

Reserved on- 01.11.2022

Delivered on- 22.11.2022

Court No. - 91

Case :- CRIMINAL REVISION No. - 2521 of 2022

Revisionist :- X (Juvenile)

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Brij Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Brij Raj Singh, learned counsel for the revisionist and learned A.G.A. for the State.

2. Perused the record.

3. This criminal revision has been filed challenging the order dated 08.03.2022 passed by the Juvenile Justice Board, Kasganj and the order dated 07.05.2022 passed by Special Judge, (POCSO) Act, Kasganj in Criminal Appeal No.13 of 2022 affirming the order of the Juvenile Justice Board and declining bail to the juvenile in a matter arising out of Case Crime No.896 of 2020, under sections- 376AB, 506 I.P.C. and section- 5/6 POCSO Act, Police Station- Kasganj, District- Kasganj.

4. As per allegations in the F.I.R. lodged by the informant- Smt. Shakeela, her daughter aged about 9 years, who resided with her grandmother used to go to the residence of accused to study religious scriptures (para); she went for the same on 05.12.2020 at about 3:00 in the afternoon as usual; To the informant's mother she appeared to be shocked and frightened when she returned; When her mother asked, she told that the accused sexually assaulted her and threatened her not to inform the police. On the basis of this, an F.I.R. being Case Crime No.0896 of 2020 was registered on 06.12.2020. On her medical examination, injuries on private part were found from which blood was oozing out. Before the Doctor, she stated that she was sexually and physically assaulted by the accused and was also threatened to refrain from disclosing his (accused) act to anybody else. In her statement recorded under sections 161 and 164 Cr.P.C., she narrated the same story and corroborated the allegations as contained in the F.I.R. As per certificate of Chief Medical Officer, she was found to be aged about 8 years. In the age determination inquiry done by the Juvenile Justice Board, accused was found to be below 18 years.

5. I went through the impugned order dated 08.03.2022 passed by the Juvenile Justice Board. The Juvenile Justice Board referred to the judgement of Allahabad High Court passed in **Monu @ Moni @ Rahul @ Rohit vs.**

State of U.P., 2011 CrLJ 4496, wherein it was held that in case the aim and the object of the legislation is not being achieved or the ends of justice may be defeated by releasing the accused, the bail to the juvenile can be declined.

6. The Juvenile Justice Board also referred to the judgement of the Allahabad High Court in **Ankit Babu Sharma (Minor) vs. State of U.P. and Another, (2015) 3 SCCR 362**, wherein it was held that being a juvenile is a fact not enough in itself to entitle him the benefit of bail.

7. The Juvenile Justice Board also referred to the judgement pronounced in **Mohammad Nabi vs. State of U.P., 2011 (2) SCC 368**, in which the Court held that in case the juvenile is allegedly involved in an offence of heinous like murder or attempt to murder, rape or attempt to rape, such a probability may exist that he may get exposed to physical, moral or psychological danger and therefore, in such circumstances the bail can be declined. Moreover, it was also observed that once the accused is found juvenile, it is not mandatory that he shall be released on bail.

8. I went through the order of the appellate court dated 07.05.2022 in which the appellate court concurred with the ultimate conclusion reached by the Juvenile Justice Board. The appellate court was of the view that the nature of the case showed complete depravity of mind and that the facts as well as the merits of the case impelled the court to draw a conclusion that in case he is released on bail, the ends of justice shall stand defeated.

9. It is contended on behalf of the revisionist that the mandate of proviso to Section-12 of the Juvenile Justice Act, 2015 and broader principles of law as applicable in the matters of bail to the juveniles have been ignored by the Juvenile Justice Board as well as the appellate court; bail has been declined on the basis of the nature of offence; the courts below have decided the matter as if they were pronouncing the accused-revisionist as guilty without trial; there was no such evidence so as to draw an inference that in case the accused-juvenile is released, he may come into association with any known criminal or he may be exposed to moral, physical or psychological danger, or that his release may defeat the ends of justice; the Board as well as appellate court have treated the case as falling within the exceptional circumstances as defined in proviso to Section- 12(1) of the Juvenile Justice Act, 2015 without having any material before them; the courts below have ignored the social investigation report, inasmuch as the report did not bring out any fact adverse to his release on bail.

10. While dealing with a case of a juvenile, who was allegedly involved in a heinous offence, the Apex Court in **Om Prakash vs. State of Rajasthan and Another, 2012 (5) SCC 201**, commanded the attention of the courts for taking a cautious approach where the accused under the guise of plea of being a minor attempted to take statutory shelter as provided under the

Juvenile Justice Act, 2015. Although the observation of the Apex Court came in the background of the fact that the evidence about the age was of doubtful nature. However, the nature of the crime as being a material fact was brought into focus by the Apex Court.

11. The Allahabad High Court made certain observations in **Mangesh Rajbhar vs. State of U.P. and Another, 2018 (2) ACR 1941** as to nature of the crime where it was found grave and heinous, vis-a-vis, the grant or refusal of the bail to the juvenile as below:-

"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 reformatory 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."

