2017 (2) ACR 1850

(ALLAHABAD HIGH COURT)
Rajul Bhargava, J.
Crl. Revision No. 1639 of 2017
Decided on June 2, 2017

Km. Fatma (Minor)
Versus
State of U. P. and another

Juvenile Justice (Care and Protection of Children) Act, 2000—

Section 12—Bail—To juvenile—Refusal to grant—There was no reliable evidence of involvement of revisionist in murder—Bail to juvenile could not be refused in uncared manner and on conjectures and surmises—There was total absence of material and reasonable ground for believing that after being released on bail revisionist was likely to come in association with known or unknown criminals or exposed her to moral, physical and psychological danger—Impugned orders set aside—Revisionist directed to be released on bail on her mother executing personal bond of ₹ 50,000 with two solvent sureties each in like amount to the satisfaction of Principal Judge concerned—Revision allowed.

[Paras 2, 3, 13, 15 and 16]

Cases referred.—*2009 Cri LJ 2002 (Para 11) ; 2007 (1) ACR 319 (Para 12).*

Counsel for the Revisionist : Hemendra Pratap Singh and Anshu Singh.

Counsel for the Opp. Parties : A.G.A. and Pankaj Bharti.

JUDGMENT

Rajul Bhargava, J.—This revision under Section 53 of Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'Act') has been preferred by Km. Fatma through her mother, natural guardian, Smt. Rabiya for being released on bail in Case Crime No. 480 of 2016 under Sections 302, 120B and 34, I.P.C., Police Station Kandhla, District Shamli.

2. For seeking desired relief, the revisionist has challenged the impugned order dated 28.4.2017 passed by the Principal Judge, Juvenile Justice Board, Muzaffarnagar in Misc. Case No. 13/12-A of 2017, *State v. Km. Fatma,* and the order dated 6.5.2017 passed by Special Judge (P.O.C.S.O. Act), Juvenile Justice/Additional Session Judge, Court No. 11, Muzaffarnagar in Juvenile Appeal No. 11 of 2017, *Km. Fatma v. State of U. P.* By the aforesaid orders, Juvenile Justice Board and the appellate court both have refused to release the revisionist on bail in aforementioned case crime.

3. Before entering into discussion on the contentions raised by the learned counsel for the revisionist and opposition in this revision, a quick search light on the background facts indicate that a first information report was lodged by one Arif Khan resident of Mohalla Sarab Gyan, Police Station Kandhla, District Shamli against unknown persons with the averment that on 20.9.2016 at about 9.00 p.m. his father, Shamim Ahmed had gone to another house for sleeping and about 9.30 p.m. his father was murdered by some unknown assailants by causing knife injuries. Neither anyone was named in the F.I.R. nor any suspicion was laid by the first informant on anyone. During investigation the statement of first informant under Section 161, Cr. P.C. was recorded who repeated version of first information report and again he did not name any accused or laid suspicion. According to the prosecution during investigation on the information of an informer of police (*Mukhbir Khas*), Riyazuddin son of Aslam, Shakoor, Abid son of Shakoor, Amna, Abida and Fatma daughters of Shakoor were involved in the murder of Shamim Ahmad. The name of the revisionist emerged from the confessional statement of Riyazuddin recorded on 22.9.2016 while in custody before the police wherein he has stated that he alongwith revisionist and other accused persons committed murder of the deceased as the deceased used to keep evil eye on some of the women folk of their family. On the basis of the invincible confessional statement of co-accused, the revisionist and other accused were arrested on 22.9.2016 from their house and since then the revisionist is in custody. The record indicates that nothing incriminating article was recovered from the possession of the revisionist and on the basis of aforesaid scanty evidence charge-sheet was submitted against her.

