

Court No. 70

Reserved on 08.2.2023**Delivered on 01.03.2023**

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 3194 of 2022

X (Minor)

...Revisionist

v/s

State of U.P. and Another

...Opposite Parties

JUDGMENT**HON'BLE SANJAY KUMAR PACHORI, J.**

1. Heard Sri Kumar Kartikey, learned counsel for the revisionist, Sri Mir Sayed, learned counsel for the opposite party no. 2 and Sri Karunakar Singh, learned A.G.A. for the State and perused the material available on record.

2. The Present Criminal Revision has been preferred by the revisionist through his father under Section 102 of The Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "JJ Act, 2015") against the judgment dated 10.06.2022 passed by Additional Sessions Judge/ Special Judge (POCSO) Act, Court No. 1 Ghaziabad in Criminal Appeal No. 17 of 2022, whereby the appellate court has rejected the Criminal appeal and affirmed the order dated 22.09.2021 passed by Juvenile Justice Board, Ghaziabad. The Juvenile Justice Board has rejected the bail application of the revisionist, which has been filed by his natural guardian/father, under Section 12 of "JJ Act, 2015" in Bail Application No. 146 of 2021 arising out of Case Crime No. 413 of 2021, under Sections 302, 201, 34 of the Indian Penal Code (in short "I.P.C."), Police Station- Tronica City, District- Ghaziabad.

3. Learned counsel for the revisionist submits that the revisionist was 17 years, 04 months and 10 days old at the time of the incident. As per educational certificate, the Juvenile Justice Board declared the revisionist as juvenile vide order dated 19.08.2021 and no proceeding is pending against

the order.

4. Learned counsel for the revisionist submits that the revisionist is innocent and has been falsely implicated in the present case due to ulterior motive. It is further submitted that motive has been assigned to co-accused Amit @ Abhishek. The case is rest upon circumstantial evidence. As per statement of the sister of the deceased, she had seen her brother with co-accused persons by motorcycle. As per postmortem report, time of death is one day. Cause of death has been mentioned as shock and haemorrhage due to ante-mortem injury. The recovery of knife was recovered on the joint possession/ pointing out of the accused persons. The first information report has been lodged only on the basis of suspicion and hearsay. There is material inconsistency between the statement of mother and sister of the deceased. It is further submitted that co-accused Amit @ Abhishek and Sunni have been granted bail by Coordinate Benches of this Court in Criminal Misc. Bail Application Nos. 55025 of 2022 and 55031 of 2021. It is next submitted that no criminal antecedent to his credit. The revisionist is in protective custody in an observation home since 01.07.2021.

5. It is further submitted that the finding recorded by the court below is against the social information report and is based on surmises and conjectures. It has been further submitted that there is no evidence to show that if the revisionist is released on bail, his 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. No such findings were recorded as to how he will come in contact with known criminals and how he will be exposed to moral, physical, or psychological danger, or that his release would defeat the ends of justice.

6. Learned counsel for the revisionist further submits that the revisionist has no criminal antecedent to his credit except the present case and is not a previous convict nor is he associated with any kind of

unsocial or criminal activities. There is no report regarding any previous criminal antecedents of the family of the revisionist. The natural guardian/father of the revisionist has given an undertaking that if the revisionist is released on bail, he will keep him in his custody and look after him properly and has assured on behalf of the juvenile that he is ready to cooperate with the process of law and shall faithfully make the juvenile available before the court whenever required and is also ready to accept all the conditions which the Court may deem fit.

7. It has been further submitted that the Juvenile Justice Board as well as the Appellate Court have not appreciated the Social Information Report of the Probation Officer in its right perspective and passed the impugned judgment and order in a cursory manner without considering the position of law and have declined bail to the revisionist. The bare perusal of the impugned orders demonstrates that the same has been passed on flimsy grounds, which have occasioned a gross miscarriage of justice. The judgment and order passed by the learned court below are illegal, contrary to law, and is based on the erroneous assumption of facts and law.

8. **Per contra;** learned A.G.A. for the State as well as learned counsel for the opposite party no. 2 have defended the impugned judgment and order passed by the Appellate Court as well as the Juvenile Justice Board and contended that the revisionist has committed a heinous crime. Considering the gravity of the offence, the present criminal revision is liable to be dismissed.

