

Court No. - 91

Case :- CRIMINAL REVISION No. - 2126 of 2021

Revisionist :- Minor Son Of Moolchand Through His Natural Guardian Grandfather Ved Prakash

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

Counsel for Revisionist :- Adesh Kumar

Counsel for Opposite Party :- G.A., Vivek Kumar Srivastava

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Adesh Kumar, learned counsel for the revisionist, Sri Vivek Kumar Srivastava, learned counsel for the opposite party no. 2 as well as Sri O.P. Mishra, learned AGA for the State and perused the record.

2. This criminal revision under Section 102 of the Juvenile Justice Act, 2015 has been filed on behalf of the minor 'X' S/o Moolchand through his natural guardian/grandfather Sri Ved Prakash S/o Late Desh Raz R/o Village- Akbarpur Shadat, Police Station Bahsuma, District-Meerut with the prayer to admit the minor to bail alongwith the prayer to set aside the order dated 07.07.2021 passed by the Juvenile Justice Board, Meerut and order dated 26.08.2021 passed by the Additional Sessions Judge/Special Judge, POCSO Act, Meerut in Criminal Appeal No. 52/2021 arising out of Case Crime No. 34 of 2021 under Section 302 IPC, Police Station- Bahsuma, District- Meerut by which the bail to the juvenile was declined.

3. As per the version of the FIR, the informant's son- Nitin had gone to his college on his bullet motorcycle to receive his report card. When he approached the gate of his college, he found the revisionist (minor) and his brother- Arjun standing there. He got engaged in some kind of conversation with them. Suddenly, the minor whipped out a country-made firearm and shot at Nitin. He was referred to Meerut Hospital, where he succumbed to his injuries and died. On the basis of the FIR lodged by deceased's father within less than 5 hours of the incident on the same day, Case Crime No. 0034 of 2021 under Section 302 IPC, was registered and investigated upon. On finding one of the accused person, who is the present revisionist, a minor, the matter was placed before the Juvenile Justice Board, Meerut where an order for determination of age was passed on 23.06.2021 and he was found of the age of little over 13 years and 6 months. The minor applied for bail through his guardian/father namely, Mool Chand but the same was rejected by the Board. The Appeal No. 52 of 2021 filed against the above noted order dated 07.07.2021, was also dismissed by the learned Appellate Court below.

4. Aggrieved by the above two orders, the minor through his guardian/grandfather has come in criminal revision.

5. It is submitted by the revisionist that the courts below have not proceeded in accordance with the provisions of Section 12 of the Juvenile Justice Act, 2015 which are mandatory in nature and have dis-entitled the minor from bail without any good reason. The courts below failed to consider that no material has been collected to demonstrate that there was any likelihood of juvenile being brought in association with any known criminals or to expose him to any moral, physical or psychological danger or that his release is likely to defeat the ends of justice. It is next submitted that the juvenile has had no criminal history and that the learned courts below have only considered the gravity of crime and dismissed his application on merits of the matter which clearly goes against the statutory provisions of Section 12 of the Juvenile Justice Act.

6. It has been submitted that gravity of the offence is not relevant consideration for refusing bail to the juvenile as has been held by this Court in **Criminal Revision No. 2732 of 2010 (Amit Kumar vs. State of U.P.) decided on 14.09.2010**, **Criminal Revision No. 1266 of 2020 (Kanchan Sonkar vs. State of U.P.) decided on 01.12.2020**, **Criminal Revision No. 1852 of 2015 (Amit vs. State of U.P.) decided on 16.03.2016** and held by the Apex Court in **Prakash vs. State of Rajasthan, 2006 Cri.L.J. 1373**.

7. In **Criminal Revision No. 1852 of 2015 (Amit vs. State of U.P.) decided on 16.03.2016**, this Court referred to the earlier judgement in **Vijendra Kumar Mali vs. State of U.P., 2003 (1) J.I.C. 103**, wherein this Court reiterated that in a number of judgements, it has been categorically held that bail to the juvenile can only be refused if one of the grounds as provided in proviso to Section 12(1) of the Juvenile Justice Act, 2015 exist. So far as the ground of gravity is concerned, it is not covered under the relevant provisions. If the bail application of the juvenile was to be considered under the provisions of Cr.P.C., there would have been absolutely no necessity for the enactment of the aforesaid Act. The Section 12 of the Act contains a non-obstante clause, which indicates that the general provisions of Cr.P.C. shall not apply. Therefore, the gravity or seriousness of the offence should not be taken as an obstacle or hindrance to refuse the bail to delinquent juvenile.

