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MANU/UP/4954/2018

Equivalent Citation: 2018 (105) ACC 396

IN THE HIGH COURT OF ALLAHABAD

Criminal Revision No. 708 of 2017

Decided On: 03.04.2018

Appellants: **Babloo**
Vs.
Respondent: **State of U.P. and Ors.**

Hon'ble Judges/Coram:
Jahangir Jamshed Munir, J.

Counsels:
For Appellant/Petitioner/Plaintiff: Sanjeev Kumar Trivedi, Rajeev Kumar Singh Parmar and Sujeet Kumar

For Respondents/Defendant: A.G.A.

JUDGMENT

Jahangir Jamshed Munir, J.

1. Service upon O.P. No. 2 is held sufficient in view of office report dated 30.5.2017.

2. Heard Sri Umesh Kumar holding brief of Sri Rajeev Kumar Singh Parmar, learned Counsel for the revisionist and Sri Saquib Meezan, learned AGA for the State and perused the record.

3. This criminal revision is directed against the order passed by Sri Surya Prakash Sharma Additional Sessions Judge, F.T.C. Court No. 1, Kannauj in Criminal Appeal No. 21 of 2016 dismissing the said appeal and affirming an order of the Juvenile Justice Board, Kannauj dated 5.11.2016 in Case Crime No. 579 of 2016 under sections 376-D, 504, 506 IPC, 66-A I.T. Act and section 3/4 POCSO Act declining to grant bail to the revisionist, a declared juvenile.

4. The submission of learned Counsel for the applicant is that both Courts below have passed the order impugned cursorily and without adverting to relevant evidence on record or applying the standards prescribed by law for the decision of a bail plea by a juvenile.

5. The facts in short giving rise to the present revision are that an FIR dated 8.9.2016 came to be lodged at 2.00 PM about the occurrence that had taken place some 15-20 days antedating the registration of the FIR where the first informant who is opposite party No. 2 and the father of the prosecutrix said to, be a minor girl of 14 years. The allegations in the first information report run to the effect that the informant is a native of village Chatnepur P.S. Saurik, District Kannauj; that his daughter Km. Neelam aged about 14 years went to graze her goats alongwith a neighbor an elderly woman of 60 years, one Sridevi W/o. Shiyaram who also used to go to graze her likestock; that it is alleged that natives of his village Vijay Singh S/o. Jeetu @ Jitendra and Babloo S/o. Surendra Singh Thakur (revisionist) ravished his

daughter and captured some of those obscene moments on a video recording device done by one Sanjesh @ Vinay S/o. Kishan Batham; that the three accused above named would blackmail his daughter with the aid of the captured video on their mobile saving in the first information that this occurrence took place 15-20 days ago but his daughter shared this information with him on 7.9.2016; that the accused on being confronted about their aforesaid disgraceful act by the informant and his wife resorted to a flourish of abuses with a threat to do the first informant to death in case he took any proceedings against them or reported the matter to the police or even shared the matter with anyone; and, that the informant said that there could be other boys involved, in association with the nominated accused, but all the same the incident has left girl and women in the village besides himself in a reaction of fear and indignation and women feel unsafe to step out of their homes with a concluding request for necessary action to the police.

6. Adverting to the submission of learned Counsel for the revisionist it would be gainful to refer to the provisions of section 12(1) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the "Act"). The provisions of section 12(1) of the Act that are apposite reads thus:--

> "12. Bail to a person who is apparently a child alleged to be in conflict with law.--(1) When any person, who is apparently a child and is alleged to have committed a bailable or non-bailable offence, is apprehended or detained by the police or appears or 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 person:
>
> > Provided that such person shall not be so released if there appears reasonable grounds for believing that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice and the Board shall record the reasons for denying the bail and circumstances that led to such a decision."

