Dharmendra (Juvenile) vs State Of U.P. & Another on 13 April, 2018

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 53 A.F.R.

Case :- CRIMINAL REVISION No. - 4141 of 2017

Revisionist :- Dharmendra (Juvenile)

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

Counsel for Revisionist :- Akhilesh Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble J.J. Munir,J.

1. Supplementary affidavit filed on behalf of the revisionist today is taken on record.

2. A perusal of the office report dated 11.04.2018 shows that notice upon opposite party no.2 has been served personally. Service is held to be sufficient. No one has put in appearance on behalf opposite party no.2.

3. Heard Sri Akhilesh Kumar Mishra, learned counsel for the revisionist and Sri Shyam Dhar Yadav, learned A.G.A. appearing for the State.

4. This revision is directed against an order of the Additional Sessions Judge (F.T.C.-I)/ Special Judge POCSO Act, Sant Kabr Nagar, dated 25.10.2017 passed in Criminal Appeal No.20 of 2017, under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereafter referred to as the "Act') dismissing the said appeal and affirming an order dated 18.07.2017 passed by the Juvenile Justice Board, Sant Kabir Nagar refusing bail to the revisionist in Case Crime No.1384 of 2016, under Sections 302, 201 IPC and Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act, Police Station Dhanghata, District Sant Kabir Nagar.

5. Brief facts giving rise to this revision are that the First Information Report giving rise to the present case crime was lodged by one Ram Shabd saying that his son Dharmjyoti alias Gulshan had left home on 11.11.2016 at about 10 in the morning hours to attend his duties at a mobile shop situate in Umariya Bazar, where he was employed but by evening he did not return home on schedule. It is said that the informant thought he might have gone over to some friend or relative; the informant called over his sons mobile number that is specified in the FIR, but both mobiles numbers reported "switched off'. The following morning the informant went to relatives and to the friends to enquire about whereabouts of his son but that all he could know was that his whereabouts were not known. He approached the police to lodge a first information that was registered under Sections 302, 201 IPC on 24.11.2016; it appears that the dead body was found by the police as the postmortem examination was held on 24.11.2016. The cause of death was opined to be haemorrhage and shock as a result of ante-mortem injuries. The injuries were a complete cut of neck separated from body besides two contusions. It is urged that the name of the revisionist has been introduced during investigation on the basis of weak circumstantial evidence of last seen and a confessional statement to the police. There is absolutely nothing to show the revisionist's complicity in the occurrence. The revisionist being a young boy claimed to be declared to be a juvenile under the Act, which was allowed by the Juvenile Justice Board by an order dated 26.05.2017 determining his age to be 16 years. Thereupon, the revisionist filed a plea of bail to the Juvenile Justice Board, who rejected his bail plea on the basis of a remark in the Social Investigation Report to the effect that the child in conflict with law does not appear to be under the control of his parents and on that account the Board concluded in a rather abrupt manner, making a short shrift of the matter, that in the event of release there is likelihood of exposure to physical and psychological danger and that the juvenile may repeat the same kind of offence. It has further been concluded by the Board again in a rather mechanical fashion that looking to the nature and gravity of the offence, juvenile's release would defeat the ends of justice; with so much said but nothing more the bail plea was turned down.

6. The revisionist preferred an appeal to the Sessions Judge being Criminal Appeal no.20 of 2017, which came up for determination before the Additional Sessions Judge (F.T.C. - I)/ Special Judge (POCSO Act), Sant Kabir Nagar on 25.10.2017, who dismissed the appeal and affirmed the order made by the Juvenile Justice Board. Aggrieved by concurrent refusal of bail by the two courts below, the present revision has been filed under Section 102 of the Act.

