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AFR

Court No. - 66

Case :- CRIMINAL REVISION No. - 1221 of 2019

Revisionist :- Abhishek Kumar Yadav
Opposite Party :- State Of U.P. And Anr.
Counsel for Revisionist :- Anand Prakash Srivastava,Matiur Rehman Khan,Sugendra Kumar Yadav
Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

1. This revision is directed against the order of Mr. Gajendra Kumar, First Additional Sessions Judge, Deoria dated 17.01.2019 dismissing Criminal Appeal No. 55 of 2018 and affirming an order of the Juvenile Justice Board, Deoria dated 06.12.2018, declining bail to the revisionist in Case Crime No. 37 of 2018 under Sections 147, 149, 302, 323, 353, 307/34 I.P.C., P.S. Bhatpar Rani, District Deoria.

2. This revision was admitted to hearing on 28.03.2019 and notice to the complainant-opposite party was directed to issue vide order dated 28.03.2019. According to office report dated 18.07.2019, service has been effected personally, evidenced by the report placed at flag 'X'. The report marked by flag 'X' is a report dated 03.05.2019, submitted by the Chief Judicial Magistrate, Deoria which indicates that the second opposite party, Jitendra Yadav has been personally served. A copy of the notice issued bearing acknowledgment of service is also enclosed. Service upon the second opposite party is, therefore, held sufficient. No one appears on behalf of the second opposite party.

3. The prosecution originates in the FIR dated 20.04.2018, giving rise to Case Crime No. 37 of 2018, last mentioned. This FIR was lodged by the second opposite party at half past nine on 20.04.2018 reporting an incident of the said date, that occurred at 3:00 o'clock in the evening hours. The first informant/opposite party no. 2, Jitendra Yadav, who is the

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brother of the two deceased, described the occurrence in the FIR thus: The informant, Jitendra Yadav was a native of village Jiraso, P.S. Bhatpar Rani, district Deoria. On 20.04.2018 in the day hours, his younger brothers Rakesh Kumar Yadav, Rajkumar Yadav, sons of Jiut Yadav, Dileep Yadav s/o Jiut Yadav, Durgesh s/o Shree Kant Yadav, all residents of village Jiraso were all ready to depart for a nearby place called Vahoran ka Tola, where at a certain Shambhu's place they were invited to a feast in connection with a *Tilak*. They had proceeded to destination and on way reached a place Bandhe, at about 3:00 p.m. There, the accused Sunil Yadav s/o Nanhoo @ Vreejanand, Vimlesh Yadav s/o Dhurendra Yadav, Kamlesh Yadav s/o Surendra Yadav, Rajesh Yadav s/o Jamuna Yadav, Nand Ji Yadav s/o Jamuna Yadav, Chandrabhan Yadav s/o Mahaveer Yadav, Vikash Yadav s/o Nanhoo @ Vreejanand Yadav, Vijay Yadav s/o Rampravesh Yadav, Abhishek Yadav s/o Amresh Yadav, Jayprakash Yadav s/o Jamuna Yadav, Parbhas Yadav s/o Indrashan Yadav, all natives of village Jiraso, armed with iron rods and pipes, with a common intention to do the informant's brothers to death, surrounded the victim's on all sides and assaulted them. It is alleged that the informant's brother, Rakesh attempted to escape in order to save his life but was surrounded on all sides. He was cornered in front of one Subhash Yadav's house and battered to death by the accused, employing the iron rods and pipes. The informant's other brother Rajkumar was surrounded by the assailant's at the door of one Mundeerika Gaud and was battered to death on the spot, assaulted by the rods and pipes. The two others Dileep and Durgesh were battered by the assailants, injuring them grievously. Dileep collapsed on the spot and fainted. It is also reported that the other victim, Durgesh had disappeared.

4. The revisionist applied to the Juvenile Justice Board that he be declared a juvenile. The Board, by their order dated 15.11.2018, declared the revisionist a juvenile aged 17 years 9 months and 19 days on the date of occurrence. The revisionist then moved the Juvenile Justice Board for bail but his bail plea was rejected. An appeal was carried to the Sessions

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Judge, under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act') which has been dismissed by means of the order impugned, passed by the learned First Additional Sessions Judge, Deoria.

5. Aggrieved, this revision has been preferred.

6. Heard Mr. M.R. Khan, learned counsel for the revisionist and the learned A.G.A. appearing on behalf of the State.

7. It is submitted by Mr. Khan, learned counsel for the revisionist that there is no cavil about the matter that the revisionist is a juvenile, duly adjudicated to be so by the Juvenile Justice Board. He submits that the courts below have committed a manifest error of law in proceeding to refuse bail to the revisionist, looking to the gravity of the offence that is quite irrelevant in the case of a juvenile. So far as a juvenile is concerned, according to Mr. Khan, the rule is that he is entitled to bail. It is only when his case falls under one or the other dis-entitling category under Section 12(1) of the Act that his bail plea may legitimately be refused.

