Allahabad High Court
Gaurav vs State Of U.P. And Another on 29 July, 2022
Bench: Shree Prakash Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 86

Case :- CRIMINAL REVISION No. - 1080 of 2021

Revisionist :- Gaurav

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

Counsel for Revisionist :- Indra Mani Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Shree Prakash Singh,J.

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

Instant criminal revision has been filed with the prayer to quash the order dated 01.04.2021 and 23.12.2020 passed by learned ADJ/Spl Judge, POCSO Act, Meerut and Principle Magistrate, Juvenile Board, Meerut in Case No. 101 of 2020 in Case Crime No. 137 of 2020, under Section 302 IPC, P.S. Kanker Khera, "State vs. Gaurav", District Meerut.

Submission of the learned counsel for the revisionist is that the present revisionist has been declared juvenile on 25.11.2020 by the Juvenile Justice Board, Meerut and his age, at the time of occurrence, was considered to be 17 years 6 month and 18 days. The revisionist has been falsely implicated in this case only on the basis of enmity and he has not committed any offence as claimed by the prosecution. It is further submitted that both the courts below have not considered the fact that revisionist is a juvenile and the gravity or the heinousness of the offence is not to be looked into at the time of disposal of his bail application and the prayer of bail of the juvenile could only be rejected on the basis of three grounds mentioned in the proviso to Section 12 of the Juvenile Justice Act, 2015.

Learned Additional Government Advocate, on the other hand, submits that though the revisionist has been declared juvenile but having regard to the facts and circumstances of the case as well as the report of the District Probation Officer it is on record that after being released on bail the revisionist may associate himself with the known and unknown criminals and otherwise also the release of the revisionist on bail will expose him to any moral, physical or psychological danger or his release would otherwise defeat the ends of justice and, therefore, the revisionist is not entitled to be released on bail.

In rebuttal, learned counsel for revisionist submits that there is nothing in the report of the District Probation Officer, which may suggest that the applicant after being released on bail may associate himself with any known or unknown criminals or may otherwise expose himself to moral, physical or psychological danger. The revisionist is in confinement in this matter since 04.03.2020 and also not having any previous criminal history.

Having heard learned counsel for parties and having perused the record, it is evident that the law with regard to the bail of juvenile is well settled that the general rule for juvenile is bail and not Jail, unless the conditions mentioned in section 12(1) of the Act are attracted the bail to juvenile should ordinarily not be denied. There should be some reasonable grounds or material available on record to believe that the release of the juvenile on bail, is likely to bring him/her in association with criminals or or his release will result in failure of justice or other exigencies mentioned in section 12(1) of the Act, pertaining to exposure of juvenile to moral, psychological danger may be attracted, but the gravity of the offence alone is not to be considered at the time of the consideration of bail of juvenile and the paramount consideration is the welfare of juvenile.

Before proceeding further it is fruitful to reproduce Section 12 (1) of The Juvenile Justice (Care and Protection of Children) Act, 2015, which speaks about the conditions pertaining to the release of juvenile on bail, as under:-

"Sec.12(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by thepolice or appears or 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 or placed under the supervision of a probation officer or under the care of any fit person. Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice, and the Board shall record the reasons for denying the bail and circumstances that led to such a decision."

Thus, section 12 of the Act lays down only three contingencies in which the bail can be refused to juvenile. These are:

(1) if the release is likely to bring him into association with any known criminal, or (2) expose him to moral, physical or psychological danger, or (3) that his release would defeat the ends of justice.

In Bhola @ Satender v/s State Of U.P. 2015 (2) JIC 38(Allahabad), this Court has held as under :-

"12. The Juvenile Justice Act is a beneficial and social-oriented legislation, which needs to be given full effect by all concerned whenever the case of a juvenile comes before them. In absence of any material or evidence or reasonable ground to believe that the delinquent juvenile, if released on bail is likely to come into association with any known criminal or expose him to moral, physical or psychological danger, it cannot be said that his release would defeat the ends of justice."

Similar view has been expressed by this Court in Mukesh v/s State of UP 2015 (2) JIC page 740, Ranjit Yadav v/s State Of UP, 2015 (2) JIC page 738, Ajay @ Abhinay Kumar v/s State of UP 2015 (2) JIC page 223 (Allahabad).