4. It seems that after the revisionist was arrested by the police an application on her behalf was moved by her mother for declaring her a juvenile. *Vide* order dated 3.4.2017 (Annexure-10 to the affidavit filed in support of the revision), the Juvenile Justice Board after recording evidence and perusing the material placed before it, recorded finding that on the date of the incident revisionist was thirteen years two and half months' old and she thus was declared a juvenile in conflict with law. The basis of the finding recorded by the Juvenile Justice Board is not being mentioned as they have been dealt with *in extenso* in the order dated 3.4.2017. After being adjudged juvenile the revisionist moved an application for being released on bail but her prayer for bail was refused by the Board *vide* its order dated 28.4.2017 by recording finding that there are chances and likelihood that after being released on bail she may fall in company of the known and unknown criminals and, therefore, her moral and psychological trait/qualities may deteriorate with the additional finding that her release on bail will defeat the cause of justice. It may be recorded that the Board has simply reproduced the conditions for grant/refusal of bail as contemplated under Section 12 of the Act. He has only referred to the report of District Probation Officer dated 20.4.2017.

5. Aggrieved by the rejection of her bail prayer by the Board, the revisionist preferred a Juvenile Appeal No. 11 of 2017 under Section 52 of the Act before Special Judge (P.O.C.S.O. Act), Juvenile Justice/ Additional Session Judge, Court No. 11, Muzaffarnagar, who failed to secure her release from there. The Special Judge *vide* its order dated 6.5.2017 negated her release prayer. Lower appellate court dismissed the appeal more or less repeating the findings recorded by the Juvenile Justice Board, hence the revisionist has preferred instant revision.

6. I have heard Sri Hemendra Pratap Singh, learned counsel for the revisionist in support of the revision and Sri Pankaj Bharti, learned counsel for the opposite party No. 2 as well as Sri Arunendra Pratap Singh, learned A.G.A. for the State in opposition.

7. Criticising and castigating both the impugned orders, it has been contended by the learned counsel for the revisionist that the charges against the revisionist who is a young girl aged about 13 years is absolutely false and fabricated. It is submitted that during entire investigation, no credible and reliable evidence against her was collected and she has been charge-sheeted solely on the basis of confessional statement of co-accused for her involvement in the murder of the deceased. She was neither named in the F.I.R. nor any incriminating article was recovered from her possession. It is also stated that there was nothing on record to indicate any criminal proclivity of the revisionist who in fact was a student of class VI. He has also pointed out that courts below have failed to consider the fact that there was no direct or indirect evidence against the revisionist to connect her with present case. The other co-accused, whose names have also emerged in the confessional statement of co-accused, Riyazuddin, have already been released on bail by this Court. He has strenuously argued that lower appellate court has also not applied its mind independently and it appears to have swayed by the fact that the revisionist alongwith her family members had committed the gruesome murder of father of the first informant, Shamim Ahmad by sharp edged weapon. The findings recorded by the courts below is absolutely contrary to the material on record and on pure hypothetical basis and the same are totally unjust and uncalled for. The opinion by the Juvenile Justice Board and the appellate court that after being released on bail, the revisionist is likely to fall in company of criminals and thereby her moral and psychological qualities will deteriorate, is based on unfounded assumptions. It is, thus, prayed that

the bail prayer of the revisionist be accepted. She may be released on bail and the instant revision be allowed.

8. Sri Pankaj Bharti, learned counsel for the opposite party No. 2 and learned A.G.A. for the State argued to the contrary and submitted that revisionist has been involved in a gruesome murder case and the report of the District Probation Officer also indicates that possibility of revisionist to come in close contact with known and unknown criminals cannot be ruled out and there is also possibility of her being exposed to moral and psychological danger in case she is released on bail. Therefore, the revisionist is not entitled for her release from jail.

9. The case of the revisionist has to be considered in the light of exposition of law.

10. I have considered the arguments of both the sides and have gone through the material on record. Before vetting facts and circumstances of the revision a quick glimpse on the relevant provision governing bail to a juvenile in conflict with law as enacted in Juvenile Justice Act. Section 12 of the Act deals with such power by the Board or the Courts. It enacts :

> "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 (or placed under the supervision of a Probation Officer or under the care of any fit institution or fit person) 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 be brought before a Board.
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> (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."

What is discernible from above section is that a juvenile should be granted bail unless his case falls within one of the exceptions engrafted therein and those are that "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."