8. Learned A.G.A. on the other hand has resisted the revision and said that it is not a case where the orders impugned ought to be interfered with.

9. This Court has keenly considered the rival submissions and perused the record.

10. It is true that so far as a juvenile is concerned, his plea for bail is to be judged on parameters quite different from that of an adult. Section 12 of the Juvenile Justice Act certainly envisages bail as a rule to every juvenile/child in conflict with law. It is also true that unless the bail plea of a juvenile fails to pass muster under the three dis-entitling conditions postulated under the proviso to Section 12 (1) of the Act, bail ought not to be refused to a child in conflict with the law. Section 12 of the Act is quoted in *extenso*:

> "**12. Bail to a person who is apparently a child alleged to be in conflict with law.**—(1) When any

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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."

11. Here, the juvenile is aged 17 years 9 months and 19 days. He is clearly above the age of 16 years. Before turning to a consideration of the two dis-entitling categories that speak about the child in conflict, upon release, coming into association with any known criminal or being exposed to moral, physical or psychological danger, this Court thinks that this case is one that requires to be tested first on the anvil of the clause, that dis-entitles a child to bail, where his release would defeat the ends of justice. Now, "defeat the ends of justice" employed in the proviso to section 12(1) of the Act, is not a word of art. It is to be associated with the

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ground realities of dispensing justice in cases where the offender is a child in conflict with the law, bearing in mind the object of the Act. The statute is no doubt enacted to safeguard the interests of young offenders, who are yet not adults. Still, the legislature has been conscious of the fact that the society too has to be protected against the depredations of juvenile offenders whose misdirected and abounding enthusiasm, replete with energy, enters a wrong channel or pursuit and threatens society.

12. A juvenile offender, particularly, above the age of 16 years about whom the Act now makes distinction, is sometimes to be tried as an adult, if he has the ability to understand the consequences of the offence and is capable of committing the offence. That apart, where the statute disentitles a child in conflict with law to bail on the ground that his release would lead to ends of justice being defeated, it requires the Court to take into consideration different factors. One of them is certainly the gravity of the offence. The other is its impact on society or the locale where it is committed. To illustrate, if the juvenile perpetrator of a gruesome rape or murder is allowed to walk free the day following he commits the offence, the shock it would administer to the society's conscience and the feeling of unrequited justice, it would leave behind, lingering in the minds of the aggrieved or the bereaved family, would certainly lead to ends of justice being defeated. Here, this Court finds, though limited to the purpose of adjudicating the revisionist's bail plea, that it is a case of a double murder committed brazenly without any fear of the authority of law and in association with a number of other accused, whose figure is indicted to be eleven, nominated. The manner of perpetration of the offence is gruesome. The determination of each of the offenders is so abiding that it has led to two lives being extinguished, one after the other, in the same transaction of crime. *Prima facie* the two murders were not the end of it, as the two surviving victims were also battered and inflicted with grievous injuries. In a crime like this, if the revisionist were allowed to walk free because he is short by two months

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and an odd number of days of his eighteenth birthday, the ends of justice, in the opinion of this Court, would most certainly be defeated.

13. I had occasion to consider this issue in **Mangesh Rajbhar vs. State of U.P. and another, 2018(2) ACR 1941**, where it was held:

> "24. This court from what appears on a furter (*sic* further) reading of the judgment in Raja (minor) (supra) did not construe the last of the three grounds for the refusal of bail to a juvenile in the proviso to Section 12(1) of the Act ejusdem generis; rather, this court in that case referred to the merits of the case and related the ground for denying bail to the juvenile being released on bail "would defeat the ends of justice" with the merits of the prosecution case. In other words, this Court found in the expression "defeat the ends of justice" a repose for the society to defend itself from the onslaught of a minor in conflict with law by certainly making relevant though not decisive, the inherent character of the offence committed by the minor. In this connection paragraph nos. 11, 12 and 13 of the judgment in Raja (minor) (supra) may be gainfully quoted.
>
> > "*11. The report of the medical examination of the victim clearly shows that the revisionist had forced himself upon the victim, who was seven years old child and in the statements under sections 161 Cr.P.C. and 164 Cr.P.C., the child had clearly deposed about how she was taken away by the revisionist and later on caught on the spot by the public and he pretended to be taking a bath. In the orders impugned, there is specific mention about the fact that the revisionist was accused by name by the victim, who was studying in class II and the release on bail of the revisionist would defeat the ends of justice.*
> >
> > *12. Having gone through the record of the case including statement under section 161 Cr.P.C. and the statement under section 164 Cr.P.C. given by the victim and also the report of the medical examination of the victim, which shows penetration by force and resultant injury, I am of the opinion that there is no legal infirmity in the orders impugned as the release on bail of the revisionist would indeed defeat the ends of justice.*
> >
> > *13. No doubt, the Juvenile Justice Act is a beneficial legislation intended for reform of the juvenile/child in conflict with the law, but the law also demands that justice should be done not only to the accused, but also to the accuser."*
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> 25. It is not that this aspect of the gravity of the offence has been considered irrelevant to the issue of grant or refusal of bail to a minor in the past and