9. I have carefully considered the submissions made by the learned counsel for the revisionist, learned counsel for the opposite party no. 2 and learned A.G.A. for the State and perused the material on record.

10. The bail application under Section 12 of "JJ Act, 2015" has been rejected by the Juvenile Justice Board vide order dated 22.09.2021 observing that there appears a reasonable ground for believing that the guardian of the juvenile has no effective control over the revisionist

and there is a possibility of re-occurrence of the offence after his release. Furthermore, he has committed the heinous offence and indulged in this activity due to lack of discipline. The appellate court has also affirmed the order passed by the Juvenile Justice Board. The appellate court without considering the social information report of the Probation Officer in its right perspective as well as without returning any finding on the three exceptions declined the bail to the revisionist and rejected the appeal after observing that the parents of the juvenile are unable to keep the juvenile under control. There is a lack of availability of a consultant and if the juvenile is released on bail, he is likely to go into association with known criminals.

11. To examine the validity of the impugned order, it is useful to note the relevant provisions of the Act as well as the case laws relating to the subject.

12. It is a settled position of law that the use of the word 'shall' in sub-section (1) of Section 12 of "JJ Act, 2015" is of great significance. The use of the word 'shall' raises a presumption that the particular provision is imperative, but this *prima facie* inference may be rebutted by other considerations such as the object and scope of the enactment and the consequences flowing from such construction. The word 'shall' has been construed as ordinarily mandatory, but is sometimes not so interpreted if the context or intention otherwise demands.

13. Provisions of Section 12 of "JJ Act, 2015" manifest that ordinarily, the Juvenile Justice Board is under obligation to release the juvenile on bail with or without surety. The juvenile shall not be released in certain circumstances as the latter part of the section also uses the word 'shall' imposing certain mandatory conditions prohibiting the release of the juvenile by the Juvenile Justice Board. If there are any reasonable grounds for believing; (a) that the release is likely to bring him into association with any known criminal; (b) that release is likely to expose him to moral, physical, or psychological danger and (c) that release of the juvenile is in conflict with law and

would defeat the ends of justice.

14. From a bare reading of the provisions of Section 12 of "JJ Act, 2015", it appears that the intention of the legislature is to grant bail to the juvenile irrespective of the nature or gravity of the offence alleged to have been committed by the juvenile, and bail can be declined only in such cases where there are reasonable grounds to believe that the release is likely to bring the juvenile into association of any known criminal or expose him to moral, physical, or psychological danger, or that his release would defeat the ends of justice. The gravity of the offence is not a relevant consideration for declining the bail to the juvenile. A juvenile can be denied the concession of bail if any of the three contingencies specified under Section 12(1) of "JJ Act, 2015" is available. A similar view has been taken in cases of *Manoj Singh v. State of Rajasthan*¹, *Lal Chand v. State of Rajasthan*², *Prakash v. State of Rajasthan*³, *Udaibhan Singh @ Bablu Singh v. State of Rajasthan*⁴, *Shiv Kumar @ Sadhu v. State of U.P.*⁵, *Maroof v. State of U.P.*⁶.

15. The term 'known criminal' has not been defined in "the Juvenile Justice Act" or Rules framed thereunder. It is a well-settled rule of interpretation that in the absence of any statutory definition of any term used in any particular statute the same must be assigned meaning as in commonly understood in the context of such statute as held by Supreme Court in ***Appasaheb v. State of Maharashtra, (2007) 9 SCC 721*** in para 11 as under: (SCC p. 726 para 11)

"11.....It is well settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understand to have a particular meaning in it, then the words are to be construed as having that particular meaning. [See: Union of India v. Garware Nylons Ltd., (1996) 10 SCC 413: AIR 1996 SC 3509 and Chemical and Fibers of India v. Union of India, (1997) 2 SCC 664: AIR 1997 SC 558]..."

16. **In Nand Kishore (in JC) v. State (2006) 4 RCR (Cri.) 754**, Delhi

1. 2004 (2) RCC 995
2. 2006 (1) RCC 167
3. 2006 (2) RCR (Cri.) 530
4. 2005 (4) Crimes 649
5. 2010 (68) ACC 616 (LB)
6. 2015 (6) ADJ 203

High Court, while considering the first condition of proviso of Section 12 of Juvenile Justice Act, observed that "as regards the first exception, before it can be invoked to deny bail to a juvenile there must be a reasonable ground for believing that his release is likely to bring him into association with any known criminal. The expression known criminal is not without significance when the liberty of a juvenile is sought to be curtailed by employing the exception, the exception must be construed strictly. Therefore, before this exception is invoked, the prosecution must identify the 'known criminal', and then the court must have reasonable grounds to believe that the juvenile if released would associate with this 'known criminal'. It cannot be generally observed that the release of the juvenile would bring him into association with criminals without identifying the criminals and without returning a *prima facie* finding with regard to the nexus between the juvenile and such criminal."