Hon'ble Supreme Court in the case of Om Prakash Vs. State of Rajasthan and Ors reported in (2012) 5 SCC 201 however has brought in due concern in matter relating to juvenile where the alleged offences committed by the juvenile are heinous like rape, murder, gang rape etc and has indicated that in such matters the nature and gravity of the offences would be relevant and the minor (juvenile) can not getaway by shielding himself behind the veil of minority. It was held by their Lordship that Juvenile Justice Act was enacted with a laudable object of providing a separate forum for holding trial of children by the juvenile court as it was felt that children became delinquent by force of circumstances and not by choice. Hence, they need to be treated with care and sensitivity, while dealing and trying cases of criminal nature. It was further highlighted by their Lordship that if the conduct of an accused or the method and manner of the commission of the offence indicates evil and well planned design of the accused committing the offence, which indicates more towards the mature skill of an accused than that of a innocent child, then he cannot be allowed to take shelter of the principle of beneficial legislation like the Juvenile Justice Act subverting the course of justice, which is meant for minors or innocent law breakers and not for on accused of mature mind who uses the plea of minority as a ploy to shield and protect himself from the sentence of the offence committed by him.

The above case laws thus suggest that no strait jacket formula may be adopted for grant or refusal of facility of bail to juvenile in conflict with law and it will depend on the facts and circumstances of each case as well as the manner and method whereby the alleged offence has been committed by the juvenile to gauge as to whether the act of the juvenile attracting penal consequences, has been done with sufficient maturity, skill and evil design, which can be attributed only to a major person or whether the penal act of the juvenile is an act of an innocent law breaker. Needless to say that every case will have to be decided on its merits, demerits and evidence which is being placed against the juvenile as well as the previous criminal history of the juvenile. The gravity of the offence certainly cannot be the sole guiding factor, but the manner and method of the commission of the offence could certainly be taken into consideration while deciding the plea of bail of a juvenile.

Coming to the facts of the present case it appears that a report has been submitted by the District Probation Officer which shows that a heinous offence has been committed by the revisionist but he is not in a bad company.

Having regard to the facts and circumstances of the case it does not appear to be a case wherein grant of bail to accused revisionist would act against his interest or will expose him to any moral, physical or psychological danger or his release would otherwise defeat the ends of justice. Keeping in view the totality of facts including the report of District probation officer, it appears in the interest of justice and juvenile that keeping an eye on the beneficial purpose of juvenile justice Act, a chance to reform may be provided to Juvenile/ revisionist. The District Probation Officer in his report has also not mentioned any fact or circumstance which may suggest that there is any likelihood of juvenile coming in association of any criminal or of exposing him to any moral, physical or psychological danger. Therefore, in absence of any such material, it was obligatory on the Court below to consider the report of District Probation Officer in right perspective. The learned Court below was required to infer from the positive evidence or material available on record, as if any of the grounds enumerated under section 12 of the Juvenile Justice Act 2015, were available,on the basis of which bail could be denied to Juvenile, and if these ground(s) were not existing, the revisionist juvenile should have been released on bail, acting otherwise would defeat the beneficial purpose of juvenile justice Act. In absence of any such material on record and also in the background of the report of the District Probation officer, the impugned order rejecting bail of accused/ revisionist, is not sustainable and the same is not in conformity with the beneficial provisions of the Juvenile Justice Act. The impugned order, therefore, deserves to be set aside and the revision is worth allow.

For the reasons mentioned herein above, I find force in the revision and the same is allowed. The order dated order dated 01.04.2021 and 23.12.2020 passed by learned ADJ/Spl Judge, POCSO Act, Meerut and Principle Magistrate, Juvenile Board, Meerut in Case No. 101 of 2020 in Case Crime No. 137 of 2020, under Section 302 IPC, P.S. Kanker Khera, "State vs. Gaurav", District Meerut, are set aside.

Let Juvenile Gaurav be enlarged on bail, in the above mentioned case on executed a personal bond by his fahter- Munnu @ Manohar with two reliable sureties each in the like amount to the satisfaction of the Court/Board concerned and on submission of undertaking on affidavit by his father that he will take due care of the juvenile, will not allow him to indulge in any unlawful or criminal activity or join the company of unlawful elements, will keep him under strict control, shall not attempt or tamper with the evidence or threaten the witnesses; shall not seek any adjournment on the date fixed for evidence, shall remain present before the trial Court on each date fixed, either personally or through his counsel failing which the facility of bail granted to Juvenile may be cancelled.

Order Date :- 29.7.2022 Ujjawal