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before the present Act of 2015 came into force. In a decision of this Court under the Juvenile Justice Act, 2000 where the interest of the society were placed seemingly not on a level of playing field with the juvenile, this Court in construing the provisions of Section 12 in that Act that were pari materia to Section 12 of the Act in the matter of grant of bail to a minor held in the case of **Monu @ Moni @ Rahul @ Rohit v. State of U.P., 2011 (74) ACC 353** in paragraph Nos. 14 and 15 of the report as under:

> *"14. Aforesaid section no where ordains that bail to a juvenile is a must in all cases as it can be denied for the reasons"......if there appears reasonable grounds 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."*
>
> *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."*

26. The Hon'ble Supreme Court in the case of **Om Prakash vs. State of Rajasthan and another, (2012) 5 SCC 201: 2012 (2) ACR 1825 (SC)** has brought in due concern in matters relating to juveniles where the offences are heinous like rape, murder, gang-rape and the like etc., and, has indicated that in such matters, the nature and gravity of the offence would be relevant; the minor cannot get away by shielding himself behind veil of minority. It has been held in Om Prakash (supra) by their Lordships thus:

> *"3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and*

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sensitivity while dealing and trying cases involving criminal offence. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a competent court of criminal jurisdiction where the trial of other adult persons are held.

23. …... Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him."

27. It seems thus that the suggestion of the learned counsel for the revisionist that bail to a juvenile or more properly called a child in conflict with law can be denied under the last ground of the proviso to Section 12 ejusdem generis with the first two and not with reference to the gravity of the offence, does not appear to be tenable. The gravity of the offence is certainly relevant though not decisive. It is this relevance amongst other factors where gravity of the offence committed works and serves as a guide to grant or refuse bail in conjunction with other relevant factors to refuse bail on the last ground mentioned in the proviso to Section 12 (1) of the Act, that is to say, on ground that release would "defeat the ends of justice".

28. Under the Act, as it now stands there is further guidance much more than what was available under the Act, 2000 carried in the provisions of Section 15 and 18 above extracted and the definition of certain terms used in those sections. A reading of Section 18 of the Act shows that the case of a child below the age of 16 years, who has committed a heinous crime as defined in the Act is made a class apart from cases of petty offence or the serious offence committed by a child in conflict with the law/juvenile of any age, and, it is further provided that various orders that may be made by the Board as spelt out under clause (g) of Section 15 depending on nature of the offences, specifically the need for supervision or intervention based on

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circumstances as brought out in the social investigation report and past conduct of the child. Though orders under Section 18 are concerned with final orders to be made while dealing with the case of a juvenile, the same certainly can serve as a guide to the exercise of power to grant bail to a juvenile under Section 12(1) of the Act which is to be exercised by the Board in the first instance.

29. Read in the context of the fine classification of juveniles based on age vis-a-vis the nature of the offence committed by them and reference to a specifically needed supervision or intervention, the circumstances brought out in the social investigation report and past conduct of the child which the Board may take into consideration, while passing final orders under Section 18 of the Act it is, in the opinion of this court, a good guide for the Board while exercising powers to grant bail to go by the same principles though embodied in Section 18 of the Act, when dealing with a case under the last part of the proviso to Section 12 (1) that authorizes the Board to deny bail on ground that release of the juvenile would "defeat the ends of justice."

30. Thus, it is no ultimate rule that a juvenile below the age of 16 years has to be granted bail and can be denied the privilege only on the first two of the grounds mentioned in the proviso, that is to say, likelihood of the juvenile on release being likely to be brought in association with any known criminal or in consequence of being released exposure of the juvenile to moral, physical or psychological danger. It can be equally refused on the ground that releasing a juvenile, that includes a juvenile below 16 years would "defeat the ends of justice." In the opinion of this Court the words "defeat the ends of justice" employed in the proviso to Section 12 of the Act postulate as one of the relevant consideration, the nature and gravity of the offence though not the only consideration in applying the aforesaid part of the disentitling legislative edict. Other factors such as the specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child would also be relevant that are spoken of under Section 18 of the Act.