7. Learned Counsel for the revisionist has submitted that the Courts below have passed the impugned orders ignoring the fact that the revisionist is a juvenile. His date of birth is 10.10.1998 and with reference to the date of occurrence he was below 18 years on the date of occurrence. Being a juvenile, the revisionist is entitled to bail in accordance with the proviso to section 12(1) of the Act. It is submitted that the Courts below have ignored the provisions of section 15(1) of the Act that are mandatory in nature. A perusal of the impugned order would show that both Courts below have not at all considered the report of Probation Officer, it is urged. It is emphasised that in case of a juvenile release on good conduct under the care of parents or other fit person is an option, even if guilt is established by virtue of section 15(1)(e) of the Act. The plea for bail would have to be considered in that perspective eschewing institutional incarceration, but to all that Courts below have not applied their mind. In particular, it has been argued that the Courts below have not indicated any reasonable ground for their satisfaction that in case the revisionist were released on bail, he is likely to come into association with any known criminal or, his release would expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

8. A perusal of the impugned order passed by the Appellate Court would show that learned Judge hearing the appeal has been swayed by the fact that revisionist is 17 years and 10 months old, and, therefore, he is nominally a juvenile but in fact almost an adult. The Judge in appeal for his approach to the above fact has drawn inspiration from the provisions of sections 15 and 18(3) of the Act. The provisions of sections 15 and 18 of the act are being extracted herein:--

> "15. Preliminary assessment into heinous offences by Board.--(1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of section 18:
>
> > Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
>
> Explanation.--For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
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> (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):
>
> > Provided that the order of the Board to dispose of the matter shall be [appealable] under sub-section (2) of section 101.
> >
> > Provided further that the assessment under this section shall be completed within the period specified in section 14."
>
> "18. Orders regarding child found to be in conflict with law.--(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,--
>
> > (a) allow the child to go home after advice or admonition by following appropriate inquiry and counselling to such child and to his parents or the guardian;
> >
> > (b) direct the child to participate in group counselling and similar activities;
> >
> > (c) order the child to perform community service under the supervision of an organisation or institution, or a specified person, persons or group of persons identified by the Board;

(d) order the child or parents or the guardian of the child to pay fine:

Provided that, in case the child is working, it may be ensured that the provisions of any labour law for the time being in force are not violated;

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

(f) direct the child to be released on probation of good conduct and placed under the care and supervision of any fit facility for ensuring the good behavior and child's well-being for any period not exceeding three years;

(g) direct the child to be sent to a special home, for such period, not exceeding three years, as it thinks fit, for providing reformative services including education, skill development/counselling, behavior modification therapy, and psychiatric support during the period of stay in the special home:

Provided that if the conduct and behavior of the child has been such that, it would not be in the child's interest, or in the interest of other children housed in a special home, the Board may send such child to the place of safety.

(2) If an order is passed under clauses (a) to (g) of sub-section (1), the Board may, in addition pass orders to--

(i) attend school; or

(ii) attend a vocational training centre; or

(iii) attend a therapeutic centre; or

(iv) prohibit the child from visiting, frequenting or appearing at a specified place; or

(v) undergo a de-addiction programme.

(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences."

9. A perusal of the provisions of sections 12 to 18, all of which form part of an integrated scheme in Chapter IV of the Act, entitled the "Procedure in Relation to Children in Conflict with Law" would show that a child in conflict with law who is a juvenile, before he can be dealt with as an adult on the ground that he is above the age of 16 years, where he has committed a heinous offence as defined under the Act requires a preliminary assessment to be made by the Board about his mental and physical capacity to commit such an offence, ability to understand the consequence

of the offence, and, the circumstances in which he allegedly committed the offence, whereafter the Board may pass an order in accordance with section 18(3) of the Act, that there is a need for trial of the said child as art adult, before the Childrens Court having jurisdiction to try offences of that glass,

10. In the present ease, the Judge in the Court of appeal has assumed jurisdiction to treat the case of the revisionist on his spontaneous assessment, while hearing an appeal from the order of the Juvenile Justice Board refusing bail, to treat the revisionist as an adult, even though there is no order made in relation to the revisionist under section 15(1) read with section 18(3) by the Board which has to be done by the Board on relevant and specific considerations mentioned there, and, in the manner prescribed, paying due regard to the proviso and the explanation to section 15(1) of the Act. The learned Judge in the absence of an assessment made by the Board under section 15(1) and an order passed under section 18(3), would in the opinion of this Court, have no jurisdiction to treat and consider the revisionist as an adult by simply falling back on his chronological age that is near adulthood, and, the bald allegation against him in the FIR, which is precisely what the learned Judge in the Court of appeal has done. The Appellate Court, or for that matter the Juvenile Justice Board, were required to strictly scrutinize the case of the revisionist for bail in accordance with parameters prescribed by section 12(1) of the Act about which an accurate statement of the law is to be found in Nitin Pal (Minor) v. State of U.P. and another, MANU/UP/0619/2015 : 2015 (89) ACC 881 (Alld.) paragraphs 11 and 12 of the report in Nitin Pal (Minor) (supra) are relevant and extracted below:--

