

\$~05.

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

Date of decision: 9th July, 2013

+ **CRL.A. 1398/2010**

AKRAM

..... Appellant

Through: Mr.Thakur Virender Pratap Singh Charak,
Ms.Shubha Pareshar,
Mr.Pushpender Singh Charak and
Mr.R.P.S. Tomar, Advocates

versus

STATE (GNCT OF DELHI)

..... Respondent

Through: Ms.Richa Kapoor, Advocate for State with
S.I. Samrat Khatiyani, P.S. G.T.B. Enclave

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

G. S. SISTANI J.(ORAL)

1. Present appeal has been filed by the appellant, Akram, under Section 374(2) read with Section 383 Cr.P.C. and is directed against the judgment dated 25.1.2010 and order on sentence dated 29.1.2010 by which the petitioner has been sentenced to imprisonment for life and fine of Rs.5,000/- for the offence punishable under Section 396 IPC; in default of payment of fine to undergo five months simple imprisonment; rigorous imprisonment for a period of seven years and fine of Rs.2,000/- for the offence committed under Section 449/34 IPC; and, in default of payment of fine to undergo two months simple imprisonment. The sentences were to run concurrently. On 18.4.2013 the following order was passed by a Division Bench of this Court:

“
%

ORDER
18.04.2013

Heard the learned counsel for the State.

As per record, on 10.04.2012, the Appellant was produced from jail. The trial court record reflects that an application was filed by the Appellant-Akram praying for conducting his ossification test, however, there was no ossification test available on record. As such, keeping in view the pleas taken by the Appellant before the trial court and his physical appearance, medical examination of Appellant was ordered to be undertaken in order to enable the determination of his age on the date of incident. Thereafter, his medical examination was conducted, however, an enquiry with regard to his age is required to be conducted. That being so, as provided under Juvenile Justice (Care and Protection of Children) Act, 2000 and the rules framed thereunder, the concerned Additional Sessions Judge/Successor Court is directed to conduct an enquiry with regard to the age of the Appellant. It shall be open to the learned Additional Sessions Judge to take into account all the medical reports available on record and such other additional evidence which he may deem fit for the purpose of conducting the enquiry. Copies of the medical report be sent to the court concerned. The enquiry be preferably completed within a period of 2½ months and thereafter report be sent.

List on 9th July, 2013.”

2. The report of the ossification test has been received as per which on 5.6.2013 the appellant was 22 to 25 years of age.
3. Mr.Charak, learned counsel for the appellant, contends that accordingly on 6.8.2004, i.e. the date of offence, the appellant was between the age of 13 to 16 years and, thus, a minor.
4. Reliance is placed by Mr.Charak on *Amit Singh v. State of Maharashtra and Another*, reported at (2011) 13 SCC 744, and *Ashwani Kumar Saxena v. State of Madhya Pradesh*, reported at (2012) 9 SCC 750, in support of

his plea that since the appellant has already undergone sentence of more than eight years he is liable to be released forthwith without any decision on the merits in the appeal.

5. Ms. Richa Kapoor, learned counsel for the State, does not dispute the report, which has been received and also does not dispute the fact that the appellant is a juvenile and is to be released forthwith. However, she submits that the appeal should be decided on merit unless the appellant does not press the appeal on merits or the case has to be remanded to the Juvenile Justice Board after setting aside the impugned order. Reliance is also placed by Ms. Kapoor on Section 20 of The Juvenile Justice (Care and Protection of Children) Act, 2000, (hereinafter referred to as '*the Act*') wherein according to the learned counsel for the respondent a finding of guilt is to be recorded before the matter is forwarded to Juvenile Justice Board.
6. We have heard learned counsel for the parties and considered the rival submissions. We find no force in the submission of learned counsel for the respondent for the reason that in the facts of the present case it is not in dispute that the appellant has already undergone more than three years of sentence, which is a maximum sentence, which could have been awarded to the appellant under the Act.
7. Section 20 of the Act contains special provision in respect of cases where the juvenile in conflict with the law was alleged to be involved in commission of any offence before coming into force of the Act. In the instant case, the offence was allegedly committed on 06.08.2004, that is, much after the date of coming into force of the Act on 01.04.2001. Thus, Section 20 has no application. Moreover, Section 20 does not deal with a

situation where an appeal is pending before an Appellate Court.

