
(2013) 03 AHC CK 0210
In the Allahabad High Court
Case No : Criminal Revision No. 100 of 2012

Sunil Kumar

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428, 433A

Dowry Prohibition Act, 1961 — Section 3, 4

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, 15, 16, 53

Penal Code, 1860 (IPC) — Section 304(B), 498A

Citation : (2013) 4 ALJ 632

Hon'ble Judges : Vishnu Chandra Gupta, J

Bench : Single Bench

Advocate : Rahul Agnihotri and Manjusha Kapil, for the Appellant;

Final Decision : Allowed

Judgement

Vishnu Chandra Gupta, J.—This is a criminal revision u/s 53 of Juvenile Justice (Care and Protection of Children) Act, 2000 (for short the "Act") against the order of rejecting the bail of revisionist, a juvenile in conflicting with law, by Juvenile Board, Lakhimpur Kheri and order confirming the same by the Appellate Court. The order impugned dated 3.1.2012 was passed by Juvenile Board, Lakhimpur Kheri in view of section 12 of the Act on the ground that there are reasonable grounds to believe that the release of petitioner would likely to bring him into association with know criminal and his release would defeat the ends of justice. This order was upheld by Additional Sessions Judge, Court No. 2, Lakhimpur Kheri, the appellate court, in appeal No. 3 of 2012 vide order dated 20.03.2012.

2. Heard the learned counsel for the revisionists Shushri Manjusha Kapil, the learned counsel appearing on behalf of opposite party Sri Ram Baksh Rawat, Advocate holding brief of Sri Rajiv Dubey, and learned A.G.A. and perused the record of this case summoned from the Juvenile Board as well as of this revision.

3. The aforesaid orders were assailed and bail was pressed mainly on the ground by the counsel for revisionist that a juvenile in conflict with law cannot be detained in custody at any place or kept under supervision for more than a period of three years. It was further submitted that even if the juvenile in conflict with law is found guilty for any offence, he could not be detained beyond maximum period of three years under sections 15 and 16 of the Act.

4. Learned counsel appearing for opposite party as well as the learned A.G.A. contended that the revisionist was declared juvenile by the order dated 24.8.2011 passed by Special Judge/Addl. Sessions Judge, Lakhimpur Kheri. Thereafter, the case was sent to Juvenile Board and only after 24.8.2011, the revisionist will deemed to be in custody within the meaning of sections 15 and 16 of the Act.

5. The sole question for consideration before this court is;

Whether in computing the period of three years, for which a juvenile in conflict with law may be kept in supervision or detained in custody in view of under sections 15 or 16 of the Act, would include the period of judicial custody of that person before declaring him to be a juvenile?

6. The provisions with regard to competence of the juvenile board in passing the orders against the juvenile may be taken into consideration. The order may be passed regarding juvenile are mentioned in Sections 15 of the Act. The orders which may not be passed against the juvenile are mentioned in Section 16 of the Act. Sections 15 and 16 are extracted hereinbelow:

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,-

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed

under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(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.

2. The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.

3. Where an order under clauses (d), (e) or (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interest of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law. Provided that if at any time afterwards it appears to the Board on receiving a report from the probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

(4) The Board shall while making a supervision order under sub-section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer.

16. Order that may not be passed against juvenile.-(1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may be extended to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security:

Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in

conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.

(2) On receipt of a report from a Board under sub-section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided u/s 15 of this Act.

7. This Court asked for the report regarding detention of the accused/revisionist Sunil Kumar from the Board. The board submitted its report on 13th February, 2013. The Principle Magistrate of Juvenile Board, Sri Devendra Pratap Singh informed that though the revisionist was in judicial custody in the aforesaid case earlier to the date of taking cognizance in this matter by the Board but his custody for the purpose of aforesaid act could be commenced from the date when the court took cognizance in the matter after deciding the juvenility of the revisionist. On the basis of this the Principal Magistrate of Board observed that he was declared juvenile on 24.8.2011 and since then if custody is taken into consideration, the period of three years will not be completed.