17. Similar view has been taken in **Manmohan Singh v. State of Punjab**, PLR (2004) 136 P & H 497 wherein, it was observed as under:

"7....The reasonable grounds for believing that his release is likely to bring 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, should be based upon some material/evidence available on the record. It is not a matter of subjective satisfaction but while declining bail to the juvenile on the said ground, there must be objective assessment of the reasonable grounds that the release of the juvenile is likely to bring him in association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice..."

8. In Sanjay Kumar's case (supra) it has been held by the Allahabad High Court that every juvenile whatever offence he is charged with, shall be released on bail but he may, however, be refused bail if there appears reasonable ground for believing that the release is likely to bring him into association with the any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends

of justice and that the existence of such ground should not be mere guess work of court but it should be substantiated by some evidence on record."

18. Section 26 of the IPC defines the expression "Reason to believe". It means a person is said to have a "reason to believe" a thing, if he has sufficient cause to believe such thing but not otherwise. In view of Section 26 of I.P.C., if there is sufficient cause to believe, reason to believe exists. The expression "reason to believe" excludes a mere suspicion. The word 'believe' is very much a stronger word than 'suspect'.

19. Section 13(1)(ii) of "JJ Act, 2015" provides that the Probation Officer shall submit a social investigation report within two weeks from when a child is apprehended or brought to the Board, containing information regarding the antecedents and family background of the child and other material circumstances likely to be of assistance to the Board for making the inquiry. The "social investigation report" which has been defined in Rule 2(xvii) of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, means the report of a child containing detailed information pertaining to the circumstances of the child, the situation of the child on economic, social, psycho-social and other relevant factors, and the recommendation thereon. This report becomes important for the inquiry to be done by the Board while passing such orders in relation to such a child as it deems fit under Sections 17 and 18 of this Act. The purpose behind this provision is to enable the Juvenile Justice Board to get a glimpse of the social circumstances of the child before any order regarding bail or of any other nature is passed.

20. 'Form-6' of The Juvenile Justice (Care and Protection of Children) Model Rules, 2016, contains a detailed proforma of the social investigation report. The report has three parts; the first part requires the Probation Officer to give the data or information regarding the close relatives in the family, delinquency records of the family, social and economic status, ethical code of the family, attitude towards

religion, the relationship amongst the family members, the relationship with the parents, living conditions, etc. Thereafter, the report requires the Probation Officer to provide the child's history regarding his mental condition, physical condition, habits, interests, personality traits, neighbourhood, neighbours' report, and school, employment, if any, friends, the child being subject to any form of abuse, circumstances of apprehension of the child, mental condition of the child. The most important part of the report is the third part i.e. the result of inquiry where the Probation Officer is required to inform the Board about the emotional factors, physical condition, intelligence, social and economic factors, suggestive cause of the problems, analysis of the case including reasons/contributing factors for the offence, opinion of experts consulted and recommendation regarding rehabilitation by the Probation Officer/Child Welfare Officer. It is incumbent upon the Juvenile Justice Board to take into consideration the social investigation report and make an objective assessment on the reasonable grounds for rejecting the bail application of the juvenile.

21. Section 3 of "JJ Act, 2015" provides that the Central Government, the State Government, the Board, and other agencies, as the case may be, while implementing the provisions of the Act, shall be guided by the fundamental principles of care and protection of children. Some of the principles are as under:

(i) *Principle of presumption of innocence*: Any child shall be presumed to be an innocent of any *mala-fide* or criminal intent up to the age of eighteen years.

(ii) *Principle of dignity and worth*: All human being shall be treated with equal dignity and rights.

(iii) *Principle of best interest*: All decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and to help the child to develop full potential.

(iv) *Principle of family responsibility*: The primary responsibility of care, nurture and protection of the child shall be that of the biological family or adoptive or foster parents, as the case may be.