8. As per provision of Section 14 of the Act wherever a juvenile is alleged to have committed an offence an inquiry is to be conducted by the Board and which is to be completed within a period of four months. Section 15 of the Act provides for the orders which may be passed by the Board regarding a juvenile who on inquiry is found to have committed the offence. Section 15 of the Act is extracted hereunder:-

“15. Order that may be passed regarding juvenile.-

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if it thinks so fit, -

(a) allow the juvenile to go home after advice or admonition following appropriate inquiry against and counselling to the parent or the guardian and the juvenile;

(b) direct the juvenile to participate in group counselling and similar activities;

(c) order the juvenile to perform community service;

(d) order the parent of the juvenile or the juvenile himself to pay a fine, if he is over fourteen years of age and earns money;

(e) direct the juvenile to be released on probation of good conduct and placed under the care of any parent, guardian or other fit person, on such parent, guardian or other fit person executing a bond, with or without surety, as the Board may require, for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(f) direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(g) make an order directing the juvenile to be sent to a special home for a period of three years;

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case, it is expedient so to do, for reasons to be recorded, reduce the period of stay to such period as it thinks fit.]

(2)
(3)
(4) ”

9. Thus, as per Section 15(1)(g) of the Act the maximum period for which a juvenile can be sent to a special home for three years.
10. Normally, whenever any order is passed by any Court in respect of a juvenile in conflict with law without any jurisdiction it has to be set aside as it is only the Board which can conduct an inquiry under Section 14 and make an order under Section 15 of the Act. The question for consideration is whether the impugned order should be set aside and the case should be remanded back to the Board for its inquiry in terms of Section 14 or the Appellant should be released forthwith.
11. ***Ashwani Kumar Saxena (supra)*** is an answer to the question raised. In concluding para of the report, the Supreme Court set aside the sentence awarded by the Sessions Court and directed the High Court to place the record before the Juvenile Justice Board for awarding appropriate sentence in accordance with the provisions of the Act with a rider that if the Appellant had already undergone the maximum sentence of three years prescribed under the Act, he has to be set free. In the instant case admittedly the Appellant is in custody for a period of over eight years.
12. Similarly, in ***Amit Singh (supra)*** again the Supreme Court ordered the Petitioner (juvenile in conflict with law) to be set at liberty as he had

already undergone a sentence of twelve years although the maximum period for which a juvenile could be detained in a special home under Section 15 was only three years. Para 21 and 22 of the report are extracted hereunder:-

“21. Inasmuch as the date of birth of the petitioner is 10-5-1982 and on the date of the alleged incident which took place on 1-5-1999, his age was 16 years, 11 months and 21 days i.e. below 18 years, hence on the date of the incident, the petitioner was a juvenile in terms of the Act because he had not completed 18 years of age and is entitled to get the benefit of the provisions under Sections 2(l), 7-A, 20 and 64 of the Act. It is also specifically asserted that the petitioner had already undergone 12 years in jail since then which is more than the maximum period for which a juvenile may be confined to a special home.

22. Under these circumstances, the petitioner is directed to be released from the custody forthwith. The writ petition is allowed.”

13. The remand of the case for an inquiry by a Juvenile Justice Board is not going to serve any purpose in a case where a juvenile in conflict with law has already served the detention of over three years as according to Section 19 of the Act, a juvenile shall not suffer any disqualification on account of any conviction in pursuance of an inquiry under the Act.
14. Learned counsel for the State urges that the decision in ***Amit Singh (supra)*** was rendered in a writ petition. Our attention is also drawn to a judgment of the Supreme Court in ***Satish @ Dhanna v. State of Madhya Pradesh & Ors. (2009) 14 SCC 187*** wherein the accused who was a juvenile was released because the order of conviction was not disputed. The eventuality where an order of conviction is disputed did not come up for consideration before the Supreme Court in ***Satish (supra)*** which was considered in ***Ashwani Kumar Saxena (supra)*** and ***Amit Singh (supra)***.

15. Accordingly, in the absence of a matriculation certificate, the date of birth certificate from the school first attended and the birth certificate given by a Corporation or a Municipal Authority, the ossification test is the only evidence to determine juvenility as per Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. Thus, it is established that the Appellant was a juvenile on the date of the alleged commission of offence.
16. Ms. Richa Kapoor fairly concedes that as per the ossification test the Appellant was aged between 13 to 16 years on the date of commission of the offence.
17. In view of the judgements of the Supreme Court in *Ashwani Kumar Saxena (supra)* and *Amit Singh (supra)* it would not be appropriate to remand the case for making an inquiry by the Board under Section 14 of the Act. The impugned order is, therefore, set aside and the Appellant is directed to be set free forthwith if not required in any other case.

CRL.M. (BAIL)1674/2010.

18. Application stands disposed of in view of the order passed in the appeal.

**(G.S. SISTANI)
JUDGE**

**(G.P. MITTAL)
JUDGE**

JULY 09, 2013
msr/vk