7. The submission of the learned counsel for the revisionist is that the revisionist was aged about 16 years at the time of occurrence. He is a declared juvenile under the Act and has been in jail since 19.11.2016. It has been argued that his case does not fall in any of the three exceptions to the rule of bail in favour of a juvenile under the proviso to Section 12(1) of the Act. It is urged that there is nothing in the Social Investigation Report that may have led the courts below to conclude that the revisionist is not entitled to bail on the parameters in the proviso to Section 12(1) of the Act. It is also emphatically pointed out that in the case in connection with which the revisionist is being held as a juvenile cannot be termed as heinous vis-à-vis the juvenile as there is nothing to connect the juvenile to the crime. The case is entirely based on weak circumstantial evidence of last seen and a confessional statement. A perusal of the order impugned passed by the learned Special Judge would show that he has largely depended on the Social Investigation Report to come to a conclusion that the juvenile if released from jail, is likely to come into association with any known criminal and be

exposed to moral, physical and psychological danger, and, that since the offence committed by him is a heinous offence, that he is said to have committed in association with co-accused Pawan Kumar Pandey, an adult, his release would defeat the ends of justice. It has also been recorded that there is no relative who would take charge of him and in a manner that his moral, physical and psychological condition is taken care of through effective management and control.

8. This Court has gone through the Social Investigation Report. The report shows that the revisionist has a mother and a father at home besides a brother and two sisters - siblings elder to him; his parents are not very rich, but their economical and social condition appears to be average with means of sustenance being manual work done by the father and mother. They also have a house. It is noticed that the family do not have any criminal history. The habits and hobbies have invited a remark from the District Probation Officer that the juvenile is fond of roaming around. This remark has also been taken into consideration by the learned Special Judge to deny release. This Court feels that it is very natural for a youth to roam around and the District Probation Officer can be far from complemented for his misplaced input. There is also a remark that the juvenile moves around with persons of higher age, and, it is their company which appears to have effect on the juvenile. The said input is again misplaced on which much reliance has been put by the learned Special Judge. A youth normally learns from elders. Unless those elders are specified to be men of ill-repute, bad habits and criminal antecedent, nothing of the kind as has been said in the input wold be logical. There is also a remark in the Social Investigation Report that a juvenile is not gainfully employed and that two natives of the village said that the juvenile does not take much interest in studies and instead roams around with his friends. This input too is of no consequence. Many a youth would not be inclined to study, particularly, in a marginalized strata of the society. The other facet of roaming around with friends is a manifestation of gregariousness that is native to a man's nature; in youth it is strong and strongly manifested.

9. This Court is constrained to observe that the Social Investigation Report by the District Probation Officer far from serves the purpose contemplated by the Act and Rules framed thereunder. The learned Special Judge has mechanically accepted every unintelligent observation of the District Probation Officer to deny bail to the revisionist. This Court is not at all in agreement with the opinion of the courts below, particularly, when the complicity of the revisionist in the crime, is far from discernible prima facie.

10. The matter can be looked at from another vantage. In case the revisionist were an adult and stood charged of the offence that he faces with a weak circumstantial evidence of last seen and confession to the police, in all probability, it would have entitled him to bail pending trial. If on the kind of evidence forthcoming an adult would be entitled to bail, denying bail to a child in conflict with law may be denying the juvenile/ child in conflict with law the equal protection of laws guaranteed under Article 14 of the Constitution.

11. The rule in Section 12(1) of the Act is in favour of bail always to a juvenile/ child in conflict with law except when the case falls into one or the other categories of denial contemplated by the proviso. It is not the rule about bail in Section 12 of the Act that in case a child in conflict with law is brought before the Board or Court, his case is not to be seen on merits prima facie about his complicity at all

for the purpose granting him bail; and all that has been done is to see if his case falls is one or the other exceptions, where he can be denied bail. The rule in Section 12 sanctioning bail universally to every child in conflict with law presupposes that there is a prima facie case against him in the assessment of the Board or the Court based on the evidence placed at that stage. It is where a case against a child in conflict with law is prima facie made out that the rule in Section 12(1) of the Act that sanctions bail as a rule, except the three categories contemplated by the proviso comes into play. It is certainly not the rule, and, in the opinion of the Court cannot be so, that a case on materials and evidence collected not being made out against a child at all, his case has to be tested on the three parameters where bail may be denied presuming that a prima facie case is constructively there. Thus, it would always have to be seen whether a case prima facie on merits against a child in conflict with law is there on the basis of material produced by the prosecution against him. If it is found that a prima facie case on the basis of material produced by the prosecution is there that would have led to a denial of a bail to an adult offender, in that case also the Rule in Section 12(1) of the Act mandates that bail is to be granted to a juvenile/ child in conflict with law except where his case falls into any of the three disentitling categories contemplated by the proviso.