31. In this context Section 12 and 18 and also Section15 (Section 15 not relevant in the case of a child below 16 years) and other relevant provisions all of which find place in Chapter IV of the Act are part of an integrated scheme. The power to grant bail to a juvenile under Section 12(1) cannot be exercised divorced from the other provisions or as the learned counsel for the revisionist argues on the other specific disentitling provisions in the grounds mentioned in the proviso to Section 12(1) of the Act. The submission made based on the rule of ejusdem generis urged by the learned counsel

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> for the revisionist is misplaced, in the opinion of this Court.”

14. A reading of the Social Investigation Report also leaves an impression on the Court’s mind that the revisionist may be dis-entitled on the two other grounds, as well. The learned Additional Sessions Judge has examined that report and concluded against the revisionist. This Court is inclined to agree with the learned Additional Sessions Judge.

15. Mr. Khan invited the attention of the Court to the fact that another co-accused, Vikash Yadav, also a child in conflict with law, with an identical role, had the favour of this Court in Criminal Revision No. 3265 of 2019 decided on 27.07.2020, where orders refusing him bail by the Courts below, were overturned and he was allowed to go free on bail.

16. This Court has carefully perused the judgment and order of His Lordship, Gautam Chowdhary, J. in the Criminal Revision, last mentioned. It must be remarked that the rule of parity, which normally applies in cases of bail under Sections 437 or 439 Cr.P.C., may not be attracted to the case of a child in conflict with law, where another child in conflict in the same crime is granted the concession of bail, under the Act. This is for the reason that in the case of bail to a juvenile, in matters where the entitlement to bail is not on merits but by virtue of the provisions of Section 12(1) of the Act, the right is always personal to the accused. It is not that for an identical role, two children in conflict with law, would both pass muster under the proviso to the Section 12(1) of the Act. In the case of one, the Court may infer based on the Social Investigation Report, the police record and other circumstances that release on bail would not bring the young offender into association with a known criminal or expose him to moral, physical or psychological danger, but in the case of the other, the conclusion may be diametrically the opposite, considering the circumstances of the child. The circumstances that could differ could be the criminal history of a family, the presence of family members in one case, who could be expected to exercise good care and control over the child in future and the absence of such family

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members in the other case. The varying company of the two children shown in the Social Investigation Report could also lead to different results in case of two children, accused of the same offence, with the same role.

17. Likewise, on the third dis-entitling factor about ends of justice being defeated on account of release, conclusions may be different in respect of the same offence for a similar role. This would again be the personal circumstances of the child.

18. This Court is of opinion that in relation to the last of the three dis-entitling features, the present case is an apt illustration of a very valid distinction between the case of co-accused, Vikash Yadav (minor) and the revisionist here. In the case of Vikash Yadav (minor), the child in conflict with the law was aged 13 years 9 months and 16 days on the date of occurrence, whereas in the present case, he is hardly two and a half month short of majority. More than that, the child in conflict in Vikash Yadav (minor) (supra) was found to be a disabled child with 57% physical disability. These factors, in the opinion of this Court, would work to illustrate the point that in cases of juvenile justice, the rule of parity in bail matters would not operate the way it does, in cases under Section 437 or 439 Cr.P.C.

19. In the result, this Court does not find any good ground to interfere with the impugned orders. This revision fail and is **dismissed**.

20. It is, however, clarified that anything said in this matter will not affect the rights of parties on merits and the Juvenile Justice Board or the Children's Court trying the offence, would be free to reach its conclusions at the trial, based on the evidence led, unaffected by anything said here.

21. However, looking to the period of detention of the revisionist, it is directed that trial pending before the concerned court be concluded expeditiously and preferably within three months from the date of receipt of a copy of this order, in accordance with Section 309 Cr.P.C. and in

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view of principle laid down in the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar v. State of Punjab** reported in **2015 (3) SCC 220**, if there is no legal impediment.

22. It is made clear that in case the witnesses are not appearing, the concerned court shall initiate necessary coercive measures for ensuring their presence.

23. Let a copy of the order be certified to the court concerned for strict compliance to the Board or the Court concerned, through the learned Sessions Judge, Deoria by the Joint Registrar (Compliance).

Order Date :- 21.09.2020
BKM/-