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HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2010:AHC:118818

?Court No. - 53

Case :- CRIMINAL REVISION No. - 2992 of 2010

Petitioner :- Praveen Kumar Maurya @ Praveen Maurya

Respondent :- State Of U.P.

Petitioner Counsel :- Sheshadri Trivedi, Satish Trivedi

Respondent Counsel :- Govt. Advocate

Hon'ble Shri Kant Tripathi, J.

1. Heard Mr. Satish Trivedi, the learned senior counsel for the revisionist and the learned AGA for the respondent and perused the record.

2. This is a revision against the judgement and order dated 18.6.2010 passed by the Sessions Judge, Basti in Criminal (Juvenile) Appeal No. 75 of 2010 (Praveen Kumar Maurya vs. State of U.P.) confirming the order dated 24.5.2010 passed by the Juvenile Justice Board, Basti in case no. 37/2010, State vs. Praveen Kumar Maurya, arising out of Crime No. 135 of 2010, under section 8/20 of the Narcotic Drugs and Psychotropic Substances Act (in short 'the NDPS Act'), Police Station Motipur, District Bahraich.

3. According to the prosecution case, on 19.2.2010, at about 4.00 p.m., near Indo ? Nepal Border, the revisionist was intercepted by the police and on search he was found in possession of 4.900 grams of charas. The revisionist claimed himself as juvenile. The Juvenile Justice Board, Basti declared the revisionist as juvenile by order dated 18.5.2010 and there is no dispute to this extent. After declaration of the revisionist as juvenile, he moved an application for bail, which was rejected by the Juvenile Justice Board. The revisionist filed the aforesaid criminal appeal before the Sessions Judge, Basti, who has also dismissed the appeal. The learned Sessions Judge found that if the revisionist is released on bail he will come into association with known or unknown criminals and thereby will be exposed to moral, physical and psychological danger.

4. Mr. Satish Trivedi, the learned senior counsel submitted that the report of the District Probation Officer was not in any way against the revisionist. According to the District Probation Officer, the family of the revisionist has a parchoon shop near SSB Border and a dispute in regard to certain transaction took place in the shop due to which the revisionist has been implicated in this case.

5. In view of the fact that the revisionist is a juvenile, his bail prayer is liable to be considered in accordance with Section 12 of the Juvenile Justice (Care & Protection of children) Act 2000 (in short 'the Juvenile Act'), which provides:

"Section 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.

(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."

6. A perusal of Section 12 of the Juvenile Act reveals that a juvenile is entitled to bail notwithstanding, gravity of the crime. His bail can be refused only when there are reasonable grounds for believing that 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 the ends of justice. It is also manifest that the said section 12 the Juvenile Act overrides the Code of Criminal Procedure, 1973 (in short 'the Code') and other laws for the time being in force and, therefore, in the event of any inconsistency, section 12 of the Juvenile Act will prevail.

7. In the case of Vijendra Kumar Mali v State of U.P. 2003 (1)JIC 103 this Court has held:

"

6. This Court in a number of judgments has categorically held that bail to the juvenile can only be refused if anyone of the grounds existed. So far as the ground of gravity is concerned, it is not covered under the above provisions of the Act. If the bail application of the juvenile was to be considered under the provisions of the Code of Criminal Procedure, there would have been absolutely no necessity for the enactment of the aforesaid Act. The language of Section 12 of the Act itself lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, the juvenile accused shall be released. Not only this, the Parliament re-considered the entire matter and repealed the old Act of 1986 by introduced the new Act No. 56 of 2000, raising the age from 16 to 18 years. This has been done keeping in view the welfare of the child so that even after committing an offence a child may not become a hardened criminal but he may reform himself."

8. And in Akash Rai v State of U.P. 2009(65) ACC 522 this Court again held as under:

"

As per provision of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000 except on the ground mentioned therein bail is mandatory to the Juvenile. It appears from the Judgement and order passed by the Session Judge, Mau that the revisionist is Class XIIth Student and according to the report of the District Probation Officer, Ballia he has committed Crime due to company of bad elements. The District Probation Officer's report is based on no evidence and it appears that simply to make a ground that the revisionist may not be released on bail the report has been submitted. There is nothing on record that after release the revisionist would come in association with any known Criminal or exposed him to moral, Physical or Psychological danger or that of his release would defeat ends of justice. Father of revisionist has given an undertaking about the revisionist's welfare and education."

