

Court No. - 4

Case :- CRIMINAL REVISION No. - 3198 of 2019

Revisionist :- Pankaj @ Pradumna

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

Counsel for Revisionist :- Shashi Kant Dwivedi,Om Prakash Singh

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta,J.

This revision has been preferred by the revisionist Pankaj @ Pradumna,(Minor) through his mother Phoola Devi against the judgment and order dated 22.7.2019 passed by the Sessions Judge, Gorakhpur in Criminal (Juvenile) Appeal No. 78 of 2019 and the order dated 6.6.2019 passed by Juvenile Justice Board, Gorakhpur in Bail Application filed on behalf of revisionist (juvenile) in case crime no. 163 of 2019, under Sections 363, 366, 376, 342, 506 I.P.C. and 3/4 of the POCSO Act, P.S.-Khorabar, District- Gorakhpur.

Heard learned counsel for the revisionist and learned A.G.A for State of U.P.

Learned counsel for the revisionist has submitted that the revisionist is juvenile and has falsely been implicated in the present case due to enmity. He further submits that as per medical board the age of the revisionist is 15 years, 7 months and 11 days. The named co-accused- Surendra has been exonerated in this case and the revisionist has wrongly been charged in the present case. There is no mark of external or internal injury on the person of the victim. F.I.R has been lodged after three days and there is no explanation of such delay. He has no criminal history. There is no evidence against him. No specific role has been assigned against him. No incriminating fact has been mentioned in the report submitted by the District Probation Officer. If he is released on bail, he will not misuse the liberty of bail. He is languishing in remand home since 14.3.2019. The impugned orders are against the provision of law which are liable to be set aside.

Learned A.G.A has vehemently opposed the prayer made by the learned counsel for the revisionist and submitted that if the revisionist is released on bail, he will join in the company of habitual criminal,hence he is not entitled for bail.

The Juvenile Justice (Care and Protection) Act, 2015 (Act) has been enacted with object to reform and protect the future career

of children below the age of 18 years. The main purpose of this Act is to keep the juvenile out of company and society of habitual criminals and to keep them in place of safety. The parameter and guidelines for assessment of plea of bail of a juvenile has been provided in Section 12 of the Act which is as under:-

"When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 1[or placed under the supervision of a Probation Officer or under the care of any fit institution of fit person] but he shall not be so released if there appear 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.

When such person having been arrested is not released on bail under sub-section (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

When such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order."

Thus it is clear that the provision for release to a juvenile has overriding effect to any provision contained in Code of Criminal Procedure, 1973 or in any other law for the time being in force. According to this provision, a duty has been cast to grant bail to a juvenile unless there is a reasonable ground for plea that the release is likely to bring the juvenile into association with any known criminal or exposed the said juvenile to moral, physical or psychological danger or that his release would defeat the end of justice.

Plea of bail raised by juvenile cannot be rejected in a mechanical manner. While considering the parameter provided in Section 12 of the Act, nature of offence, role played by the juvenile in committing the offence, his family background, his association with known or unknown criminals or bad elements of society, number of person named in the occurrence and

future carrier of juvenile should also be taken into consideration by Juvenile Justice Board or court concerned in addition to the other factors.

In this case the revisionist was aged about 15 years at the time of occurrence. Admittedly the revisionist was juvenile at the time of occurrence. No material is available on record whereby it can be presumed that the revisionist was in association of any criminal or bad elements.

From perusal of impugned judgement and order passed by the appellate Court as well as passed by the Board, it transpires that both the Courts below have passed the impugned judgement and orders in cursory manner without placing due reliance on the report submitted by the District Probation Officer as well as facts and circumstances of this case. The impugned judgment and orders are liable to be set aside.

Consequently, the revision succeeds and is allowed. Both the impugned judgment and order- 6.6.2019 and 22.7.2019 are hereby set aside.

Let the revisionist Pankaj @ Pradumna through his natural guardian/mother Phoola Devi be released on bail in the aforesaid criminal case and be given into custody of aforesaid natural guardian on furnishing a personal bond with two solvent sureties of relatives of the aforesaid natural guardian each in like amount to the satisfaction of Juvenile Justice Board concerned on the following conditions.

(i) That, aforesaid natural guardian of the revisionist will furnish an undertaking that upon release on bail, the juvenile will not be permitted to go into contact or association with any known or unknown criminal or exposed to any moral or physical danger and will not indulge in any criminal activity and aforesaid natural guardian will make best effort for improvement of juvenile's carrier.

(ii) That the revisionist and his aforesaid natural guardian shall remain present before the trial court on each date fixed, either personally or through counsel..

Order Date :- 5.10.2020

Anuj Singh