

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

% Judgment delivered on 29.11.2011

+ CRL.M.C. No. 1542/2011

MUKESH KUMAR YADAV ... Petitioner

versus

STATE ... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr S. Azad, Adv. with Mr Habib, Ms Meenu Sharma,
Mr Hari Om Gautam, Advs.

For the Respondent : Ms Richa Kapoor

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MS. JUSTICE VEENA BIRBAL

BADAR DURREZ AHMED (ORAL)

1. This is an application under section 7-A of The juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as the said Act) whereby the applicant Mukesh Kumar Yadav is claiming that he was a juvenile within the meaning of section 2 (k) of the said Act on the date of the incident i.e. 03.10.2006. On the basis of the plea of juvenility, the applicant Mukesh Kumar Yadav is seeking the benefit of the provisions of the said Act. In particular, it is the case of the applicant that he has been in custody for over four years but, according to the said Act, a juvenile in conflict with law cannot be kept in detention either in protective custody or in a place of safety, for more than a period of three years, as stipulated in sections 15 and 16 of the said Act.

2. This application had initially been filed before a learned Single Judge of this court. The learned counsel for the applicant also states that the applicant has not filed any appeal against the judgment dated 26.04.2010 passed by the learned Additional Sessions Judge in Sessions case No. 8/3/08 which, in turn, arose out of FIR No. 304/06 under section 302/394/201/34 IPC registered at police station Civil Lines. By virtue of the said judgment, the applicant Mukesh Kumar Yadav @ Chhotu along with Vijay Kumar Yadav @ Monu were convicted under sections 302/397/34 IPC and were sentenced to life imprisonment by virtue of the order on sentence dated 19.05.2010.

3. Insofar as the co-convict Vijay Kumar Yadav @ Monu is concerned, he had filed an appeal before this court being Crl. A. No. 978/2010. The present applicant, namely, Mukesh Kumar Yadav, however, as mentioned above, had not filed any appeal against the said judgment and order on the point of sentence. Vijay Kumar Yadav, during the pendency of the appeal before this court, had filed an application being Crl. M.A. No. 18803/2010 in which he claimed that he was a juvenile on the date of the incident. That application came to be heard by this court and was allowed by an order dated 03.02.2011. By virtue of the said order, the co-convict Vijay Kumar Yadav was held to be a juvenile on the date of the incident and he was given the benefit of the said Act. Since the co-convict had already been in custody for over four years which was beyond the maximum period of three years stipulated under the Act, he was directed to be released forthwith. In the course of the hearing, the co-convict Vijay Kumar Yadav had taken the plea that he was not challenging the conviction.

4. In the present case also, the applicant Mukesh Kumar Yadav is not challenging the conviction as he has not filed any appeal, but, is challenging the order on the point of sentence in view of the fact that such an order could not have been passed inasmuch as the applicant was a juvenile on the date of the incident. The present applicant, as mentioned above, has only resorted to filing this application under section 7-A of the said Act claiming the benefit of the same.

5. However, Gurcharan Singh, who is the son of the deceased Charanjeet Kaur, has filed an appeal (Crl. A. No. 1341/2010) under the proviso to section 372 Cr.P.C. seeking enhancement of the sentence from life imprisonment to death sentence. Since that appeal was pending before this court, the learned Single Judge, before whom the present application was initially filed, thought it fit to send the matter to this court, subject to the orders of Hon'ble the Chief Justice, by virtue of his order dated 18.08.2011. That is how the present application is before us.

6. On 10.10.2011, we were informed by the learned counsel for the State that the birth certificate which was furnished by the applicant could not be verified as the originals had been destroyed/ were not available. The school certificate could also not be verified. However, according to the admission register of the Madya Vidhyalay, Konha, Sarsa, Bihar, the applicant's date of birth appeared to be 08.07.1993. He was admitted in class 3 in 2001 and left the school in 2003. In our order dated 10.10.2011 we had observed that since this was not the first school attended by the applicant, the age of the applicant needed to be corroborated through other means. The necessity of ascertaining

the age recorded in the first school arises because of the provisions of Rule 12 of the Juvenile Justice (Care and protection of Children) Rules, 2007 (hereinafter referred to as the said Rules). Consequently, we had directed that the applicant be produced before a medical board to be constituted by the Medical Superintendent of All India Institute of Medical Sciences for the purpose of determining his age.

7. Pursuant to the said direction, the Medical Superintendent of All India Institute of Medical Sciences constituted a medical board consisting of the following members:-

1. Dr. T. Millo - Chairperson
Addl. Professor. Deptt. Of Forensic Medicine
2. Dr. Ashu Seith Bhalla - Member
Addl. Professor of Radio-diagnosis
3. Dr. Ajay Logani - Member
Assoc. Professor of CDER
4. Dr. Sunil Verma -Member Secy.
Department of Hospital Administration

The Chairperson of the medical board was also free to co-opt member(s) from other specialties, if required.

8. The report of the medical board is dated 20.10.2011 and is on record. According to the report, the applicant Mukesh Kumar Yadav was examined physically, dentally and radiologically. The opinion of the medical board was as under:-

“After going through the findings of physical, dental and radiological examinations we are of the considered opinion that the age of the applicant Mukesh Kumar Yadav is between 20 to

21 years on the date of examination i.e. 17.10.2011.”

9. There is no evidence to controvert this finding of the medical board. Consequently, the age of the applicant Mukesh Kumar Yadav, going by the opinion of the medical board, would be 20-21 years as on 17.10.2011. This would mean that the applicant Mukesh Kumar Yadav was 15-16 years old on the date of the incident i.e. 03.10.2006. Even if we take the upper age limit of 21 years, and do not give the benefit of one year as contemplated in Rule 12 of the said Rules, the applicant Mukesh Kumar Yadav would still be 16 years old on the date of the incident and would therefore have to be regarded as a juvenile in terms of the said Act because he would be less than 18 years of age on the date of the incident. That being the position, the applicant Mukesh Kumar Yadav would have to be given the benefit of other provisions of the said Act. Since he has already been in custody for over four years, which is more than the maximum period of detention of three years prescribed under the said Act, he is entitled to be released forthwith. Thus, although the conviction is not disturbed, the sentence of life imprisonment awarded to the applicant Mukesh Kumar Yadav is set aside and he is directed to be released forthwith.

10. The application stands allowed as above.

11. A copy of this order be sent to the Superintendent of the concerned jail for compliance.

12. Dasti.

BADAR DURREZ AHMED, J

VEENA BIRBAL, J

NOVEMBER 29, 2011

kb