
(2011) 10 AHC CK 0178
In the Allahabad High Court
Case No : Criminal Revision No. 3526 of 2011

Salim Mohammad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 12-10-2011

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 15(1), 53
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 15(13)
Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2012) 1 ACR 245 : (2011) 9 ADJ 811

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Judgement

Hon'ble S.C. Agarwal, J.—This revision u/s 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the "Act") is directed against the order dated 27.7.2011 passed by Addl. Sessions Judge, Court No. 1, Allahabad in criminal appeal No. 141 of 2011 as well as order dated 2.6.2011 passed by Juvenile Justice Board, Allahabad (hereinafter referred to as the "Board") in case crime No. 22 of 2007 under Sections 302, 120-B IPC, PS Sarai Mamrej, District Allahabad whereby the application for bail of revisionist Salim Mohammad was rejected.

2. The revisionist is an accused in the aforesaid criminal case. He was declared juvenile in conflict with law vide order dated 11.11.2009. His first bail prayer was rejected by the Board on 1.7.2010. Second application for bail was moved on behalf of the revisionist before the Board on the ground that he has completed 4 years in jail and in view of provisions of Section 15(1)(g) of the Act and Rule 15(13) of the Juvenile Justice (Care and Protection of Children) Rules, 2007, (hereinafter referred to as the "Rules"), he cannot be detained for a period more than 3 years. The second bail prayer was rejected by the Board on the ground that his earlier bail application was rejected vide order dated 1.7.2010 passed by the Board and, therefore, second bail application was not maintainable.

3. Feeling aggrieved, the revisionist preferred the aforesaid criminal appeal, which was dismissed by Addl. Sessions Judge on the ground that the appellant was declared a juvenile vide order dated 11.11.2009 and, therefore, his detention under the Act commences from 11.11.2009 and the period prior to 11.11.2009 spent by him in jail cannot be taken into account for the purposes of Section 15(g) of the Act and Rule 15(13) of the Rules, 2007.

4. Heard Learned Counsel for the revisionist, learned A.G.A. for the State and perused the impugned orders.

5. Learned Counsel for the revisionist submitted that the revisionist was arrested in the year 2007 and is in jail since 15.10.2007. He was a juvenile throughout, though the revisionist was declared a juvenile by the Court subsequently. The contention is that his entire period of detention shall be deemed to be a detention under the Act.

Learned A.G.A. is unable to support the impugned orders.

6. After hearing Learned Counsel for the revisionist, learned A.G.A. for the State and going through the material available on record, I am of the opinion that the impugned orders cannot be sustained and are liable to be quashed.

7. The Board, instead of deciding the second application for bail on merits, abdicated its functions and did not decide the point involved in the second bail application. The second bail application cannot be dismissed on the ground that earlier application has been rejected by the Board. If a new point has been raised in the second bail application, the Court or the Board has to take note of the same. The reasoning adopted by the learned Addl. Sessions Judge can also not be appreciated.

8. Section 15(1)(g) of the Act provides as under:

15. Order that may be passed regarding juvenile.--(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit,--

....

(g) make an order directing the juvenile to be sent to a special home for a period of three years:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.

Rule 15(13) of the Rules, 2007 provides as follows:

15. Completion of Inquiry and Dispositional Alternatives.--(13) In no case the period of detention shall exceed beyond the maximum period provided in clause (g) of Sub-section (1) of Section 15 of the Act.

9. Section 15(1)(g) of the Act and Rule 15(13) of the Rules, 2007, when read together, give rise to the only conclusion that a juvenile in conflict with law cannot be held in detention for a period exceeding 3 years. The revisionist is in jail since 15.7.2007 i.e. for more than 4 years. The date of declaration of the revisionist as juvenile is immaterial. Though the plea of juvenility was taken and decided in favour of the revisionist in the year 2009, but when the revisionist was declared a juvenile in conflict with law, his detention either in jail or in the protection home, shall be deemed to be a detention under the Act Therefore, the continuous detention of the revisionist is illegal and amounts to illegal detention. It is not the case of the Board or the first Appellant Court that after release on bail, the appellant would come in association with any known criminal or would be exposed to moral, physical or psychological danger or that his release would defeat the ends of justice.

10. In these circumstances, the revisionist is entitled to bail and is entitled to be released from detention without any delay.

Thus, both the impugned orders are not sustainable and are liable to be set-aside.

Revision is allowed. Impugned order dated 2.6.2011 passed by the Board and order dated 27.7.2011 passed by the Addl. Sessions Judge are set-aside.

The revisionist Salim Mohammad son of Late Moharram Ali, resident of Village Bela Khas, PS Sarai Mamrej, District Allahabad involved in case crime No. 22 of 2007 under Sections 302, 120-B IPC, PS Sarai Mamrej, District Allahabad be released on bail on his furnishing a personal bond through his legal guardian mother / uncle and two sureties each in the like amount to the satisfaction of the Board concerned.