Parvez vs State Of U.P. And Anr. on 31 January, 2014

Author: Het Singh Yadav

Bench: Het Singh Yadav

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 5

Case :- CRIMINAL REVISION No. - 3679 of 2013

Revisionist :- Parvez

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

Counsel for Revisionist :- Sushil Kumar Pandey

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Het Singh Yadav,J.

This criminal revision under section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (in short 'the Act 2000') has been preferred against the order dated 6.12.2013 passed by the learned Sessions Judge, Muzaffar Nagar in Criminal Appeal No. 101 of 2013 (Gayyur Khan Vs. State of U.P.) arising out of rejection of bail prayer of juvenile, Parvez @ Parvez Khan.

2. Heard Sri Sushil Kumar Pandey, learned counsel for the revisionist and learned A.G.A. for the State at prolix length.

3.The facts which are relevant and necessary for the disposal of the revision, briefly stated, are that on Jan. 04, 2009, first informant lodged F.I.R. alleging therein that the revisionist had sexually assaulted his minor daughter aged about 4 years. Pursuant thereto, case was registered at crime no. 05/2009 under section 376 I.P.C. against the revisionist at P.S. Adarshmandi, Distt.-Muzaffarnagar(now Distt.-Shamli). The revisionist was arrested on Jan. 05, 2009 and was

confined in jail .He was dealt with the criminal justice system as applicable for adults. The revisionist's father however, for the first time on Feb.17, 2010 raised claim of his being juvenile before the court of Addl. Sessions Judge, Muzaffarnagar where the trial was pending by invoking provision of section 7-A of the Act 2000. The trial court made an enquiry as per rules applicable and after inordinate delay recorded finding on Sept.07, 2013 that the revisionist was a juvenile on the date of commission of offence, his age being 16 years 8 months and 2 days. The trial court accordingly, processed the matter for transfer of the case to the Juvenile Justice Board, Muzaffarnagar (in short 'the board') for enquiry and for passing appropriate order.

4. The revisionist's father moved an application before the Board under Section 12 of the Act 2000 seeking his release on bail which was rejected by the Board on 21.10.2013 substantially on the ground of gravity of offence which is alleged to have been committed.

5.It would appear that an appeal was preferred under Section 52 of the Act 2000 which was dismissed by the learned Sessions Judge observing that juvenile in conflict with law kidnapped a female child aged about 4 years and raped her as a result of which she received injuries on her private part, further observing that this indicated his criminal proclivities. It was further observed that he, as a juvenile, was smitten with libido-psyche and could go to any extent to gratify his lust, that his family members had no commanding control over him and that in such a view, if the appellant was set at liberty on bail, it would not only be an instance of miscarriage of justice but would push the appellant in further moral and psychological degradation. The appellate court also held the view that the juvenile/appellant being above 16 years of age, was conscious of his illegal criminal activity and by this reckoning, his case fell in more than one clauses of Exception as is provided under Section 12 of the Act.

6.The quintessence of the arguments advanced across the bar by Sri Pandey is that the very scheme of the Act 2000 is rehabilitatory in nature and not adversarial, that the bail to a juvenile in conflict with law is a rule and rejection is an exception that the bail prayer of a juvenile can only be refused on the grounds mentioned in Section 12 of the Act 2000 itself and no other grounds and that in this case, the Board as well as the learned Sessions Judge in the appeal preferred under Section 52 of the Act 2000 have refused bail to the revisionist only on the ground of gravity of the offence alleged to have been committed. He further argued that the general law of bail applicable to the adults cannot be imported for application while considering the bail prayer of a juvenile. By this reckoning, it is reasoned, refusing bail to the juvenile by the Board and the learned Sessions Judge are out of ambit of Section 12 of the Act 2000.

7.The next limb of argument advanced across the bar by Sri Pandey is that the learned Sessions Judge while dismissing the appeal has made observations and derogatory remarks against the revisionist without any material and prima facie evidence on record, are fraught with deleterious impact on the inquiry being conducted by the Board on the charges levelled upon the revisionist. He laid much emphasis that the Board as well as the learned Sessions Judge have failed to consider the peculiar aspect of this case that the revisionist has been languishing in jail since 06.1.2009, and thus, he has already spent a period of more than 3 years in incarceration. As per Section 15 of the Act 2000, the Board if satisfied on inquiry that the juvenile has committed an offence, then,

notwithstanding anything to the contrary contained in any other law for the time being in force, if it is so thinks fit, it can make an order directing the juvenile to be sent to the Special Home for a maximum period of three years. Thus, the revisionist at the time of moving bail application before the Board had already suffered incarceration for 4 years 9 months and 15 days in jail which is more than the maximum period for which a juvenile may be confined in special home. This bespeaks, it is vociferously submitted, the Board and the learned Sessions Judge had rejected the bail prayer of the revisionist in whimsical and wanton manner even de-hors the rules and procedure of the Act 2000.

