

Court No. - 69

Case :- CRIMINAL REVISION No. - 1571 of 2024

Revisionist :- X- Juvenile

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Radhey Shyam Shukla, Vipul Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Manish Kumar Nigam, J.

1. As per office report dated 18.05.2024, a report has been submitted by C.J.M, Shahjahanpur that opposite party no. 2 Vijay Singh went to Rajasthan in connection to his employment and notice has been served to his sister Sandhya d/o Ashok Kumar.

2. Heard learned counsel for the applicant/revisionist, learned A.G.A. for State and perused the record.

3. The present criminal revision has been filed to quash the order dated 28.02.2024 passed by the Special Judge (POCSO)/8th Additional Sessions Judge, Child Court, Court No.8, Shahjahanpur in Juvenile Criminal Appeal No. 08 of 2024 (X minor Vs. State of U.P. and another), arising out of order dated 18.01.2024 passed by the Principle Magistrate, Juvenile Justice Board, Shahjahanpur, in Case Crime No. 426 of 2023, under Sections- 147, 148, 149, 364, 302, 34 of I.P.C., Police Station- Tilhar, District- Shahjahanpur.

4. Learned counsel for the applicant submits:

(i) as per the order passed by Juvenile Justice Board, the revisionist/applicant was aged about 16 years and 6 months at the time of incident.

(ii) there is no specific or strong objection raised in the DPO report dated 11.01.2024, other than the general and vague observations; observations favourable to the applicant have been made in the report of the DPO;

(iii) there is no criminal history of the applicant;

(iv) there is no hope of early conclusion of the trial;

(v) the applicant has remained confined in the child observation

home for an unduly long period of time;

(vi) Co-accused namely Rajendra Singh, Akhilesh, Mithilesh and Kamlesh have already been granted bail by this Court;

(vii) none of the grounds contemplated under proviso to Section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the Act) are available, to deny the bail to the applicant.

(viii) therefore, the impugned orders have been assailed as erroneous and contrary to law.

5. Learned A.G.A. vehemently opposed the present criminal revision. It is submitted, the incident reported is true and it is wrong to say that the allegations made against the applicant are false, and/are motivated. Also, reliance has been placed on the findings recorded in the bail rejection orders to submit that the instant revision may be dismissed.

6. It is not in dispute that the applicant is a juvenile and is entitled to the benefits of the provisions of the Act. Under Section 12(1) of the Act, the prayer for bail of a juvenile may be rejected 'if there appear reasonable grounds for believing that the release of the juvenile 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'.

7. The court has to see whether the opinion of the learned appellate Court as well as Juvenile Justice Board recorded in the impugned judgment and orders are in consonance with the provision of the Act. Section 12 of the Act lays down three contingencies in which bail may be refused to a juvenile offender. These are:-

(i) if the release is likely to bring him into association with any known criminal, or

(ii) expose him to moral, physical or psychological danger, or

(iii) that his release would defeat the ends of justice?

8. Gravity of the offence has not been mentioned as a ground to reject the bail. It is not a relevant factor while considering to grant bail to the juvenile. It has been so held by this Court in Shiv Kumar alias Sadhu Vs. State of U.P. 2010 (68) ACC 616(LB). It has been consistently followed in subsequent decisions of this

court.

9. Thus, it remains largely undisputed that the applicant - was a juvenile on the date of occurrence; does not appear to be prone to criminal proclivity or criminal psychology, in light of the observations of the D.P.O; does not have a criminal history; has been in confinement for an unduly long period of time, in as much as the trial has not concluded within time frame contemplated by the Act. Even otherwise, there does not appear to exist any factor or circumstance mentioned in section 12 of the Act as may disentitle the applicant to grant of bail, at this stage. The mother undertakes to address the statutory concerns expressed in section 12 of the Act, as to the safety and well being of the applicant, upon his release.

10. In view of the above, it appears that the findings recorded by the learned Court below are in conflict with the settled principle in law, for the purpose of grant of bail and are erroneous and contrary to the law laid down by this court. Consequently, those orders cannot be sustained. The orders dated 28.02.2024 passed by the Special Judge (POCSO)/8th Additional Sessions Judge, Child Court, Court No.8, Shahjahanpur in Juvenile Criminal Appeal No. 08 of 2024 and order dated 18.01.2024 passed by the Principle Magistrate, Juvenile Justice Board, Shahjahanpur, in Case Crime No. 426 of 2023, under Sections- 147, 148, 149, 364, 302, 34 of I.P.C., Police Station- Tilhar, District- Shahjahanpur, are hereby set aside.

11. In view of the observations made above, the present criminal revision is allowed. Let the applicant- Himanshu (Minor) S/o Akhilesh Singh, involved in the aforesaid case crime be released on bail, on his furnishing personal bond with two sureties each of like amount, to the satisfaction of the court concerned with the following conditions:

(i) The applicant shall not tamper with the evidence or threaten the witnesses;

(ii) The applicant through guardian shall file an undertaking to the effect that he shall not seek any adjournment on the date fixed for evidence when the witnesses are present in court. In case of default of this condition, it shall be open for the trial Court to treat it as abuse of liberty of bail and pass orders in accordance with law;

(iii) The applicant through guardian shall remain present before the trial Court on each date fixed, either personally or through his

counsel. In case of his absence, without sufficient cause, the trial Court may proceed against him under Section 229-A of the Indian Penal Code.

12. Let the record of learned court below be returned immediately.

Order Date :- 3.6.2024

Ved Prakash

(Manish Kumar Nigam,J.)