

**(2014) 01 AHC CK 0055**

**Allahabad High Court**

**Case No:** Criminal Revision No. 2639 of 2011

Kabutar @ Indrasen Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** Jan. 17, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397, 401
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 12, 14, 15, 15 (g), 20
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2014) 2 ACR 1224 : (2014) 2 ADJ 219

**Hon'ble Judges:** Kalimullah Khan, J

**Bench:** Single Bench

**Advocate:** Manvendra Singh, Ramesh Kumar Singh, Ali Hasan, Rajeev Upadhyay, Girish Dubey, Budha Prakash and R.A. Mishra, Advocate for the Appellant; Sushil Kumar, S.K. Pal and Shyam Singh, Advocate for the Respondent

**Final Decision:** Allowed

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**Judgement**

Kalimullah Khan, J.

Heard learned counsel for the revisionist-applicant, learned A.G.A. and perused the record.

This criminal revision has been preferred u/s 397/401 of Criminal Procedure Code read with Section 53 of Juvenile Justice (Care & Protection of Children) Act, 2000 against the impugned order dated 16.5.2013 passed by learned Additional Sessions Judge, Court No. 7, Allahabad in criminal appeal No. 31 of 2011 "Kabutar alias Indrasen Singh v. State" which has arisen out of order dated 31.1.2011 passed by Juvenile Justice Board, Allahabad in crime No. 384 of 2010 u/s 302 I.P.C., P.S. Karchhana, District Allahabad.

The brief facts of the case are that in a triple murder case, revisionist-applicant Kabutar alias Indrasen Singh was found involved during the course of investigation, F.I.R. of which was registered at crime No. 384 of 2010 u/s 302 I.P.C., P.S. Karchhana, District Allahabad. The revisionist-applicant claimed his juvenility in the Juvenile Justice Board. According to him, on the alleged date of incident of the aforesaid murder case, he was below 18 years of age and his date of birth in the High School certificate was shown as 21.5.1994. The Juvenile Justice Board held him juvenile but his bail prayer was rejected vide order dated 31.1.2011 on the ground that the mother, guardian of the revisionist-applicant had no supervisory control over him and his release on bail would not be in the interest of his moral, physical or psychological upliftment.

2. Feeling aggrieved, the revisionist-applicant preferred criminal appeal No. 31 of 2011 "Kabutar alias Indrasen Singh v. State of U.P., challenging the order dated 31.1.2011 passed by concerned Juvenile Justice Board. Having heard learned counsel for the parties, learned appellate Court dismissed the appeal on the ground that it lacks merit, inasmuch as, the revisionist-applicant was involved in a heinous offence of triple murder case and it was not in the interest of justice to release him on bail.

3. Challenging the aforesaid two orders of subordinate Courts, this criminal revision has been preferred on the ground that the orders impugned are illegal, incorrect and improper.

Learned counsel for the revisionist-applicant has submitted that in case of juvenile, the gravity of offence is not the deciding factor; the revisionist-applicant has already served out his three years detention and it is the maximum period for which a juvenile can be detained in connection with some criminal case. He is in jail since 24.11.2010; the findings recorded by both the Courts below refusing bail to the revisionist-applicant are untenable under the law.

4. Per contra, learned A.G.A. has submitted that it is not necessary that in all the criminal cases, accused should be enlarged on bail in the garb of Section 12 of Juvenile Justice (Care & Protection of Children) Act, 2000 but he has conceded that the revisionist-applicant has been declared juvenile by Juvenile Justice Board and he has served out more than three years in jail in connection with this case crime No. 384 of 2010 (supra).

Section 12 of Juvenile Justice (Care & Protection of Children) Act, 2000 reads as under:

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.

(2) When such person having been arrested is not released on bail under sub-section (1) by the officer incharge 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, 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.

From the bare reading of the provision contained u/s 12 of Juvenile Justice (Care & Protection of Children) Act, 2000 it is clear that word "shall" occurred under clause (1) of Section 12 of the aforesaid Act connotes an idea that the release of a juvenile in a criminal case is mandatory unless there appears reasonable grounds for believing that 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. It is hereby made clear that mere saving in the impugned order that the release of a juvenile is likely to bring him into association with any known criminal or expose him to moral, physical, psychological danger or that his release would defeat the ends of justice is not enough rather the Courts are under legal obligation and duty bound to record reasons based on material and evidence available on record for the aforesaid findings because the aforesaid provision enacted by the Parliament is not a mere idle formality rather it attaches with it a legal sanctity and the Courts of law are supposed to ensure its strict compliance in its letter and spirit in the matter of dispensation of justice otherwise the very object and reasons behind the legislation of the aforesaid provision shall lose its legal import.

5. Viewed from the aforesaid mentioned legal angles, impugned orders passed by both the Courts below refusing bail to the juvenile-revisionist is against the mandates of the provision contained u/s 12 of Juvenile Justice (Care & Protection of Children) Act, 2000. Hence, it is held that both the impugned orders passed by the learned Courts below are bad in law and they deserve to be set aside. Even otherwise, in the background of the facts and circumstances of the case especially the duration of the detention of the juvenile-revisionist beyond a period of three years in this case is another fact which entitles him to bail under the scheme of Sections 14, 15, 15 (g) & 20 of Juvenile Justice (Care & Protection of Children) Act, 2000 which gives a clear view that the Juvenile Act is intended to protect the juvenile from rigors of a trial by a criminal Court. It prohibits sentencing of a juvenile and committing him to prison. As its preamble suggests it seeks to adopt a child-friendly

approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation. The instant offence took place in between the night of 22/23.11.2010 and the revisionist-applicant is in jail since 24.11.2010. His detention has continued for more than three years, the maximum sentence admissible to him in case of his being convicted.

In the result, the criminal revision is allowed. Let the revisionist-applicant Kabutar @ Indrasen Singh involved in Crime No. 384 of 2010 u/s 302 I.P.C., Police Station-Karchhana, District-Allahabad, be released on bail on his executing a personal bond with two sureties each in the like amount to the satisfaction of the Court concerned.