

Gurjeet Singh vs State Of U.P. on 9 April, 2018

HIGH COURT OF JUDICATURE AT ALLAHABAD

AFR

Court No. - 53

Case :- CRIMINAL REVISION No. - 2662 of 2017

Revisionist :- Gurjeet Singh

Opposite Party :- State Of U.P.

Counsel for Revisionist :- Shashi Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

1. Heard Sri Shashi Kumar Mishra, learned counsel for the revisionist and Sri Shyamdhara Yadav, learned AGA along with Sri Kulveer Singh, learned counsel appearing for the State and perused the lower court record.

2. This criminal revision has been preferred from an order of Sri Ravindra Kumar, First, learned Additional District & Sessions Judge, Court No.1, Kasganj dated 25.07.2017 dismissing Criminal Appeal No.24 of 2017 under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and affirming an order of the Juvenile Justice Board, District Kasganj dated 30.06.2017 refusing bail to the revisionist in Case Crime No. 94 of 2017 under Sections 377, 504 IPC and Section 3/4 POCSO Act, P.S. Ganjdundwara, District Kasganj.

3. Notice to the opposite party no. 2 was directed to be issued by RPAD vide order dated 06.03.2018. A perusal of the office report dated 07.04.2018 shows that the notice issued to opposite party no. 2 was sent out in compliance with the Court's order dated 06.03.2018. But a service report relative to the same has not been received back so far. In case of notice issued by registered post, there is a presumption that unless the registered cover is received back undelivered, the same is

deemed to be delivered in due course of post. Thus, service upon opposite party no. 2 is held sufficient.

4. No one has put in appearance on behalf of the opposite party no. 2. Accordingly, the Court has proceeded to hear the matter.

5. According to the first informant his son aged about five years was playing in the field when the revisionist allured him away to his home (revisionist's home). Upon hearing the child's wail of pain, a passer-by Pappu Singh S/o Ram Singh reached the place of occurrence whereupon the revisionist escaped abusing him. It is also alleged that the father of the revisionist had also come to the victim's father and mother, confessed his son's crime and begged for apology.

6. In this case, the FIR was lodged on 07.04.2017 at 14:10 hours, whereas the occurrence is said to have taken place on 06.04.2017 at 04:00 p.m. Thus, the FIR has been lodged with a delay of 22 hours which, in the submission of learned counsel for the revisionist, carries no explanation.

7. The revisionist has been declared a juvenile by the Juvenile Justice Board, Kasganj aged about 16 years 2 months and 5 days by their order dated 26.05.2017. Thereafter, the revisionist applied for bail as a juvenile before the Juvenile Justice Board who by their impugned order dated 30.06.2017 proceeded to reject the application for bail.

8. Aggrieved by the said order of the Juvenile Justice Board, the revisionist preferred Criminal Appeal No. 24 of 2017 to the learned District & Sessions Judge, Kasganj. The said appeal came up for determination on 25.07.2017 before the learned Additional District & Sessions Judge, Court No. 1, Kasganj who has ordered it to be dismissed.

9. Aggrieved by the orders dated 25.07.2017 and 30.06.2017 passed by the courts below, the present revision has been filed on behalf of the juvenile/child in conflict with law through his father who is the natural guardian, under the provisions of Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, and, hereinafter referred to as the Act.

10. The submission of learned counsel for the revisionist is that the impugned orders passed by the courts below are contrary to the parameters envisaged under the proviso to Section 12(1) of the Act in the matter of grant of bail to a juvenile.

11. In short, the submission of learned counsel for the revisionist is to the effect that there is nothing in the social investigation report or in any other evidence on record that may lead to the conclusion that the case of the revisionist falls within any of the three exceptions to the rule in favour of bail to a juvenile under the proviso to Section 12 (1) of the Act.

12. Section 12 of the Act, has been quoted in extenso:-

12. Bail to a person who is apparently a child alleged to be in conflict with law.-(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 the police 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.

(2) When such person having been apprehended is not released on bail under sub-section (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.

13. A perusal of the impugned orders show that the courts below have drawn conclusions from the social investigation report that in case of release of the juvenile there appears to be reasonable grounds to believe that he is likely to come into association with any known criminals or expose the said person to moral, physical or psychological danger or his release would defeat the ends of justice.

14. A perusal of the social investigation report shows that the learned Additional Sessions Judge as well as the Juvenile Justice Board have selectively picked out expression of opinion by the District Probation Officer rather than going by concrete data otherwise available in the report. In particular, the learned Sessions Judge has relied much on a repeat opinion by the District Probation Officer that is no more than a personal opinion of the officer that since the father of the juvenile is engaged in a trade in connection whereof he has to stay away from home, there is lack of control over the child in conflict with law. There is no concrete material on the basis of which lack of control of the father has been inferred by the District Probation Officer. The learned Sessions Judge has recorded objective data in the report which shows that the child in conflict with law lives in a family that comprises the father, the mother and three siblings. He has, however, ignored that there is another relative Ajudadi Prasad S/o of Johari Lal resident Badagaon, P.S. Sahawar District Kasganj who is