8. The fact in brief to decide the revision are that the petitioner is in jail from the date of his arrested in connection with this crime on 15.11.2009 and since then he is continuing in judicial custody. The case was committed to the court of Sessions for trial of the accused under sections 304(B) and 498A, I.P.C. and 3/4 of Dowry Prohibition Act. When the case was pending before the court of Session, the revisionist moved an application to declare him juvenile in accordance with the provisions of the Act. The court declared him juvenile by its order dated 24.8.2011, which shows that the revisionist remained in judicial custody from 15.11.2009 to 24.8.2011 before the regular court till he was declared juvenile by Addl. Sessions Judge vide order dated 24.8.2011. After 24.8.2011 the case was sent to Juvenile Board for his trial. His bail application was twice rejected by the Juvenile Board and since than he is continuing in judicial custody. If this period is taken into consideration, the period of three years of the detention of revisionist would be completed on 14th of November, 2012.

9. In view of section 16 of the Act juvenile is conflict with law cannot be sentenced to death or imprisonment for any term or committed to prison in default of payment of fine or in default of furnishing the security. Proviso to sub-section (2) of Section 16 of the Act clearly provides that period of detention so ordered shall not exceed the maximum period provides u/s 15 of the Act. Clauses (e), (f), and (g) of sub-section (1) of section 15 and sub-section (3) of section 15 provide that in any case the period of supervision or detention in some protective home or any other place cannot in any case exceed more than three years.

10. Section 428 of the Criminal Procedure Code (for short "Cr.P.C.") provides that period of detention undergone by the accused to be set off against the sentence of imprisonment. The provision of section 428 of Cr.P.C. are extracted hereinbelow:

428. Period of detention undergone by the accused to be set off against the sentence of imprisonment.--Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the date of such conviction, shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to remainder, if any, of the term of imprisonment imposed on him.

Provided that in case referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section.

11. In view of the fact that sentence of imprisonment cannot be passed against juvenile in conflict with law but the period already undergone by him in judicial custody before declaration of his juvenility cannot be ignored while computing the total period of three years.

12. The provisions of the aforesaid Act are part of beneficial legislation. It is incumbent upon the courts before proceeding with the trial or committing the accused in judicial custody in a prison to ensure that the person before court is not a juvenile. During investigation, inquiry or trial the accused may apply to the court for declaring him juvenile. In this process if he is in judicial custody and not allowed to be released on bail, will deemed to be in judicial custody for the purpose of computing a period of three years as provided in Sections 15 and 16 of the Act. The provisions of section 428 of Cr.P.C. can be applied in computing the period of detention u/s 16 of the Act.

13. In this case period of detention of three years has already completed on 15th of November, 2012 and this fact has not been disputed either by the state or by the complainant. In such situation the consideration u/s 12 of the Act for granting bail to juvenile would become redundant. Hence, in view of the aforesaid facts and circumstances of the case the revision deserves to be allowed.

14. Consequently, the revision is allowed and the order impugned dated 3.1.2012 passed by Juvenile Board rejecting the bail of revisionist Sunil Kumar and the order dated 20.3.2012 passed by Addl. Sessions Judge, court No. 2, Lakhimpur Kheri in Appeal No. 3 of 2012 is hereby set a side. The revisionist Sunil Kumar is admitted to bail on executing a personal bond with two sureties of the like amount to the satisfaction of the Board, the Board, while releasing the accused/revisionist, may pass any appropriate order in the light of section 15 of the Act.

15. As the trial is in progress before the Juvenile Board, the record of Juvenile Board be sent back immediately. The Registrar of this Court will ensure that the record of the Juvenile Board and of the Trial Court be sent back positively within a month from the date of this order. The Revisionist shall appear before Juvenile Board for further proceeding in the trial on 22.04.2013.