8. Learned A.G.A. very fairly conceded to the facts that the revisionist who has been declared juvenile in conflict with law, has already undergone excess period of detention maximum awardable to a juvenile in conflict with law by the Board after concluding the inquiry as envisaged under Section 15 of the Act 2000.

9. I have given my careful consideration to the submissions made across the bar as above by learned counsel of either sides and have also been taken through the materials on record.

10. In this case, it would appear, initially the revisionist was being prosecuted under the general criminal law applicable to the adults. His father raised the claim of juvenility before the trial court. The trial court made an inquiry and ultimately, pronounced him a juvenile, invoking the procedure provided under Section 7-A of the Act 2000 as aforementioned . The the case of revisionist was referred to the Board for conducting inquiry and passing appropriate order in accordance with the provisions of the Act 2000. When the revisionist was brought before the Board, his father moved the application under Section 12 of the Act 2000 seeking his release on bail. His bail application was rejected by the Board and the appeal preferred under Section 52 of the Act 2000 was also rejected by the learned Sessions Judge. Hence this revision.

11. Before delving into the propriety of the bail rejection orders passed by the Board as well as by the lower appellate court, it is expedient to have a look at the bail provisions provided under Section 12 of the Act 2000 which reads thus:-

"12. Bail of juvenile.-

> (1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is 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 but he shall not be so released if there appear 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.
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> (2) When such person having been arrested is not released on bail under sub-section (1) by the officer in-charge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can brought

before a Board.

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

12- On critical analysis of the above section it may be summarised as under: (i) Gravity of offence is immaterial for considering bail prayer of juvenile.

(ii) Bail provisions contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, as applicable in case of adults, shall have no application.

(iii) Release of a juvenile on bail is a rule, and refusal is an exception.

(iv) Bail to a juvenile can be refused only on the grounds as mentioned in the section itself and not on any other ground out of ambit and scope of the section.

(v) The grounds of refusal of bail as provided in the section shall not be readily inferred but there must be some material and/or evidence on record to substantiate the refusal.

(vi) The bail provisions contained in Act-2000 have an overriding effect over the general criminal justice system applicable to the adult.

11.A juvenile shall not be released on bail, if there appear reasonable grounds for believing that (i) the release is likely to bring him into association with any known criminal or; (ii) expose him to moral, physical and psychological danger or; (iii) his release would defeat the ends of justice. The Board has refused bail to the revisionist on the ground that he has committed rape upon a minor girl aged about 4 years further observing that his release is likely to bring him into association with any known criminal and his release is likely to expose him to moral, physical and psychological danger and further that his release would defeat the ends of justice. I have very closely scrutinised the order and there is not a whisper in the order as to on what basis there appear reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to moral, physical and psychological danger and that his release would defeat the ends of justice. Thus, the ground mentioned in the bail rejection order of the Board are based on guess work and hypothetical consideration.

12.This Court, in a catena of decisions, has categorically held that there must be some material and evidence on record to refuse bail prayer of a juvenile for believing that his release was likely to bring him into association with any known criminal or would expose him to moral, physical and psychological danger and that his release would defeat the ends of justice. The bail to a juvenile cannot be refused on hypothetical considerations. The Board also failed to consider that the juvenile had already undergone a period more than maximum period for which juvenile may be confined in special home, even if the Board is satisfied on inquiry that he has committed an offence. In this way,

the Board has passed a lop-sided order even ignoring that the detention of the revisionist at the time when his bail prayer was refused, was illegal and in violation of his fundamental rights conferred under Article 21 of the Constitution of India. The bail prayer of the revisionist was refused in the instant case as if he was an inveterate adult criminal to be dealt with under the general criminal law. Thus, the Board refused the bail prayer of the revisionist in antagonism of the settled principles governing the bail matters of a juvenile in conflict with law.

13. In appeal under Section 52 of the Act 2000, the learned Sessions Judge has also committed the self-same illegality while rejecting the appeal and confirming the bail rejection order passed by the Board.

14. From a perusal of the impugned order passed by the learned Sessions Judge, it would transpire that the bail was declined to the revisionist attended with the observation that juvenile kidnapped a female child aged about 4 years and ravished her as a result of which she sustained injuries on her private part. Thus, the learned Sessions Judge, too, refused the bail to the revisionist treating the offence as serious and grave crime. This does not constitute a ground for rejection of bail as mandated by section 12 of the Act 2000 but constitutes a ground for rejection of bail in a case involving an adult under the general criminal law. It appears that the Sessions Judge while deciding the appeal has slurred over the fundamental objects for which the Act 2000 was enacted possibly on account of her inability to adapt to a system which is, however, different from the general criminal law.

15. In connection with the case in hand, it would be appropriate to refer to the observations made by the apex court in Hari Ram Vs. State of Rajsthan and another, 2011 (13) SCC 211 which I feel, are truly attracted in this case :-

> "2. The said law which was enacted to deal with offences committed by juveniles, in a manner which was meant to be different from the law applicable to adults, is yet to be fully appreciated by those who have been entrusted with the responsibility of enforcing the same, possibly on account of their inability to adapt to a system which, while having the trappings of the general criminal law, is, however, different there from.
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> 3. The very scheme of the aforesaid Act is rehabilitatory in nature and not adversarial which the courts are generally used to. The implementation of the said law, therefore, requires a complete change in the mind-set of those who are vested with the authority of enforcing the same, without which it will be almost impossible to achieve the objects of the Juvenile Justice Act, 2000."

