

(2023) 01 UK CK 0130

In the Uttarakhand High Court

Case No : Criminal Revision No. 785 Of 2022

Gunjan Gangwar @ Jalim (Minor)

APPELLANT

Vs

State Of Uttarakhand & Another

RESPONDENT

Date of Decision : 18-01-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 147, 148, 302, 504

Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 3, 12, 12(1)

Citation : (2023) 01 UK CK 0130

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Harshpal Sekhon, V.S. Rathore, Mamta Joshi, Sangeeta Bhardwaj

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. The challenge in this revision is made to the following:-

(i) Order dated 04.11.2022, which relates to the FIR No. 354 of 2022, State vs. Gunjan Gangwar @ Jalim, under Sections 147, 148, 120-B, 302 & 504 IPC, Police Station Haldwani, District Nainital, by the court of Juvenile Justice Board, Nainital, and;

(ii) The judgment and order dated 15.11.2022, passed in Criminal Bail Appeal No. 17 of 2022, passed by FTC/Additional Sessions Judge/ Special Judge POCSO, Haldwani, Nainital. By it, the appeal has been dismissed.

2. The revisionist who is a Child in Conflict with Law ("the CIL") seeks bail also. According to FIR, in the instant case on 06.07.2022 at 7:00 in the evening, in a fight of two groups, a person died. The FIR records that, in fact, one of the assailant was the CIL also.

3. Heard learned counsel for the revisionist through video conferencing and perused the record.

4. Learned counsel for the CIL would submit that the CIL is a very poor boy. His mother was left by his father five year back. He stays with his mother. He works in his cousin's tea stall to earn livelihood for his family. He has no criminal antecedent. The Probation Officer report is not correct, where it says that the parents of the CIL should take care of him or keep him under control.
5. It is argued that had the Probation Officer visited the house of the CIL, he would have known that, in fact, CIL stays with his mother in most miserable condition. It is also argued that there is no reason to detain the CIL.
6. Learned State Counsel would submit that the Probation Officer's report does not reveal anything adverse against the CIL.
7. In the matters of CIL, bail is essentially a rule. The Act does not make any distinction between bailable or non-bailable offences. As per Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the Act"), a CIL must be released on bail irrespective of the fact as to whether he is involved in bailable or non-bailable offence. The only rider is given under the proviso to Section 12(1) of the Act, according to which, if the release of the CIL may bring him in the association with any known criminal or expose him to moral, physical or psychological danger or if the release of the CIL would defeat the ends of justice, only in such eventuality, the CIL may be denied bail.
8. Admittedly, it is a case of sudden fight between two groups. It is stated that the CIL works in a Thela of his cousin, which is near a wine shop.
9. The principles on which the Act has been enacted are given under Section 3 of the Act. According to one of the principles, the primary responsibility of nurturing, care and protection of a child in conflict in law lies with this biological family or adoptive or foster parents, as the case may be.
10. Having considered the entirety of facts, this Court is of the view that this is not a case, in which the proviso to Section 12(1) of the Act comes into play. There is no reason to deny the bail to the CIL.
11. The impugned orders are set aside.
12. Let the CIL be given in the custody of his mother, subject to production of two reliable sureties. The mother of the CIL shall also give an undertaking that he shall take care of the CIL and shall not allow him to contact any of the witnesses or their family members. The mother of the CIL shall also undertake that he shall also not contact either the witnesses or any of any of their family members.
13. The revision is allowed, accordingly.