12. This Court in **Criminal Revision No.1195 of 2022 ('X' Minor vs. State of U.P.) decided on 12.10.2022** took a view that the gravity of the offence as well as the merits of the matter may be of ample significance when the Court has to form an opinion whether case is one falling within the exceptions as envisaged under the proviso to Section- 12(1) of the Juvenile Justice Act, 2015.

13. In para-8 of the above judgement, it was held as below:-

8. Ordinarily, the merits of the matter may not be unduly important where the Courts are inclined to give benefit of bail as envisaged in Section 12 of the Juvenile Justice Act. This is not to say that once a person is found a juvenile, it is mandatory to grant him bail and that gravity and the merits of matter shall have no relevance. In my view, the nature of the crime and factors connected thereto never went into oblivion and this particular aspect have been usefully illuminated by the Courts time and again. I am of the view that in fact nature of the offence and merits of the matter may assume ample significance when the Court has to form an opinion about the ends of justice. It may be noted that the phrase 'ends of justice', cannot exist in a vacuum. Unarguably and undeniably, the Courts are under obligation to address the concerns of both the sides and strike a delicate balance between competing and often conflicting demands of justice of the two sides. When viewing the matters of bail from this particular angle of deciphering the ends of justice, not only the nature of crime, but also the manner of

commission thereof, methodology applied, the mental state, the extent of involvement, the evidence available shall be the factors to reckon with. To my mind, from this particular point of view, no artificial line can be drawn to differentiate cases of juvenile above 16 years from those who are found just below 16, in ordinary circumstances. Incidentally, the accused in this case was found marginally below 16.

14. In para-11 and para-15 of the same judgement, it was observed that:-

11. The vastness of the ends of justice may pull within its sphere facts and circumstances, which may otherwise seem quite irrelevant and not so important at first glance for the purpose of the applicability of proviso to Section 12 of the Juvenile Justice Act. It may be reiterated that the provisions of the Juvenile Justice Act though largely enacted with a reformatory theories in mind, do not obliterate streaks of retributive justice in them and this aspect of the scheme of the Act cannot be glossed over. In the end, the Court may have to depend on its own judicial discretion and objective assessment of the things while still going strictly according to the provisions of law as to bail and also keeping in mind that the Act has intertwined approach reformatory as well as retributive. At this stage, it may be noted that the interest of the child finds mention under the head 'Principle of best interest' as described in Chapter IV, Section 3 (iv) of the Juvenile Justice Act, 2015. And this principle also underlines the matters to be dealt with under the provisions of the Act including matters of bail. And undeniably and unarguably keeping in mind the reformatory goals of the Act, the bail can definitely be denied, where there are circumstances to arrive at a conclusion that bail should be declined because of the fact that juvenile shall not get such conducive atmosphere as may be needed for his own welfare and betterment, if released to his family or parents.

15. This thing should be kept in mind that aim and object of the Act is to ensure proper care, protection, development treatment and social reintegration of child, in difficult circumstances by adopting child friendly procedures. Under the 'Act' the moment child alleged to be in conflict with law is apprehended (not arrested), he is to be placed under the charge of the child welfare police officer (not merely a police officer) and is not to be lodged in police lockup or jail and if required may be sent to 'observation home'. Even while the Board chooses to exercise its power (of bail) under Section 12(1), it may place such child under the supervision of probation officer and may not release him on surety bonds. In my view, in certain circumstances, the protective custody in observation home may be better than any other custody or release.

15. In this case an 8 year old girl of III standard went as usual for religious teachings from a person, who in our society is supposed to be having even higher than usual moral standards of conduct. She was absolutely clueless that she will be preyed upon today. A person in whom she might have trusted as she would trust her own parents, sexually assaulted her and she sustained 1 cm. tear at 2 o' clock position causing fresh bleeding and also ruptured hymen perineum. It became difficult for her to urinate and defecate. The

shock and trauma caused to the victim as well as her family can easily be understood. This kind of violent sexual assault is an indicator that accused needs counselling by psychiatrist/experts not only for his own betterment but also for the health of society. He needs to be extended services of reformatory and rehabilitatory nature so that he can move without posing danger to himself as well as to public and so that he can be brought back to main stream.

16. As per social investigation report, he has not been to regular school and is uneducated and that he belonged to a very poor family. His parents too are illiterate and do physical labour. In my opinion, he cannot be given that kind of atmosphere in his family as is required for his healthy physical and psychological growth. Prima-facie, it appears that he is in real need of intensive counselling. Such a service cannot be provided effectively outside the observation home/child care institution. Besides such measure may be required so that he grows into an adult with healthy mind to serve his own best interest as well as the interest of the society at large. In my view, he cannot be risked to fall in the same environs of which he is the product. He may be in dire need of counselling. Such juveniles need to be put under constant supervision of professionals.

17. To prevent ends of justice from being defeated and to achieve the aim and goal of the salutary act, he should be kept in observation home under strict supervision and should be extended such reformatory services as are available under the scheme of the act.

18. Accordingly, present criminal revision is **dismissed**.

19. Copy of the order be certified to the Court concerned.

20. The Court/concerned Board is directed to expedite the hearing and conclude the same at the earliest without getting influenced by any of the findings/observations made in this order.

Order Date :- 22.11.2022

Saif