also willing to act as the child's guardian. The courts below have further ignored from consideration that the economic condition of the family is average and they have no criminal record. The courts below have ignored that remark of the District Probation Officer which shows in the column regarding habits and hobbies that the juvenile does not have any such bad habit or interest that may affect his life. The character and personality has been assessed to be average. His school record is also average. In the remarks column also it is mentioned that during investigation a number of natives of the village informed that the family members of the child have no criminal history, and, that the child is a student of class VI. It has, in particular, come in the remarks column of the District Probation Officer's report that the child does not have any such association which may affect his life. There is in the end again an ipse dixit of the officer that the repetition of the offence by the child cannot be discounted. The courts below, as already said, have selectively looked at the social investigation report and drawn conclusions that the child in conflict with law is likely to repeat the offence.

15. A perusal of the record shows that the child has pursued his study and has read up to class V. He is currently reading to take admission in Class VI. The remarks of the learned Additional Sessions Judge that the age of the child is about 15 to 16 years, and, the fact that he is reading in Class VI shows that he is far behind schedule betrays a rather insensitive approach to matter.

16. In the Indian rural background where the endeavour of the State is to promote education be it children or adults, a belated progress in the hierarchy of class is to be appreciated rather than drawn an adverse inference from. This Court may now turn to the last aspect of the matter: the third ground on which bail may be denied. The said ground is also to be found under proviso to Section 12 of the Act and shows that one legitimate reason to deny bail to a child in conflict with law is the case of a juvenile where to release him on bail "would defeat the ends of justice." This is certainly has reference to the nature of the offence which would intrinsically bring in the merits of the case and the evidence appearing against the child. This Court is constrained to observe that the merits of the case have hardly been looked into by the courts below. The statement of the victim, the medical evidence and all other evidence have been ignored from consideration.

17. A perusal of that evidence would show that it cannot be said that the offence, in fact, has been committed so daringly and outwardly that enlarging the revisionist on bail would defeat the ends of justice. In this connection the guidance of the Hon'ble Supreme Court in the case of Om Prakash vs. State of Rajasthan and another¹ may be quoted:

"3. Juvenile Justice Act was enacted with a laudable object of providing a separate forum or a special court for holding trial of children/juvenile by the juvenile court as it was felt that 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. But when an accused is alleged to have committed a heinous offence like rape and murder or any other grave offence when he ceased to be a child on attaining the age of 18 years, but seeks protection of the Juvenile Justice Act under the ostensible plea of being a minor, should such an accused be allowed to be tried by a juvenile court or should he be referred to a

competent court of criminal jurisdiction where the trial of other adult persons are held.

23. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him."

18. There is no such finding or otherwise any material on record that the revisionist has committed the offence that indicates more towards the matured skill of an accused than an act of the child as held by their Lordships in *Om Prakash* (supra). There is nothing about the manner and method of the commission of the offence that indicates a well planned design. In fact, not much about the circumstances under which the alleged offence took place, where it was committed and by whom, has been dwelt upon. This matter is to be determined in the pending case before the Juvenile Justice Board. There is, however, in the opinion of the Court no such ground disentitling the juvenile to bail under the proviso to Section 12(1) of the Act so as to keep him deprived of the company of his family which is the best school for any child. It is also not the case that it is a family of criminals and delinquents. The revisionist's family is a normal, average and happy family as the social investigation report would show, though they may not be an affluent family.

19. Looking to the overall circumstances of the case, impugned orders passed by the courts below cannot sustained.

20. In the result, this revision succeeds and is allowed. Impugned orders dated 25.07.2017 passed by he learned Additional Sessions Judge, Kasganj in Criminal Appeal No. 24 of 2017 and the order dated 30.06.2017 of the Juvenile Justice Board passed in Case Crime No. 94 of 2017 under Sections 377, 504, IPC and Section 3/4 POCSO Act, P.S. Ganjdundwara, District Kasganj are hereby set aside and reversed. The bail application made on behalf of the revisionist through his father Bhajan Singh stands allowed.

21. Let the revisionist Gurjeet Singh through his natural guardian/father Bhajan Singh be released on bail in Case Crime No. 94 of 2017 under Sections 377, 504, IPC and Section 3/4 POCSO Act, P.S. Ganjdundwara, District Kasganj on his father furnishing a personal bond with two solvent sureties of his relatives each in the like amount to the satisfaction of the Juvenile Justice Board, Kasganj subject to the following conditions:

(i) that the natural guardian/father Bhajan Singh will furnish an undertaking that upon release on bail the juvenile will not be permitted to come into contact or

association with any known criminal or 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) that the father will further furnish an undertaking to the effect that the juvenile will be placed in a school and encouraged to his studies and not allowed to waste his time in unproductive and mere recreational pursuits.

(iii) The revisionist Gurjeet Singh and his father Bhajan Singh will report to the District Probation Officer on the first Monday of every month with effect from the first Monday of the month next after release from custody, and, if during any calendar month the first Monday falls on a holiday then on the following working day.

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

22. Let records of the lower court be sent back at once.

Order Date :- 9.4.2018 Deepak