

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 205 of 2020

Ujwal @ Ujwal Singh Tomar ..... Appellant

Versus

State of Uttarakhand ....Respondent

Mr. Rajendra Singh Azad, Advocate for the revisionist.  
Mr. Shubhash Tyagi Bhardwaj, D.A.G. for the State of Uttarakhand.

Hon'ble Ravindra Maithani, J. (Oral)

The instant revision is preferred against the following:-

- (i) Judgement and order dated 03.03.2020, passed in Criminal Appeal No. 47 of 2020, Ujwal vs. State of Uttarakhand by the Learned Special Judge POCSO/Additional Sessions Judge, Haridwar. (for short 'the appeal')
- (ii) Order dated 13.02.2020 passed in Bail Application No. 7 of 2020, Case Crime No.71 of 2020, under sections 307, 342, 436 IPC, P.S. - Kotwali Roorkee, District Haridwar("the Case"). By this order, the bail application of the revisionist has been rejected.

2. Revisionist is in judicial custody in Case Crime No.71 of 2020 under section 307, 342, 436 IPC, P.S. - Kotwali Roorkee, District Haridwar. By the impugned order dated 13.02.2020, passed in the case, the bail of the revisionist was rejected and this order was confirmed in the appeal.

3. Heard Learned counsel for the parties through video conferencing and perused the record.

4. According to the FIR, some children from the neighbourhood of the informant were studying in the school. After school hours, the informant observed that the revisionist would follow the school children up to their houses. A few days prior to the date of incident, the informant stopped the revisionist to follow the students, at which, the revisionist started abusing the informant and threatened him to life. On 24.01.2020, when the informant was asleep in his house with his family, at about 2:00 in the midnight, he heard some voices. When he looked out from his room, he saw that his house was ablaze. His car and scooty were burning. When the informant tried to open the gate, it was locked from outside. The informant reached at the rooftop of his house. He saw the revisionist and one more person sprinkling petrol on the walls of the house. The date of incident is on the intervening night of 23/24.01.2020. The date of birth of the revisionist is 05.06.2002. He was arrested and produced before the Principle Magistrate Juvenile Justice Board (JJ Board), Haridwar, on 27.01.2020. After investigation, a report was submitted before the JJ Board.

5. Learned counsel for the revisionist would submit that in this case, no offence under section 436 and 307 IPC is made out. It is no injury case. Section 342 IPC is bailable. Applicant is a “child in conflict with law”.

6. Learned counsel for the applicant would further argue that at the most, the offence under Section 435 IPC is made out; the parties have entered into a compromise, therefore, the revisionist deserves to be enlarged on bail now.

7. On behalf of the State, Learned counsel would argue that bail in such cases is governed by Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'J.J. Act').

8. Bailable or non-bailable, it makes no difference when it comes to a "child in conflict with law". A "child in conflict with law", as a rule, has to be enlarged on bail. It makes no difference even if the offence is non -bailable. Even the gravity of the offence at times has less meaning while considering the bail application of the "child in conflict with law". But, what is important is to see that the applicability of the proviso to Section 12 of J.J. Act, which is as hereunder:-

**"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.

(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 fulfil 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.”

9. In fact, a bare perusal of Section 12 of the J.J. Act would reveal that it is for the benefit of the “child in conflict with law”. It is to help a “child in conflict with law” to grow. Broadly speaking, if release of a “child in conflict with law” on bail may have some adverse affect on his growing, perhaps, bail should be denied.

10. In the instant case, according to the FIR, when the revisionist was stopped by the informant to follow the school children up to their house, he threatened the informant of dire consequences and in fact, he threatened him to life. Subsequently on the fateful night, he set the house of the informant ablaze, bolted the main gate from outside. He was seen by the informant sprinkling the petrol alongwith one more person. There have been CCTV footages as well taken by the

Investigating Officer, locating the identity of the “child in conflict with law”.

11. On the date of incident, the revisionist was a child of 17 years, 7 months and 19 days old. It is not a single act, which made the child as a “child in conflict with law”. It is a sequence. This “child in conflict with law” was following the school children. When stopped, he threatened the informant and then in the midnight, according to the prosecution, set the house of the informant ablaze. Many articles were burned including the car, scooty etc. He bolted the house from outside. The judgment and order dated 03.03.2020 passed in the appeal further reveals that, in fact, the revisionist was harassing a girl child in the locality and when he was stopped to do so by the informant, he threatened him to life. The gravity of the offence reflects the mental condition and attitude of the revisionist.

12. In fact, the legislature in its wisdom, has also provided for trial of a “child in conflict with law” as an adult. Under section 15 of the J.J. Act, a child above 16 years of age may, after preliminary assessment by the Board with regard to his mental and physical capacity, be ordered to be tried as an adult under section 18(3) of the Act. The stage of preliminary assessment of the revisionist is yet to come. He has completed 16 years of age. He is just short of 18 years. Learned Magistrate, J.J. Board observed that if revisionist is released on bail, it would further deteriorate him psychologically. He also observed that the alleged act committed by the revisionist reflects his bad mental state and

urge for revenge. In appeal, Learned court observed that in case, revisionist is enlarged on bail, it may defeat the ends of justice

13. The gravity of the alleged offence; the way it had happened and having considered the age of the “child in conflict with law”, this Court is of the view that the Learned courts below did not commit any error in not enlarging the revisionist on bail. Both the orders are in accordance with law. In fact, if the revisionist is enlarged on bail, it may defeat the very ends of justice, therefore, the revision is devoid of merit and deserves to be dismissed.

14. The revision is dismissed.

15. Let a copy of the judgment along with lower Court record be sent to the Court below for compliance.

(Ravindra Maithani, J.)  
01.07.2020

Ujjwal