8. It is contended that there exist no material to justify rejection of bail on the grounds envisaged in Section 12 of the Act. In view of the above provisions, the 'child in conflict with law', who has been in custody for quite some time deserves to be released on bail otherwise, the purpose of provisions of Section 12 of the Juvenile Justice Act shall stand defeated. It is also contended that care of the juvenile in a child care institution cannot be preferred over his care in his biological family.

9. Learned AGA as well as learned counsel for opposite party no. 2 have opposed the prayer for bail.

10. I perused the impugned orders. It appears that the Juvenile Justice Board, Meerut took into consideration the report of the District Probation Officer and made it a sole ground for dismissal of his bail application.

11. The learned Appellate Court below took into consideration amongst other facts, the fact that the weapon of offence was recovered from guardian/father of the juvenile which was bought almost a year before the incident of this case. The juvenile took that country-made firearm out from the almirah kept in his house and used that very firearm to carry out this frightful crime of murder. The learned Appellate Court below took into consideration the family background and the fact that because of disturbed and not so tranquil atmosphere in the family, he was driven to commit this kind of offence at a tender age of 13 1/2 years and that in all probability, he is not likely to get good guidance from his family members and therefore, on the basis of above observations, the learned Appellate Court below has dismissed the appeal.

12. In **Om Prakash vs. State of Rajasthan and another; (2012) 5 SCC 201**, the Hon'ble Apex Court observed that the Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of juvenile as it was felt that the children become delinquent by force of circumstance and not by choice and hence they need to be treated with care and sensitivity while dealing and trying cases involving criminal offence. It was further observed that when an accused is involved in grave and serious offence which he committed in a well planned manner reflecting his maturity of mind the court ought to be more careful. **Thus, the Hon'ble Apex Court has brought in focus the nature of offence, the conduct of an accused as reflected in the method employed and connected facts in the commission of crime, in other words merits of the case, a relevant consideration while considering the matters of bail.**

13. It may be noted that the Hon'ble Apex Court gave the above view in the background of the facts that age of the victim as determined by the courts below was not free from doubts. In the peculiar circumstances, the Hon'ble Apex Court observed that where accused commits grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording his age, is not acceptable and that the shelter of the principle of benevolent legislation of the Juvenile Justice Act is meant for minors, who are innocent law breakers and not otherwise. Nevertheless, in my view, the spotlight is again on the nature of crime particularly when the alleged crime is grave and heinous and factors connected thereto.

14. In **Mangesh Rajbhar vs. State of U.P. and Another; 2018 (2) ACR 1941**, this Court observed as under:

"13. No doubt, the Juvenile Justice Act is a beneficial legislation intended for reform of the juvenile/child in conflict with the law, but the law also demands that justice should be done not only to the accused, but also to the accuser."

25. It is not that this aspect of the gravity of the offence has been considered irrelevant to the issue of grant or refusal of bail to a minor in the past and before the present Act of 2015 came into force. In a decision of this Court under the Juvenile Justice Act, 2000 where the interest of the society were placed seemingly not on a level of playing field with the

juvenile, this Court in construing the provisions of Section 12 in that Act that were *pari materia* to Section 12 of the Act in the matter of grant of bail to a minor held in the case of **Monu @ Moni @ Rahul @ Rohit v. State of U.P., 2011 (74) ACC 353** in paragraph Nos. 14 and 15 of the report as under:

"14. Aforesaid section no where ordains that bail to a juvenile is a must in all cases as it can be denied for the reasons".....if there appears 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."

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."

15. This Court in **Criminal Revision 2808 of 2019, Sonu (Minor) vs. State of U.P.**, clearly opined that the gravity and heinous nature of offence become relevant while judging the entitlement of a juvenile to bail under last of the three disentitling categories under Section 12(1) of the Act. I fully agree with the above observation of this Court.

16. Though cases of juveniles who have allegedly committed a heinous crime and are of the age of above 16 years have been treated differently from those who are found to be of the age of below 16 years in the Juvenile Justice Act, 2015. However, by no stretch of imagination, it can be said that the Courts are bound to release the juvenile below the age of 16 years once he is found to be of that age and no more.

17. Ordinarily to dis-entitle the juvenile from the benefits of bail, as envisaged in Section 12 of the Juvenile Justice Act, the merits or say the allegations against him are not important and relevant as has been consistently held by the Hon'ble Courts from time to time. However, as said earlier the allegations may assume importance where the Court has to form an opinion about the ends of justice. The Courts are under obligation to address the concerns of both the sides while deciding upon whether or not the ends of justice shall stand defeated in case the juvenile is admitted to bail.