> "11. In view of the mandate aforesaid, it is obvious that if the aforesaid conditions are existing and there is reasonable likelihood of minor coming into association with any known criminal or he is likely to be exposed to moral, physical or psychological danger or his release would defeat the ends of justice, then the bail to the delinquent juvenile in conflict with law will not be allowed.
>
> **12.** Even as per settled position of law, the merits/gravity of the offence will not be the sole guiding factor for disposal of the bail application of the delinquent juvenile in conflict with law. It is true that the first information report has been lodged against the revisionist under section 376(2)(g) and 364 I.P.C. but gravity of the offence loses significance in view of the report of the District Probation Officer dated 20.07.2013 annexed as Annexure No. 11 to the affidavit filed in support of this revision, wherein, it has been specifically stated that the parents of the minor are willing to reform their child. This positively indicates that parents are ready to take custody of their son with a will to improve upon his life."

11. This Court is, therefore, of opinion that the Judge in the Appellate Court fell into an error in proceedings to consider the case of the revisionist, treating him to be an adult, in the absence of a declaration to that effect made by the Juvenile Justice Board under section 18(3) of the Act, after an inquiry in accordance with section 15(1) of the Act. This Court also finds that the Appellate Court has hardly approached the revisionist's plea for bail on the parameters set out in section 12(1) of the Act, and, all of which are carried in the proviso of section 12(1). The Appellate Judge instead of referring to facts and evidence, on the basis of which he found the revisionist not entitled to bail under any of the three specified exceptions to the rule of bail to juveniles under the proviso to section 12(1), has chosen to paraphrase the provisions of section 12(1), and, the three exceptions mentioned in the proviso

thereto bereft of any specific reference to the revisionist's case, assessed in accordance with the provisions of the Act.

12. Thus, this Court finds that the Appellate Court has utterly failed to exercise jurisdiction as the Court of appeal, and, has proceeded to decide the appeal in a casual manner on irrelevant considerations that the law does not countenance. The two Courts below are in unanimous error in not taking into consideration the social investigation report, which in this case is there on record from the District Probation Officer, and, carries relevant information for the purpose of exercise of jurisdiction under section 12(1) of the Act.

13. The order passed by the Juvenile Justice Board is so cursory that it hardly carries any reasoning and is no more than an ipse dixit of the members of the Board, who have spoken without assignment of any reason. The order of the Board on this count alone is flawed. Thus, seen this Court finds that both the Appellate Court and the Juvenile Justice Board have not attended to the plea of bail brought by the revisionist in accordance with law, which they were duty bound to do. It, therefore, appears appropriate under the circumstances to remand the matter to the Juvenile Justice Board for decision afresh bearing in mind the views expressed in this judgment.

14. In the result, this revision succeeds and is allowed. The impugned order dated 7.1.2017 passed by Additional Sessions Judge, Court No. 1, Kannauj in Criminal Appeal No. 21 of 2016 and by the Juvenile Justice Board, Kannauj in Case No. 28 of 2016 relating to Case Crime No. 579 of 2016, under sections 376-D, 504, 506 IPC and section 3/4 POCSO Act and section 66-A I.T. Act, P.S. Saurikh, District Kannauj are hereby set aside. The bail application made by the revisionist would stand restored to file of the Juvenile Justice Board, Kannauj with a direction to decide the same afresh in accordance with the guidelines in this judgment within a period of 15 days of receipt of a certified copy of this order by the Board.

The office is directed to forthwith forward a copy of this order to the Juvenile Justice Board, Kannauj for compliance.

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