

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: October 08, 2010

+ **WRIT PETITION (CRL.) No.1432/2009**

DHARAMVIR

....PETITIONER

Through: Mr.Sumeet Verma, Advocate

Versus

STATE

.....RESPONDENT

Through: Mr.Saleem Ahmed, Additional Standing
Counsel with S.I.Dhirender.

CORAM:

HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

1. Petitioner Dharamvir stands convicted in the trial based upon FIR No.529/96 P.S. Sultan Puri for the offences punishable under Section 302/120B/34 IPC and Section 27 of the Arms Act. He was sentenced to undergo imprisonment for life, besides fine, by the learned Additional Sessions Judge vide order dated 31.01.2000.

2. The petitioner preferred an appeal against his conviction and order on sentence, being Crl.A.No.222/2000 which was dismissed by the High Court of Delhi on 15.05.2002. Even the SLP filed by the

petitioner against the dismissal of his appeal was dismissed by the Supreme Court on 16.10.2003.

3. As per the nominal roll submitted by the Jail Superintendent, the petitioner has already undergone incarceration for a period of 12 years 5 months and 25 days as on 23.08.2009. It is alleged by the petitioner that he was a juvenile on the date of commission of offence, therefore his case ought to have been dealt with under the provisions of Juvenile Justice (Care and Protection of Children) Act 2000 (hereinafter called the 'Act') and in view of Section 15 of the Act, he could have been sent to a Special Home for a maximum period of 3 years. Learned counsel submitted that the error has crept in because the Amicus Curiae provided for defence of the appellant failed to bring the factum of juvenility to the notice of the trial court or subsequent courts. Learned counsel further submitted that Section 7-A of the Act provides for the procedure to be followed when the claim of juvenility is raised before any Court and proviso to Section 7-A(1) provides that such a claim may be raised before any court at any stage and even after the final disposal of the case. He further submits that sub-Section 2 of Section 7-A provides that if the court finds a person to be a juvenile on the date of commission of offence, it shall forward the juvenile to the Board for passing appropriate order and the sentence, if any, passed by a Court shall be deemed to have no effect. Learned counsel for the petitioner has pointed out that in the instant case, the Juvenile Justice Board, after conducting inquiry, has found the appellant to be a

juvenile aged about 17 years and 4 months on the date of commission of offence i.e. 23.05.1996. As such, he is entitled to the benefit of the provisions of the Act and he should be dealt with in accordance with Section 7-A of the Act. Learned counsel has thus strongly urged for release of the petitioner for the reason that he has already undergone incarceration for a period of about 13 years, which is much more than the maximum period of 3 years for which a juvenile can be detained in a Special Home.

4. Learned APP, on the other hand, has opposed the prayer on the ground that the judgment of conviction of the petitioner and the impugned order on sentence dated 31.01.2000 has become final and it cannot be interfered with in a writ petition. Learned APP, however, has not disputed that the petitioner was a juvenile aged 17 years and 4 months on the date of commission of offence i.e. 23.05.1996.

5. Section 7-A of the Act reads thus:-

“7-A Procedure to be followed when claim of juvenility is raised before any court – 1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of

the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.”

6. Taking into account that the petitioner has raised a plea of juvenility on the date of commission of offence, vide order dated 7th July 2010, the Juvenile Justice Board was directed to conduct an inquiry into the plea of the petitioner for determination of his age on the date of commission of offence and submit its report within two months. Pursuant to the directions, the Juvenile Justice Board conducted the inquiry for determining the age of the petitioner and as per its report dated 21.08.2010, the date of birth of the petitioner is found to be 01.01.1979. The date of commission of offence in the instant case is 23.05.1996. Thus, it is apparent that the age of the petitioner on the date of commission of offence was 17 years and 4 months. The finding of Juvenile Justice Board is not controverted by learned APP. Thus, it is established that the petitioner was a juvenile on the date of commission of offence.

7. Clause 2 of Section 7-A of the said Act provides that if the Court finds a person to be juvenile on the date of commission of offence, it shall forward the juvenile to the Juvenile Justice Board for passing

appropriate orders, and the sentence, if any, passed by a Court shall be deemed to have no effect. The import of this provision is that sentence awarded by the impugned order of sentence will have no effect and the matter ought to be referred to the Juvenile Justice Board for passing appropriate orders. It is, however, noted that as per Section 15 of the said Act, the maximum period for which a juvenile can be sent to a Special Home is three years. As per the nominal roll of the petitioner Dharamvir, he has already suffered detention for a period of more than 12 years.

8. In view of the fact that the petitioner has suffered incarceration for a period which is more than the maximum period of detention in Special Home permissible under the said Act, I do not deem it appropriate to refer the matter back to the Juvenile Justice Board for passing appropriate orders and direct formal release of the petitioner in the present petition.

9. The writ petition is accordingly allowed. It is ordered that the petitioner be released forthwith, if not required in any other case.

OCTOBER 08, 2010
ks

AJIT BHARIHOKE
(JUDGE)