18. In my firm view, the manner of commission of the crime, the nature thereof cannot be ignored while striking a balance between the demands of justice of either of the sides. It shall be impudent to hold, regardless of the age of the juvenile, that the nature of the crime or merits of the matter are of no relevance when judging the entitlement of a juveniles to bail in cases where heinous crimes are committed. In other words, the nature of crime, the manner of commission, the methodology applied, the mental state, the extent of involvement, the evidence available shall be the factors to be taken into account in both the types of cases where the juvenile is

below 16 or where the juvenile is above 16. No artificial line can be drawn between the two categories when considering the bail from this particular angle.

19. A word of caution may be added that no useful purpose may be served by looking into background of the offender or as to reasons and circumstances as revealed from social investigation report, which led him to this juncture or which brought him into such a quagmire. They may be factors which are for a social scientist to ponder over and to suggest the corrective action. A judge is only concerned with the facts arising out of the commission of crime with a view to decide upon whether or not to release him on bail. The Court is not expected to embark on inquiry going back in times and search for reasons and justifications for commission of a dastardly crime by a person of rather a very young and tender age and get swayed by it. **From this point of view, a social background or a social investigation report may have a very limited purpose to serve. The findings cannot be solely based on such reports, which are more than often very superficial and unscientific.** It is a common knowledge that social investigation reports are usually prepared on printed formats without proper research. In my opinion, not much reliance can be placed on such half baked reports. The Court may have to depend on its own judicial discretion and objective assessment of the things while still going strictly according to the provision of law as to bail and also keeping in mind that the Act has intertwined approach reformatory as well as retributive. The judge has to strike a precarious balance between interest of the child and interest of the victim and also the society at large.

20. The vastness of the ends of justice may pull within its sphere facts and circumstances, which may otherwise seem quite immaterial, extraneous, irrelevant, impertinent, not so important or even innocuous at first glance for the purpose of the applicability of proviso to Section 12 of the Juvenile Justice Act. 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.

21. Another dimension which sweeps in, to be weighed, when considering the bail to juvenile, grant or refusal thereof, is the PRINCIPLE OF BEST INTEREST as described in Chapter IV, Section 3 (iv) of the Juvenile Justice Act, 2015. 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.

22. Coming to the facts of present matter, this cannot be ignored that it was the juvenile who came prepared and armed with a country-made firearm and though he accompanied his brother, but

it was he, who fired upon Nitin, killing him almost instantaneously or sometime thereafter. Before commission of crime, he picked the firearm from his own house indicating that this incident was not committed at a spur of moment, rather it was planned. This fact can also not be pushed aside that the bail application and the present revision has been filed on behalf of the minor through his grandfather and not by his mother or father.

23. The District Probation Officer has reported that he was not properly taken care of in his family and that he fell into bad company. It is not very clear that how a grandfather can properly take care of a boy who is aged about 13 or 14 years. This fact is also worth notice that he may be in specific need of supervision or intervention and that he may be needing proper professional counseling and behavioral therapy.

24. The fact of matter is that in this case, a school going juvenile of a very tender age of little over 13 years and 6 months, indulged in a very heinous crime in a well planned manner, who came ready with a firearm and had a main role of shooting the victim; the victim herein was also a school going boy; sudden loss of a young member must have sent shock waves to victim's family members and they certainly must have gone through emotional trauma. **The Court is, in such circumstances expected to strike a delicate balance between competing and more often than not, conflicting demands of justice where liberty of an individual is pitted against the larger interest of the society. In such cases, the need for specific supervision of the juvenile and wider need to convert the juvenile into a healthy adult by giving him professional counseling and behavioral therapy under the scheme of the Act cannot be underestimated.** Moreover, it may be necessary to keep him away from the company of elements, which he previously had.

25. Considering all the above facts and circumstances of the matter, I concur with the conclusions arrived at by the Appellate Court and by the Juvenile Justice Board and am of the opinion that the revisionist is not entitled to bail.

26. Subject to orders of the Juvenile Justice Board, in this regard, the District Probation Officer shall sincerely attend to his duties as assigned to him in Rule 64 of Juvenile Justice (Care and Protection) Model Rule, 2016 and prepare individual care plan, if need arises; likewise person in charge of child care institution shall provide care and protection to the child as per scheme of the Act.

27. Accordingly, the present criminal revision is **dismissed**. However, the Juvenile Justice Board is directed to expedite the hearing and conclude the same at the earliest.

Order Date :- 13.9.2022

Vik/-