Mohit Vs State of U.P. and Another

Criminal Revision No. 1631 of 2013

Court: Allahabad High Court

Date of Decision: Aug. 7, 2013

Citation: (2013) 3 ACR 2408 : (2013) 8 ADJ 216 : (2013) 83 ALLCC 242

Hon'ble Judges: Anil Kumar Sharma, J

Bench: Single Bench

Advocate: Rajiv Lochan Shukla, for the Appellant; Sushil Kumar Dubey, for the Respondent

Final Decision: Dismissed

Judgement

Anil Kumar Sharma, J.
Heard learned counsel for the parties and perused the affidavits and other documents filed by the parties.

Challenge in this revision is to the order dated 18.5.2013 passed by Additional Sessions Judge/Special Judge (SC & ST Act), Etawah in Criminal

Appeal No. 43 of 2013 whereby the application of the revisionist u/s 12 of Juvenile Justice Care and Protect Act (hereinafter referred to as the

"J.J. Act" for grant of bail in case crime No. 36/2013 u/s 354(1)(i), 376(2)(H)/511, 306 and 509 IPC P.S. Jaswant Nagar, District Etawah had

been rejected.

It was alleged that on 25.2.2013 at about 7 a.m. in the Main Market of Jaswant Nagar the revisionist alongwith his four associates caught hold the

15 years" old daughter of complainant while she was going for tuition .She was dragged into a lane and all of them attempted to forcibly commit

rape with her and also showed her obscene photographs. On her alarm witnesses came to her rescue. The victim consumed some poisonous

substance in the market. She came back home alongwith her brother and narrated the incident. She became unconscious and was admitted in

Saifai hospital where she died in the evening of 26.2.2013. The revisionist was declared juvenile by the Juvenile Justice Board vide order dated

20.4.2013, however, his bail application was rejected after obtaining police report and report of the Probation Officer. His aforesaid appeal filed

before Sessions Judge had been rejected vide judgment dated 18.5.2013. The learned Additional Sessions Judge while dismissing the appeal of

the revisionist has held that there is every likelihood of the delinquent juvenile after release on bail would associate with criminals and expose him to

moral, physical or psychological danger.

2. Castigating the impugned judgments, learned counsel for the revisionist has argued there is no evidence to show that if the juvenile-revisionist is

released on bail, then 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 ends of justice. He further submitted that the gravity of the offence committed cannot be a ground to

decline bail to a juvenile. Learned Courts below in quite cursory manner have declined bail to the applicant-petitioner. His submission is that the

impugned orders passed by the Courts below are not based upon definite facts and they are based on surmises and conjectures as they have not

considered the report of the police and the Probation Officer.

3. Per contra learned counsel for the opposite party No. 2 learned AGA have contended that considering the nature of offence the revision is liable

to be dismissed. They have defended the impugned order passed by the Juvenile Justice Board in declining the bail to the petitioner as also the

judgment passed by the Appellate Court upholding the order passed by the Juvenile Justice Board.

4. In my humble opinion, the Act of 2000 being a beneficiary and social reforms oriented legislation, should be given full effect by all concerned,

whenever matters relating to juvenile come for consideration before them. It is not disputed that bail application of a delinquent juvenile is to be

considered with the provisions contained u/s 12 of the J.J. Act, which is as under:

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 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.

(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.

(3) When such person is not released on bail under Sub-section (1) by the Board it shall, instead of committing him to prison, made 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.

The above provisions clearly show that once a person is held to be a juvenile in conflict with law, then Section 12 of the Act would govern the

question of grant of bail and the custody of juvenile and it will not be governed by the provisions of the Code of Criminal Procedure. It is important

to note that gravity or seriousness of the offence, divorced from above exceptional reasons, has not been taken as an obstacle or hindrance by the

legislature to refuse bail to a delinquent juvenile. No straight jacket formula of inflexible nature can be laid down as it would depend on facts and

circumstances of each case. Words ""ends of Justice"" should be confined to those facts which show that the grant of bail itself is likely to result in

injustice. For example, there is likelihood of the juvenile delinquent, to whom the bail is granted, interfering with the course of justice or he may

pressurize the prosecution witnesses; he is likely to abscond from the jurisdiction of the Court. There may be other examples also. Burden to show

that if delinquent juvenile is released on bail there appears a reasonable ground 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 is on the

prosecution. In the instant case no reason has been assigned by appellate Court in the impugned order to arrive at conclusion that if petitioner is

released on bail it will defeat the ends of justice. Following observations have been made by the learned Additional Sessions to dismiss the appeal

of the revisionist:

Had cogent reasons for reaching the above conclusions been given in the impugned judgment, then it would have helped this Court in evaluating

them on the touchstone of probabilities.

5. The report of the Probation Officer does not substantiate the conclusion drawn by the appellate Court. He has reported that the father of the

revisionist is a lecturer, mother is house wife and he has one brother and one sister (both married). Nothing adverse has been noted in the report

about the family and previous conduct and character of the revisionist. In the end of the report the Probation Officer under heading has observed

as under:

6. In the counter-affidavit the opposite party No. 2 has stated that the father of the revisionist has criminal proclivities as he was involved in three

criminal cases. First case is u/s 307 IPC being crime No. 180 of 1998, the other is case crime No. 179 of 2007 u/s 409 IPC as he has illegally

drawn salary for the period he was confined in jail in the 1st case and last is a non-cognizable offence under Sections 323 and 504 IPC. In

rejoinder-affidavit it has been averred that father of the revisionist has been acquitted in case crime No. 180 of 1998 and the case of 2007 is

pending. Thus, it cannot be said that the father of the revisionist has bad criminal antecedents. He is still a lecturer in an Inter College. The other

siblings of the revisionist are married, so it is difficult to comprehend that the parents of the revisionist would have no control over him. In view of

the above discussion, in my opinion the impugned order dated 18.5.2013 passed by the appellate Court and the order dated 27.4.2013 passed by

Juvenile Board are not sustainable in law and both the Courts below have committed jurisdictional error and illegality in passing the orders.

Consequently, revision is allowed and the aforesaid impugned orders are set aside. It is directed that revisionist shall be released on bail on

executing a personal bond by his natural guardian with two solvent sureties each in the like amount to the satisfaction of the Principal Magistrate,

Juvenile Justice Board, Etawah with the stipulation that on all the subsequent dates of hearing, he shall produce the delinquent juvenile before the

said Board during pendency of the inquiry and his guardian shall keep proper control and look-after of the juvenile delinquent and keep him away

from the company of known criminals. In case of default, the Board would be competent to cancel the bail of the revisionist after giving an

opportunity of hearing to him.