised in favour of the juvenile and prayer for bail has to be rejected. The said power should be exercised with due care and caution only when there is some reliable material on record which justifies bringing the case within one of the exceptions. It is the burden of the prosecution to bring such material on record. In the absence of such material, the bail cannot be rejected on assumptions. Some of the decisions propounding law on the point are extracted below, for ready reference:-

In Juvenile accused Prem Kumar Through His Father Kashi Ram Pasi Vs. State of U.P. and another, 2019 (2) JIC 296 (All), it has been held as under:-

“10. Perusal of Section 12 of the Act of 2015 makes it clear that ordinarily, the bail has to be granted to the juvenile and the same can be rejected only when it appears to the court concerned that either of three conditions laid down in this provision are in existence. The orders of the Juvenile Justice Board and the Sessions Court go to show that while passing the same both the courts below have not at all considered the report of Probation Officer in a correct manner and rejected the application of the applicant for his release on bail in a mechanical manner simply by reproducing few words of Section 12 of the Act of 2015. Further the courts below have presumed many things of their own, which is not part of record of Probation Officer. These aforesaid two orders passed by the Courts below do not stand on the touchstone of the relevant legal provisions.”

In Sanjay Chaurasia Vs. State of U.P. and another, 2006 (55) ACC 480 (All), the Court held:-

“10. In case of the refusal of the bail, some reasonable grounds for believing abovementioned exceptions must be brought before the court concerned by the prosecution but in the present

case, no such ground for believing any of the abovementioned exception has been brought by the prosecution before the Juvenile Justice Board and appellate court. The appellate court dismissed the appeal only on the presumption that due to commission of this offence, the father and other relatives of the kidnapped boy had developed enmity with the revisionist, that is why in case of his release, the physical and mental life of the revisionist will be in danger and his release will defeat the ends of justice but substantial to this presumption no material has been brought before the appellate court and the same has not been discussed and only on the basis of the presumption, Juvenile Justice Board has refused the bail of the revisionist which in the present case is unjustified and against the spirit of the Act. It appears that the impugned order dated 27.6.2005 passed by the learned Sessions Judge, Meerut and order dated 28.5.2005 passed by the Juvenile Justice Board are illegal and are hereby set aside”.

In Manglesh Rajbhar Vs. State of U.P. and another, 2018 (2)

JIC 359 (All), it is held as follows:-

“8. Turning to the requirements of recording reasons and spelling out those circumstances where bail is denied to a child as postulated in the proviso to Section 12 (1) of the Act, the impugned order passed by the Board does no more than paraphrase the provisions of the statute. It does not record with reference to evidence available findings on the parameters mentioned in the proviso to Section 12 (1) of the Act where bail may be refused on facts and evidence emerging in the present case. An echoing and recitation of the statutory provisions of the proviso to Section 12 (1) of the Act is certainly not in the opinion of this Court the requirement of the law which the Board are charged to fulfill while dealing with a child's plea for bail.”

It transpires from the material brought on record that there is nothing adverse against the revisionist in the social enquiry report submitted by the District Probation Officer. In fact, this report is more or less in favour of the revisionist, as it clearly mentions that the family members of the revisionist had no criminal history; they are peace loving persons; the revisionist had maintained cordial relations with the family members, friends and neighbours; that on enquiry from neighbours it transpired that the revisionist had no criminal proclivity; that the revisionist was in love with the prosecutrix and that they ran away to Delhi, resulting in arrest of the revisionist. The conclusion drawn by the District Probation Officer in his

report is as follows:-

i-	भावनात्मक कारण	—	सामान्य
ii-	शारीरिक स्थिति	—	शारीरिक रूप से स्वस्थ बताया गया तथा
iii-	बुद्धिमत्ता	—	मनसिक रूप बुद्धिमान भी था
iv-	स्माजिक एवं आर्थिक कारण	—	स्माज के लोगों का प्रति धारणा अच्छी पाई गयी और आर्थिक रूप से कमजोर पाया गया
v-	समस्याओं के सुझाए गए कारण	—	
vi-	अपराध के कारणों / कारणों में अंशदायी कारकों की विश्लेषण	—	
vii	परामर्श किये गये विशेषज्ञों की राय	—	
Viii	परिवीक्षा अधिकारी / बाल कल्याण अधिकारी / सामाजिक कार्यकर्ता द्वारा पुनर्वास के सम्बन्ध में सिफारिश	—	मुहल्लेवासियों, संरक्षकों आदि से वार्ता के उपरान्त ज्ञात हुआ कि किशोर के साथी संगी एवं परिवार के सदस्य अच्छे आचरण एवं व्यवहार के हैं और किशोर तथा उनके परिवार के किसी सदस्य का सम्बन्ध किसी अपराध या आपराधिक प्रवृत्ति के व्यक्तियों से नहीं था। किशोर को सामाजिक एवं नैतिक खतरे की संभावना नहीं है। किशोरावस्था के प्रमाण और विपरीत लिंग के प्रति आकर्षण के कारण घटना घटित हुई। अतः किशोर को माता-पिता के द्वारा उचित नियंत्रण एवं संरक्षण की आवश्यकता है।

The Juvenile Justice Board in its impugned order as well as the appellate authority have recorded finding in favour of the revisionist that there is no likelihood of his coming into association with any known criminal or risk of exposing him to moral, physical or psychological danger. However, in so far as the Juvenile Justice Board is concerned, it had proceeded to discard the report of District Probation Officer on the sole ground that the said report

is not based on testimony of any person. However, the same does not appear to be correct. Alongwith the said report, there is joint statement of the neighbours (Page 41). The State has filed a counter affidavit and has not denied that the statement of neighbours was part of the report of the District Probation Officer or was not filed before the Board. The second ground taken by the Board in rejecting the bail application was that there is apprehension that the revisionist, if released on bail, would abscond to Nepal. It is based on pure conjectures and suggestion of the Investigating Officer, without appreciating that the revisionist had no criminal antecedents nor had company of any criminal or anti-social elements. Likewise, the appellate authority placed undue emphasis on the mental state of the revisionist in committing the alleged offence while holding that grant of bail would defeat the ends of justice, ignoring the recitals in the report of the District Probation Officer that the revisionist and the prosecutrix were having love affair and they ran away to Delhi. They have also ignored from consideration the own admission of the prosecutrix that she is a married woman and that her husband had instituted a suit for divorce, in which it is alleged that since 15.6.2018 she had deserted her husband and living with her parents in the same village in which the revisionist resides. The entire approach of the courts below is wholly erroneous in law, consequently, the impugned orders dated 29.11.2019 passed by the Principal Judge, Juvenile Justice Board and the appellate order dated 20.12.2019 are hereby quashed.

I am satisfied that it is a fit case where the revisionist should be enlarged on bail. It is accordingly directed that the revisionist **Sanjay Chaudhary** be released on bail on his father Radhey Shyam Chaudhary executing a personal bond of Rs.50,000/- with solvent securities each in the like amount to the satisfaction of the Principal Judge, Juvenile Justice Board, Maharajganj on the condition that he will keep the revisionist in proper custody and will constantly monitor his conduct and will report to the Juvenile Justice Board, Maharajganj once in every three months regarding the same.

In the result, the revision stands allowed as above.

It is made clear that this Court has not expressed any opinion on merits of the case and the trial court would be at liberty to decide the trial strictly in accordance with law on the basis of evidence so adduced by the parties.

(Manoj Kumar Gupta, J)

Order Date :-25.8.2020

SL