(v) *Principle of non-stigmatising semantics*: Adversarial or accusatory words are not to be used in the process pertaining to a child.

(vi) *Principle of right to privacy and confidentiality*: Every child shall have a right to protection of his privacy and confidentiality, by all means and through out the judicial process.

22. After noticing the position of law, now I revert back to the facts of the present case. The Social Information Report (SIR), demonstrates that the revisionist has passed Class VIII. His elder sisters aged about 22 years and 20 years have passed Class X. His younger brother aged about 15 years and has passed Class VIII. His father aged about 46 years and has passed Class X and his mother aged about 44 years and she is illiterate. His father runs Workshop and his mother is a housewife; relations among the family members are cordial; parents of the juvenile have no criminal antecedent. The SIR further noted that the discipline in the house of the juvenile is moderate. Lack of parental control over the juvenile was found.

23. The first information report was lodged on 30.06.2021 by uncle of the deceased against the revisionist and two named persons under Sections 302, 201, 34 of I.P.C. stating that co-accused Amit had enmity with the deceased, due to some relation between Amit's sister and the deceased. For this reason the revisionist and other co-accused hatched a criminal conspiracy and slit his nephew's throat and the dead body was found near Khanpur Cemetery (Shamshan Ghat). After lodging of the first information report, inquest of the body of the deceased was conducted on 30.06.2021. As per postmortem report incised wound 16 cm x 5 cm below left side ear to right side back of neck cutting through and through.

24. In view of the above foregoing discussion, I am not satisfied with the reasoning and conclusion of the Appellate Court as well as the Juvenile Justice Board in the impugned judgment and order. The Juvenile Justice Board as well as the Appellate Court have not properly appreciated the mandatory provisions of Section 12 of "JJ Act, 2015" as well as other provisions in relation to juvenile 'X' and have declined

to grant bail merely on the basis of unfounded apprehension. In the absence of any material or evidence of reasonable grounds, it cannot be said that his release would defeat the ends of justice and have failed to give reasons on three contingencies for declining the bail to the revisionist. The findings recorded by the Juvenile Justice Board as well as the Appellate Court are based on the heinousness of the offence, therefore, the order dated 22.09.2021 passed by the Juvenile Justice Board and judgment dated 10.06.2022 passed by the Appellate Court are not sustainable. Hence, the above-mentioned orders are set aside and the present criminal revision is **allowed**.

25. Let the revisionist, aged about 17 years, 4 months and 10 days, who is in observation home since 01.07.2021 be released on bail via assurance and surety given by his natural guardian/father, in Bail Application No. 146 of 2021 arising out of Case Crime No. 413 of 2021, under Sections 302, 201, 34 of the I.P.C., Police Station- Tronica City, District- Ghaziabad, after furnishing a personal bond on his father (Prabhu Narayan) with two sureties of her relatives each in the like amount to the satisfaction of Juvenile Justice Board, Ghaziabad, subject to the following conditions:

(i) Natural guardian/father will furnish an undertaking that upon release on bail the revisionist will not be permitted to go into contact or association with any known criminal or allowed to be exposed to any moral, physical, or psychological danger and further that the father will ensure that the juvenile will not repeat the offence.

(ii) Natural guardian/father will further furnish an undertaking to the effect that the juvenile will pursue his study at the appropriate level which he would be encouraged to do besides other constructive activities and not be allowed to waste his time in unproductive and excessive recreational pursuits.

(iii) Juvenile and natural guardian/father will report to the Probation Officer on the first Monday of every calendar month

commencing with the second Monday of March 2023, and if during any calendar month the first Monday falls on a holiday, then on the following working day.

(iv) The Probation Officer will keep a strict vigil on the activities of the juvenile and regularly draw up his social investigation report that would be submitted to the Juvenile Justice Board, Ghaziabad, on such a periodical basis as the Juvenile Justice Board may determine.

26. Before imparting the judgment, it is necessary to point out that the identity of the juvenile in the present matter has been disclosed in the impugned judgment and order which violates the right to privacy and confidentiality of the juvenile and against the law laid down by the Supreme Court in **Shilpa Mittal v. NCT Delhi, (2020) 2 SCC 787** wherein, it was held that the identity of the juvenile shall not be disclosed.

Dated: 1.3.2023

Ishan

(Sanjay Kumar Pachori, J.)