16. The observations of the Learned Sessions Judge that the juvenile has ravished the modesty of a 4 years girl child, and that this exhibits his criminal proclivities and that he, even as a juvenile has a libido-psyche and can go to any extent to soothe his lust, are based on hypothetical grounds without there being any shred of evidence on record at that stage. There is not an iota of material or evidence at the stage of bail on record to make room for such observation. In my considered view, the

observations made by the Sessions Judge in the order would certainly be fraught with the consequences which may impinge upon the inquiry pending against the revisionist before the Board. The above observations made by the Sessions Judge, I feel constrained to say, are based on guess work and hypothetical consideration. Moreover, these observations are whimsical as there is no shred of evidence on record to support them. The Sessions Judge while deciding the appeal of a juvenile in bail matters, had no business to pass such unwarranted remarks stigmatizing a juvenile. It is worth mentioning here that one of the objects and reasons for the enactment of the Act 2000 is to minimise the stigma upon the juvenile in keeping with his developmental needs.

17. One more point that surfaces for consideration is that the very scheme of the Act 2000 is rehabilitatory in nature and not adversarial. Children Act has been enacted to protect young children from the consequences of their criminal acts on the footing that their mind at that age could not be said to be mature for imputing mens rea as in the case of an adult. It is for this reason that a juvenile would undergo inquiry by the Board which is not in the form of regular trial irrespective of the gravity of the offence. As per Section 15 of the Act 2000 where a Board after having satisfied on inquiry that a juvenile has committed an offence, then notwithstanding anything to the contrary of any other law for the time being in force, may, if it so thinks fit, make an order at the most directing the juvenile to be sent to a Special Home for a period of three years only. In the case in hand, the revisionist has been in detention since 06.1.2009. As mentioned earlier, he has already undergone a period of more than the maximum period for which a juvenile may be confined to a special home. Thus, at the time of rejection of the bail by the Sessions Judge in appeal, his detention was illegal.

18. In the case of Amit Singh Vs. State of Maharashtra and another, 2011 (13) SCC 744, the apex court held thus:

> "The claim of juvenility can be raised before any court at any stage, even after the final disposal of the case. Section 20 and 7-A set out the procedure which the court is required to adopt, when such claim of juvenility is raised. The petitioner was a juvenile in terms of the 2000 Act because he had not completed 18 years of age and is entitled to get the benefit of provisions under Ss. 2(l), 7-A, 20 and 64 of the Act. The petitioner has already undergone 12 years in jail since then, which is more than the maximum period for which a juvenile may be confined to a special home. Under these circumstances, the petitioner is directed to be released from custody forthwith."

19.The case of the revisionist, in my opinion, is on a better footing qua the above cited case. In this case, the offence was committed on 4.1.2009 much after incorporation of the Act No. 33 of 2006 in the Act 2000. This brooks no dispute that the revisionist was a juvenile on the date when offence was committed. Thus, certainly his case was to be dealt with under the provisions of the Act 2000. But unfortunately for him, he was subjected to trial under the general criminal law applicable to the adults and was declared juvenile only on Sept. 7, 2013 after a period of more then three years from the date of moving application by his father, under Section 7-A of the Act 2000. By all reckoning, this constitutes a serious lapse on the part of the authorities of criminal administration of justice. What shocks the conscience of this Court is that the juvenile was in detention since 06.1.2009 and

thus he had already undergone a period of more than three years in detention by the time, his bail prayer and the appeal against his bail rejection orders were made. This leaves no manner of doubt that the Sessions Judge had passed the lop-sided order in confirming the bail refusal order rendered by the Juvenile Board, blissfully oblivious of the fact that the principles of bail of an adult as per the Code are not attracted in a case of juvenile, and in complete antagonism of the settled principles governing the bail matter of a juvenile as set forth in Section 12 of the Act 2000.

20. The revision accordingly, succeeds. The order of the Board dated 21.10.2013 passed in Case Crime No. 5 of 2009, under Section 376 I.P.C., P.S.- Adarsh Mandi, Shamli, District-Shamli and the impugned order of the Sessions Judge, Muzaffarnagar, dated 6.12.2013 passed in Criminal Appeal No. 101 of 2013 are hereby set aside.

21. Since, the revisionist (a juvenile in conflict with law) has already undergone a period of more than 5 years in detention/Special Home, which is more than maximum period for which a juvenile may be confined to a Special Home, where a Board is satisfied on inquiry that he has committed the offence, it is ordered that the revisionist-Parvez would be released from the custody forthwith, if not wanted in any other case.

Order Date :- 31.1.2014 Naresh