

Court No. - 66

Reserved
A.F.R.

Case :- CRIMINAL REVISION No. - 1944 of 2019

Revisionist :- Akash Alias Nirmal Mishra (Juvenile)

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

Counsel for Revisionist :- Babu Lal Ram, Phool Singh Yadav

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir, J.

1. This revision is directed against an order of Smt. Pooja Singh, Special Judge (POCSO)/ XIth Additional Sessions Judge, Kanpur Nagar dated 30.03.2019 dismissing Criminal Appeal No.30 of 2019 and affirming an order of the Juvenile Justice Board, Kanpur Nagar dated 16.02.2019 refusing bail to the revisionist in Case Crime No.530 of 2018, under Section 376 IPC and Section 3/4 of the POCSO Act, Police Station Panki, District Kanpur Nagar.

2. Notice was issued to opposite party no.2 by this Court vide order dated 14.05.2019. According to the office report dated 31.07.2019, notice has been received back after personal service, detailed in the report, placed at Flag-A. A perusal of the said report shows that the Chief Metropolitan Magistrate, Kanpur Nagar has indicated through his memo dated 26.06.2019 that the notice issued by this Court has been personally served by Head Constable no.787 on opposite party no.2. Service upon opposite party no.2 is, therefore, held sufficient. No one appears on behalf of the said opposite party.

3. Heard Sri P.S. Yadav, learned Counsel for the revisionist and the learned A.G.A. appearing on behalf of the State.

4. A perusal of the First Information Report dated 16.11.2018 shows that it has been lodged by opposite party no.2, Smt. Mohini wife of Akhilesh on 16.11.2018 at 00:31 hours regarding an occurrence dated 15.11.2018, that befell the victim at 6 o'clock in the evening. It is said in the FIR that the informant's minor daughter (for short, 'the prosecutrix') aged about six years was playing along with other children of the locality when the revisionist, who is also a resident of the same locality, ravished

the prosecutrix. It is mentioned in the FIR that the informant had come to the Station along with a relative of hers, whom she has named in the FIR as also the minor prosecutrix, asking the police to register a case and to take necessary action. It appears that Case Crime no.530 of 2018, under Section 376 IPC and Section 3/4 of the POCSO Act, Police Station Panki, District Kanpur Nagar, was registered on the basis of the aforesaid information.

5. The revisionist moved the Juvenile Justice Board asking them to declare him a child in conflict with law. The Juvenile Justice Board by their order dated 08.01.2019 adjudged the revisionist a child in conflict with law aged 14 years, 3 months and 15 days on the date of occurrence. The revisionist then asked to be released on bail by an application made under Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, 'the Act'). The bail application came to be rejected by the Juvenile Justice Board. The revisionist assailed that order in Appeal carried to the learned Sessions Judge. The revisionist's Appeal has since come to be dismissed by means of the impugned order. Assailing both the orders denying bail, the instant Revision has been brought.

6. It is argued by Sri P.S. Yadav, learned Counsel for the revisionist that the revisionist is a child in conflict with law, who is below the age of 16 years. His case regarding bail, therefore, has to be considered strictly on the parameters of Section 12(1) of the Act. He emphasizes that regarding bail plea of a juvenile of the revisionist's age, there can be no reference about the merits of the prosecution case or the gravity of the offence. All that is required to be seen is whether given his right to be released on bail, is he disentitled under any of the three exceptions to the rule of bail postulated under Section 12(1) of the Act. Mr. Yadav submits that there is nothing on record to show that the revisionist's case falls under any of the three disentitling exceptions. He urges that the Courts below have not properly evaluated the social investigation report, which alone could furnish relevant material to form an opinion whether the revisionist ought to be enlarged on bail pending trial. Learned Counsel for

the revisionist has placed reliance on a decision of this Court in **Criminal Revision no.915 of 2017, Sumit Kumar vs. State of U.P. and another, decided on 13.04.2018** in support of his submission, noted above.

7. Learned A.G.A. on the other hand urges that it is a heinous crime, where a six years old child has been ravished by the revisionist. In case, the revisionist were released on bail, it would lead to ends of justice being defeated.

8. This Court has considered the rival submissions and perused the record. It may be true that the Courts below have not undertaken a careful exercise by evaluating the social investigation report while forming their opinion on the first of the two disentitling parameters under the proviso to Section 12(1) of the Act, that is to say, the prospect of release bringing the child in conflict into association with some known criminal or exposing him to moral, physical or psychological danger. But, that does not end the matter. It is a case where the revisionist, though below the age of 16, has ravished a very young prosecutrix, who is just six years old. About the factum of the incident, there is reasonable assurance at this stage, short of the charge being tested at the trial. The prosecution is consistent in the FIR lodged by the prosecutrix's mother, the statement of the prosecutrix and her mother, recorded by the police, under Section 161 Cr.P.C. and the statement of the prosecutrix, under Section 164 Cr.P.C. before the Magistrate.

9. This Court has also noticed that the police appear to have recorded the young prosecutrix's statement in some or the other form of electronic record, be it a video or an audio recording, possibly in the presence of her mother. All these remarks may not be understood as the Court's intendment to express any opinion on the merits of the charge. All that this Court wishes to say is that for the present, the Court seized as it is of the bail matter, there is a reasonable assurance about the charge being *prima facie* credible. It is true that the merits of the case or *prima facie* tenability of the charge, like an adult, is not entirely decisive to the fate of the bail plea. At the same time, it is not altogether irrelevant. The gravity

of the charge, manner of its perpetration, circumstances in which the offence is alleged to have been committed, its immediate and not so immediate impact on the society at large and the locality, in particular, besides its impact on the aggrieved family, are all matters to be taken into reckoning while judging a juvenile's bail plea. All these factors are relevant under the last disentitling clause postulated under the proviso to Section 12(1) of the Act, which says that release of the juvenile would 'defeat the ends of justice'. After all 'defeat the ends of justice' is not a word of art. It has been thoughtfully introduced by the legislature to arm the Court with a right to overcome an otherwise absolute right to bail, where in the totality of the circumstances, release on bail would adversely impact the law and order and the equilibrium of an ordered society.

10. The case in hand shows that the revisionist by his action, if true, has put the society and its surroundings on alarm. His actions have led to a situation, where *prima facie* no child of tender years, and more than that the parents or the guardians of a young child, would feel safe during their daily routine, when there is nothing otherwise to call extra caution. In the opinion of this Court, it is a case where release of the child in conflict with law would lead to ends of justice being defeated.

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

12. 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.

13. 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 two months from the date of receipt of a copy of this order, in accordance with Section 309 Cr.P.C. and in 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.

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

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

Order Date :- 5.10.2020

Anoop