9. To combat the aforesaid citations, the learned counsel for the revisionist has cited the cases of Deepak Kumar v State of U.P. 2003(1) UP CrR 616, Vikky alias Vikram Singh (Minor) v State of U.P. & others 2003(1) UP CrR 526, Rajendra v State of U.P. 2003(1) UP CrR 149, Shiv Kumar alias Sadhu v State of U.P. 2010 (68) ACC 616, Prem Chand @ Monu vs. State of U.P. & another, 2008 (2) All. Cr. J. 447, Sanjay Chaurasia vs. State of U.P. 2006 (55) ACC 480, Sanjay Kumar vs. State of U.P. 2003 (1) UP CrR 220 and Rajveer vs. State of U.P. 2002 (II) UP CrR 617.

10. The learned AGA submitted that the recovered quantity of charas was the commercial quantity, therefore, the revisionist's bail prayer is liable to be considered in accordance with the provisions of section 37 of the NDPS Act. According to the learned AGA, in a case where section 37(1)(b) of the NDPS Act is applicable, the court must adopt a negative attitude towards bail and in that event the bail can be granted only when the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence and is not likely to commit any offence while on bail.

11. Mr. Satish Trivedi in reply submitted that the provisions of section 12 of the Juvenile Act has an overriding effect not only on the Code but also on the provisions of section 37 of the NDPS Act. Therefore, the provisions of section 37(1)(b) of the NDPS Act has no application in the present matter.

12. In section 12 of the Juvenile Act, a non obstante provision "notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force" has been placed, which clearly indicates that the provisions of section 12 of the Juvenile Act has an overriding effect not only on the Code but also on other laws, if any, for the time being in force. It is also true that section 37 of the NDPS Act, 1985 has also a non obstante clause, according to which the provisions of section 37 of the NDPS Act 1985 have effect notwithstanding anything contained in the Code. Therefore, section 37 of the NDPS Act, 1985 has an overriding effect only on the Code and not on other laws. Moreover, the NDPS Act was enacted in the year 1985 and was in force on the date of commencement of the Juvenile Act, therefore, the non obstante provision "notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force" contained in section 12 of the Juvenile Act, overrides also the provisions of section 37 of the NDPS Act because the NDPS Act squarely falls within the expression "any other law for the time being in force", contained in section 12 of the Juvenile Act. It is also relevant to mention that when there is a conflict between the two enactments, the later enactment prevails. This proposition has been laid down by the Apex Court in the case of *Solidaire India Ltd v. Fairgrowth Financial Services Ltd. and others* JT 2001 (2) SC 639.

13. It is true that section 37(1)(b) has imposed two conditions, fulfilment of which is necessary before grant of bail, firstly, the public prosecutor must be given an opportunity to oppose the application for bail and secondly, where the public prosecutor opposes the application for bail, the court must record its satisfaction before releasing the accused on bail that - (a) there are reasonable grounds for believing that the accused is not guilty of such offence, and (b) that he is not likely to commit any offence while on bail. Therefore, a non-juvenile accused who is involved in dealing with the narcotic substances involving commercial quantity is not entitled for bail in a routine manner. But the present case is somehow different. The revisionist was admittedly a juvenile on the date of occurrence, therefore, his bail matter was liable to be governed by section 12 of the Juvenile Act and the provisions of section 37 of the NDPS Act was not applicable, specially when section 12 of the Juvenile Act overrides the provisions of section 37 of the NDPS Act in the case of a person who is a juvenile.

14. In view of the above, the submission of the learned AGA has no merit. In my opinion, the bail matter of the revisionist is liable to be dealt with according to the provisions of section 12 of the Juvenile Act.

15. There is no indication in the report of the District Probation Officer that the revisionist has any criminal background or association with any known or unknown criminals. There is also no report of any other authority. The revisionist seems to be a first offender. The District Probation Officer has indicated that the revisionist has a parchoon shop and a dispute in regard to certain transactions had taken place in that shop which occasioned for implicating the revisionist in this case. In view of these factual aspects of the matter I fail to understand as to how the Juvenile Justice Board as well as the Sessions Judge arrived at the conclusion that if the revisionist is released on bail he will come in contact with known or unknown criminals or will be exposed to moral, physical and psychological danger.

16. Keeping in view the facts and circumstances of the case, I am of the view that section 12 of the Juvenile Act is fully attracted in this case, therefore, it would be just and expedient to enlarge the revisionist Praveen Kumar Maurya @ Praveen Maurya on bail.

17. The revision is allowed. The impugned order dated 18.6.2010 passed by the Sessions Judge, Basti as well as the order dated 24.5.2010 passed by the Juvenile Justice Board, Basti in the aforesaid criminal case are hereby quashed.
18. Let the revisionist Praveen Kumar Maurya @ Praveen Maurya be released on bail in the aforesaid case on his furnishing a personal bond to be executed by his guardian and two sureties each in the like amount to the satisfaction of the Juvenile Justice Board, Basti.

Order Date :- 16.9.2010

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