
(2015) 04 AHC CK 0153

In the Allahabad High Court

Case No : Criminal Revision Defective No. 240 of 2015

Ranjeet Yadav

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 21-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164

Juvenile Justice Act, 1986 — Section 12

Penal Code, 1860 (IPC) — Section 120-B, 363, 366, 376, 504

Protection of Children from Sexual Offences Act, 2012 — Section 3, 4, 5, 6

Citation : (2015) 2 ACR 2027 : (2015) 7 ADJ 65 : (2015) 4 CCR 403

Hon'ble Judges : Vijay Lakshmi, J

Bench : Single Bench

Advocate : S.M.A. Abdy and Ajeet Kumar Yadav, for the Appellant

Judgement

Vijay Lakshmi, J—This revision has been filed against the judgment and order dated 17.3.2015, passed by learned Additional Sessions Judge, Court No. 3, Mau in Criminal Appeal No. 3 of 2015 (Ranjeet Yadav v. State of U.P.), arising out of Case Crime No. 485 of 2014, under Sections 363, 366, 376, 120-B, 504, 506 I.P.C. & Section 3/4 and 5/6 of POCSO Act, P.S. Haldharpur, District Mau, whereby the order dated 9.1.2015 passed by Juvenile Justice Board, rejecting the bail application of revisionist/juvenile has been affirmed and the appeal filed by juvenile has been dismissed. Heard learned counsel for the revisionist and learned A.G.A.

2. According to the F.I.R. (Annexure-1) lodged by the father of the prosecutrix, on 3.6.2014 at about 8.00 p.m. when his daughter had gone to the fields to attend the natural call, the revisionist enticed her away with the help of co accused Kamlesh. The father of revisionist, co accused Bahadur, despite having knowledge about the occurrence, did not tell anything, to the informant.

3. Learned counsel for the revisionist has submitted that the revisionist, his driver and his father all are falsely implicated in this case. He is a student, who

intends to further pursue his studies, but due to detention in juvenile home he is unable to do so. The prosecutrix is major and according to her statement recorded under Section 161 Cr.P.C. she had left her home in the company of the revisionist on her own free will. Learned counsel has further submitted that the medical report and the statement of prosecutrix does not support the prosecution story. There is material contradiction between the two statements of the prosecutrix recorded under Sections 161 and 164 Cr.P.C. The learned counsel has submitted that the statement under Section 164 Cr.P.C. has been given by the prosecutrix under pressure, whereas her statement under Section 161 Cr.P.C., recorded during video recording (which fact is evident from the statement of the I.O. (Annexure-5)) appears to be more reliable. It has further been submitted that it is hard to digest that the old father and son would commit rape with the same girl at the same place and time. It is next contended that the two co-accused who are major have already been released on bail whereas the revisionist is still languishing in juvenile home since 31.7.2014 and his bail application has been rejected by both the Courts below without keeping in view the clear mandate of Section 12 of Juvenile Justice Act. The learned counsel has drawn the attention of this Court to the report of District Probation Officer, annexed as Annexure-9 to the affidavit which indicates that the revisionist and the prosecutrix had love affair and both of them had run away from their homes on 31st May, 2014.

4. Learned A.G.A. has opposed this revision by contending that there is allegation of gang rape against the revisionist, which is a heinous offence. His parents have got no control over him and, therefore, for the betterment of his psychological and physical trails, his retention in Juvenile Home has rightly been ordered by both the Courts below and consequently instant revision being merit less be dismissed.

5. I have given a thought over the entire facts and circumstances of the case and have gone through the two impugned orders.

6. The radiological age of the girl has been found to be about 18 years. She has travelled to Varanasi and from Varanasi to Delhi and has lived at Delhi for about a month, but she has not tried to raise any alarm. Her statement under Section 161 Cr.P.C. which has been recorded under video recording reveals that she had clearly stated to have left her parental home out of her own sweet will. It is also evident from the police report (Annexure-7) that seeing the police, the revisionist and the prosecutrix, both tried to run away. However, when the police arrested them, she changed her statement alleging that she was enticed away and raped not only by the revisionist but also by his father and the tractor driver. The occurrence is of 3.6.2014, the medical examination of the prosecutrix was done on 31.7.2014 and she was found to be five months pregnant.

7. The Juvenile Justice Board rejected the bail application of revisionist on the ground of gravity of offence, whereas gravity of the offence is not a ground to deny bail to a juvenile accused, unless the conduct of the accused is such that it

indicates that in all likelihood, after being released on bail, a juvenile in conflict with law will indulge into more crimes and there are imminent chances of his repeating the crime, bail to a juvenile should not be ordinarily refused.

8. The Juvenile Justice Board without considering the legal position as provided under Section 12 of Juvenile Justice Act rejected the bail application. The lower appellate Court too instead of applying its independent mind to the facts and circumstances of the case, concurred with the opinion of the Juvenile Justice Board, suffering from such patent error of analysis and appreciation.

9. In *Prakash Vs. State of Rajasthan*, (2006) CriLJ 1373 : (2006) 1 RLW 538 , it has been observed thus:

"9. At the time of consideration of bail under Section 12 of the Act, the gravity or nature of offence has no relevancy. The language of Section 12 of the Act, using the word "shall" is mandatory in nature and providing non obstante clause by using the expression "notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time-being in force be released on bail" shows the intention of the Legislature to grant bail to the delinquent juvenile offender by releasing him on bail who is arrested or produced before a Court; however, with exception to release him on bail if there are reasonable grounds for believing that his 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. It is for the prosecution to bring on record such material while opposing the bail and to make out any of the grounds provided in this Section which may persuade the Court not to release the juvenile on bail.

10. The Act is beneficial and social-oriented legislation which needs to be given full effect by all concerned whenever the case of juvenile comes before them. In absence of any material or evidence of reasonable ground to believe that the delinquent juvenile, if release 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. On the contrary, keeping in view the legislative intent in enacting the Act, the juvenile offender deserves to be released on bail."

10. Considering the facts and circumstances of the case mentioned above, and the submissions of both the parties and without expressing any opinion on the merits of the case, I am of the view that the revision deserves to be allowed and the order dated 17.3.2015 is liable to be quashed.

11. Accordingly, the revision is allowed. The impugned order dated 17.3.2015, passed by Additional Sessions Judge, Court No. 3, Mau is set aside. Let the revisionist Ranjeet Yadav be released on bail on his mother/guardian (other than his father, who is also a co-accused) furnishing a personal bond of Rs. 50,000/- with two solvent sureties each in the like amount to the satisfaction of Juvenile Justice Board, Mau in Case Crime No. 485 of 2014, under Sections 363, 366,

376, 120-B, 504, 506 I.P.C. & Section 3/4 and 5/6 of POCSO Act, P.S. Haldharpur, District Mau with the condition that his guardian will take care of his education and betterment and he will not allow him to indulge in any criminal activity and will keep a check on his activities. Both the sureties are directed to be close relatives of the revisionist juvenile.