

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No.226 of 2021

Ayaan Ali Revisionist

Versus

The State of Uttarakhand Respondent

Mr. Aditya Singh, learned counsel holding brief of Mr. Rajat Mittal, learned counsel for the revisionist.

Mr. V.K. Jemini, learned Dy.A.G. for the State.

Hon'ble R.C. Khulbe, J.

This criminal revision is preferred against the judgment and order dated 17.08.2021 passed by the Juvenile Justice Board, Dehradun, District Dehradun in Case Crime No.177 of 2021 as well as the judgment and order dated 02.09.2021 passed by the Addl. Sessions Judge/Special Judge (POCSO)/F.T.C., Dehradun in Criminal Appeal No.62/2021, 'Ayaan Ali vs. State'.

2. Heard learned counsel for the parties.

3. Learned Counsel for the revisionist as well as learned Counsel for the State admitted that the revisionist was a juvenile who is involved in connection with Case Crime /FIR No.177/2021, under Sections 304, 338, 107, 201 IPC, registered at P.S. Shahaspur , Distt. Dehradun.

4. The revisionist, being a juvenile, moved the bail application before the Juvenile Board Dehradun, which was rejected vide order dated 17.08.2021. Aggrieved by it, the revisionist preferred Criminal Appeal No.62/2021 before the Addl. Sessions Judge/Special Judge (POCSO)/F.T.C., Dehradun, which was also dismissed vide judgment and order dated 02.09.2021. Hence, this revision.

5. Admittedly, the revisionist was about 17 years at the time of the incident. From a perusal of the order passed by the Board, it appears that the sole ground, on

which the bail was rejected, is that the revisionist may again commit an offence. In the present case, the bail has been dismissed considering the gravity of offences alleged to have been committed by the revisionist.

6. Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with bail to a child in conflict with law which reads as under:-

“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 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.

(2) When such person having been apprehended is not released on bail under subsection (1) by the officer-in-charge of the police station, such officer shall cause the person to be kept only in an observation home in such manner as may be prescribed until the person can be brought before a Board.

(3) When such person is not released on bail under sub-section (1) by the Board, it shall make an order sending him to an observation home or a place of safety, as the case may be, for such period during the pendency of the inquiry regarding the person, as may be specified in the order.

(4) When a child in conflict with law is unable to fulfill the conditions of bail order within seven days of the bail order, such child shall be produced before the Board for modification of the conditions of bail.”

7. A plain reading of Section 12(1) of the Act reveals that, any person, who is apparently a child, shall be entitled to 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. The distinction between bailable or non-bailable offence has been done away with in respect of a juvenile. In other words, every juvenile is entitled to be released on bail except in circumstances where his/her release will bring him/her into association with any known criminal or expose him/her to moral, physical or psychological danger or that his release would defeat the ends of justice. As per the Section 2 (12) of the Act, 'child' means a person who has not completed eighteen years of age."

8. Admittedly, the revisionist was about 17 years of age at the time of incident. From the perusal of the FIR, the revisionist was driving the offending vehicle at the relevant point of time; it is a matter of evidence whether the matter falls within the definition of Section 304A IPC or Section 304 IPC. As per Section 12 of the Act, the bail can be refused if there appears reasonable ground for believing that the release is likely to bring that person into association with any known criminal. The word 'known' has not been used by the Parliament without purpose. By use of the word 'known', the Parliament requires that the Court must know the full particulars of the criminal with whom the delinquent is likely to come into association. In the case in hand, there is no such evidence on record regarding the same; both the impugned orders are silent about it; the bail of the delinquent was rejected simply on the ground that the offence is heinous in nature while Section 12 of the Act is silent about it.

9. In such view of the matter, this Court has no hesitation in holding that the Courts below had erred in law in not releasing the juvenile on bail.

10. As a result, the Criminal Revision is allowed. The orders, under challenge, are set aside. The juvenile in conflict with law (revisionist) shall be enlarged on bail in the aforesaid crime on furnishing two sureties and personal bond of Rs.50,000/- to be executed by the grandfather of the revisionist to the satisfaction of the Juvenile Justice Board /Court concerned. It is further directed that the custody of the juvenile/revisionist shall be given to his grandfather.

11. The grant of bail to the revisionist shall be subject to the condition that his grandfather will take the revisionist to the concerned Juvenile Justice Board once in a month, and revisionist shall not leave the jurisdiction of the concerned Juvenile Board without its prior permission, and further, that the revisionist shall not try to contact or influence the witnesses in any manner or tamper with the evidence. In case of any violation of these conditions, the respondent-State will be at liberty to approach the Juvenile Board for cancellation of the bail of the revisionist.

12. All pending applications stand disposed of.

(R.C. Khulbe, J.)
16.02.2022