Unless the aforesaid rider is satisfied bail to a juvenile should not be refused. It is significant to note that gravity of offence or it's seriousness alone, divorced from above exceptional reasons, has not been taken as a rider by the legislature to deny bail to a juvenile in conflict with law. It is only danger to his moral, physical and psychological qualities and likelihood of his attaching himself with criminals or his release defeating ends of justice that Board or the courts may not exercise discretion in his favour and enlarge him on bail. For such a determination no hard and fast rule of inflexible nature can be laid down as it depends on facts and circumstances peculiar to each case.

There is no dearth of judicial pronouncements supporting above view and, therefore, without being voluminous some of the decisions are referred to below.

11. In *A. Juvenile v. State of Orissa, 2009 Cr LJ 2002*, it has been held :

> "*7.* A close reading of the aforementioned provision shows that it has been mandated upon the court to release a person who is apparently a juvenile on bail with or without surety, howsoever heinous the crime may be and whatever the legal or other restrictions containing in the Cr. P. C. or any other law may be. The only restriction is that if there appear reasonable grounds for believing that his release is likely to bring him into association with any known criminal or expose him to any moral, physical or psychological danger or his release would defeat the ends of justice, he shall not be so released."

12. In *Sanjay Chaurasia v. State of U. P. and another, 2006 (4) All LJ 353 : 2007 (1) ACR 319*, it has been laid down by this Court as under :

> "*10.* In case of the refusal of the bail, some reasonable grounds for believing above-mentioned exceptions must be brought before the courts concerned by the prosecution but in the present case, no such ground for believing any of the above-mentioned exceptions has been brought by the prosecution before the Juvenile Justice Board and appellate court. The appellate court dismissed the appeal only on the presumption that due to commission of this offence, the father and other relatives of other kidnapped boy had developed enmity with the revisionist, that is why in case of his release, the physical and mental life of the revisionist will be in danger and his release will defeat the ends of justice but substantial to this presumption no material has been brought before the appellate court and the same has not been discussed and only on the basis of the presumption, Juvenile Justice Board has refused the bail of the revisionist which is in the present case is unjustified and against the spirit of the Act."

13. It transpires that *prima facie* there is no reliable and credible evidence of involvement of the revisionist in the murder. The bail to a juvenile cannot be refused in an uncared manner and on conjectures and surmises which should be done in accordance with Section 12 of the Act. There was total absence of material and no reasonable ground existed for believing that after being released on bail, the revisionist is likely to come in association with known or unknown criminals or expose her to moral, physical and psychological danger and the finding that the ends of justice would be defeated by granting bail, is based on no material and in my opinion it is purely conjectural and hypothetical. I may record that Principal Judge, Juvenile Justice Board has dealt with the case in a very casual and perfunctory manner without assigning reasons or dealing with the facts and circumstances which would disentitle her to be enlarged on bail. In this behalf, I have also carefully gone through the report of the District Probation Officer that too is shorn of necessary facts on which he has drawn his conclusions which are mere reproduction of the provision of Section 12 of the Act. The appellate court did not look into the decisions of this Court cited before him from a correct perspective which in fact supported the revisionist's pleas.

14. From the discussion made hereinabove, I am of the opinion that both the courts below have erred in exercising their discretionary power in

favour of the revisionist and the impugned orders suffer from patent error of law as well as of fact and cannot be sustained.

15. Consequently, the revision is *allowed*. Both the impugned orders *i.e.* order dated 28.4.2017 passed by the Principal Judge, Juvenile Justice Board, Muzaffarnagar in Misc. Case No. 13/12-A of 2017, *State v. Km. Fatma* and the order dated 6.5.2017 passed by Special Judge (P.O.C.S.O. Act), Juvenile Justice/Additional Session Judge, Court No. 11, Muzaffarnagar in Juvenile Appeal No. 11 of 2017, *Km. Fatma v. State of U.P.*, are hereby set aside.

16. The revisionist, Km. Fatma is hereby directed to be released on bail on her mother, Smt. Rabiya wife of Shakoor executing a personal bond of ₹ 50,000 with two solvent sureties each in the like amount to the satisfaction of Principal Judge, Juvenile Justice Board, Muzaffarnagar on the condition that she will keep the revisionist in her proper care and custody and will constantly contact her school management, if she continues with studies and will report to the Juvenile Justice Board, Muzaffarnagar once in every two months regarding the progress made by the revisionist.