12. In the opinion of this Court, therefore, the perception that merits of the case on the basis of prima facie evidence is absolutely irrelevant to a juvenile's bail plea under the Act would not be in conformity with the law. The catena of decisions that speak about merits of the case or the charge against a juvenile being irrelevant, proceed on facts and not an assumption that a case on merits is made out, and, not where the case is not at all made out prima facie. It is not that a child alleged to be in conflict with law against whom there is not iota of evidence to connect him to the crime would still have bail denied to him because his case may be placed in or the other disentitling categories under the proviso to Section 12(1) of the Act. If this kind of a construction were to be adopted it might expose the provisions of Section 12(1) of the Act to challenge on ground of violating the guarantee of equal protection of laws enshrined in Article 14 of the Constitution. It is an enduring principle that a construction that lends a statute to challenge about its constitutionality should be eschewed and one that saves and upholds its vires is to be adopted. In this context the guidance of their Lordships of the Hon'ble Supreme Court in Japani Sahoo vs. Chandra Sekhar Mohanty, (2007) 7 SCC 394 may be referred to:-

> "51. The matter can be looked at from different angle also. Once it is accepted (and there is no dispute about it) that it is not within the domain of the complainant or prosecuting agency to take cognizance of an offence or to issue process and the only thing the former can do is to file a complaint or initiate proceedings in accordance with law. If that action of initiation of proceedings has been taken within the period of limitation, the complainant is not responsible for any delay on the part of the Court or Magistrate in issuing process or taking cognizance of an offence. Now, if he is sought to be penalized because of the omission, default or inaction on the part of the Court or Magistrate, the provision of law may have to be tested on the touchstone of Article 14 of the Constitution. It can possibly be urged that such a provision is totally arbitrary, irrational and unreasonable. It is settled law that a Court of Law would interpret a provision which would help sustaining the validity of law by applying the

> doctrine of reasonable construction rather than making it vulnerable and unconstitutional by adopting rule of 'litera legis'. Connecting the provision of limitation in Section 468 of the Code with issuing of process or taking of cognizance by the Court may make it unsustainable and ultra vires Article 14 of the Constitution."

13. This Court is, therefore, of opinion that looked at from any angle, be it the merits of the prima facie case appearing against the revisionist showing his complicity in the crime or assuming that a prima facie case appears against him, the revisionist's case does not fall in any of the three categories envisaged under the proviso to Section 12(1) of the Act so as to deny him the liberty of bail.

14. The impugned orders are, therefore, held not sustainable and liable to be reversed.

15. In the result, this revision succeeds and is allowed. The impugned order dated 25.10.2017 passed by the learned Additional Sessions Judge (F.T.C. - I)/ Special Judge, Sant Kabir Nagar in Criminal Appeal No.20 of 2017 and the order dated 18.07.2017 passed by the Juvenile Justice Board, Sant Kabir Nagar in Case Crime No.1384 of 2016, under Sections 302, 201 IPC and Section 3(2)5 of the SC/ST (Prevention of Atrocities) Act, Police Station Dhanghata, District Sant Kabir Nagar, are hereby set aside and reversed. The bail application made on behalf of the revisionist through his father stands allowed.

16. Let the revisionist, Dharmendra through his natural guardian/ father Anil Kumar be released on bail in Case Crime No.1384 of 2016, under Sections 302, 201 IPC and Section 3(2)5 of the SC/ST (Prevention of Atrocities) Act, Police Station Dhanghata, District Sant Kabir Nagar through his father upon 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, Sant Kabir Nagar subject to the following conditions:

> (i) that the natural guardian/father Harilal will furnish an undertaking that upon release on bail the juvenile 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.
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> (ii) that the 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 allowed to waste his time in unproductive and excessive recreational pursuits.
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> (iii) The revisionist and his father Harilal will report to the District Probation Officer on the first Monday of every calendar month commencing with the first Monday of July, 2018 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, Sant Kabir Nagar on such periodical basis as the Juvenile Justice Board may determine.

Order Date :- 13.4.2018 Anoop