

GAHC010091022022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Interlocutory Application (Criminal) No. 217 of 2022

SONA BESRA @ MANDAL

S/O LATE RABON BESRA, R/O VILLAGE GANESHPUR, NANGRIJULI UNDER
TAMULPUR POLICE STATION, IN THE DIST. UDALGURI, BTAD, ASSAM.

.....Applicant/Appellant

VERSUS

THE STATE OF ASSAM AND ANR

REP. BY PP, ASSAM

2:MONIKA MURMU

D/O LATE RAJEN MURMU

R/O VILLAGE- GANESHPUR UNDER MAJBAT POLICE STATION IN THE DISTRICT
OF UDALGURI
BTAD, ASSAM

.....Respondents

Advocates for the petitioner	:	Mr D Talukdar, Mr M K Das, AC
Advocate for the respondents	:	Ms S Jahan, Addl. P.P, Assam. Ms P Tamuli, R-2

BEFORE
HON'BLE MR. JUSTICE AJIT BORTHAKUR
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Order : 25.01.2023

ORDER (ORAL)

(Malasri Nandi, J.)

Heard Mr D Talukdar, learned counsel and Mr M K Das, learned *Amicus Curiae*, appearing on behalf of the applicant/appellant and Ms S Jahan, learned Additional Public Prosecutor for the State of Assam. Also heard Ms P Tamuli, learned counsel for the respondent No. 2.

2. By filing this interlocutory application, the applicant has taken the plea of juvenility on the date of incident. According to the applicant, he was minor on the date of incident.

3. The brief facts of the case is that on 13.10.2013, an FIR was lodged by one Manika Murmu, alleging inter alia that the present applicant along with another person attempted to commit rape on the informant and her mother on the bank of river Bhutiamari. Somehow, she could manage to escape from the place, however, the present applicant and another committed rape on his mother and killed her.

4. On receipt of the FIR, a case was registered under Sections 376/302 IPC and after completion of investigation, charge sheet was submitted against the present applicant & another under Sections 376/302/34 IPC. During trial, before the learned Sessions Judge, Udalguri, in connection with Sessions Case No. 116(U)/2014 the prosecution has examined witnesses to prove its case and the defence case was of total denial. However, after

completion of trial, the accused appellant along with another were convicted and sentenced to undergo Rigorous Imprisonment for seven years each, for the offence under Section 376/34 IPC and also sentenced to Rigorous Imprisonment for Life and to pay a fine of Rs. 1,000/- each, with default stipulation under Section 302/34 IPC.

5. The applicant has preferred an appeal from jail vide Criminal Appeal No. 63/2017.

6. It is submitted by the learned counsel for the applicant that after filing of the appeal, it came to know that the present applicant was born on 31.05.1997 and the incident occurred in the year 2013. As such, the age of the applicant was around 16 years. Hence, he was a minor at the time of commission of the offence.

7. To that effect, the Headmaster of Dayalpur Nagaon Primary School, Sonitpur, Assam has issued one certificate, by stating that on 31.12.2007, when the applicant has left the school, he was around 10 years 7 months as per record book.

8. It is further submitted that as per Juvenile Justice (Care and Protection of Children) Act, 2000, the plea of juvenility can be taken at any stage before any Court. As such, the applicant be released on bail and the matter may be forwarded to the Juvenile Justice Board.

9. In support of his submission, the learned counsel for the applicant/appellant has placed reliance on the following caselaws:-

1) 2019 14 SCC 401; (*Raju vs. State of Haryana*)

2) 2012 CrL. L. J. 471 (*in Re: State of Assam*)

10. On the other hand, learned Additional Public Prosecutor has argued that as per the report of Sessions Judge, Udalguri, it reveals that the applicant was minor on the date of

incident and as such, the applicant may be released accordingly.

11. We have considered the submissions of the learned counsel for both the parties. We have also gone through the record accordingly.

12. It appears that during pendency of the appeal, the instant interlocutory application has been filed by the applicant, Sona Besra @ Mandal, taking the plea of juvenility and accordingly, the matter was sent back to the learned Sessions Judge, Udalguri, vide order dated 14.09.2022, for making an inquiry, as to the veracity of the claim of juvenility made by the applicant/appellant. Accordingly, a report was submitted by the learned Sessions Judge, Udalguri, stating that during the inquiry, the applicant relied on a certificate issued by the Headmaster of Dayalpur Nagaon Primary School, Sonitpur, which shows that the date of birth of the applicant, was 31.05.1997 and the incident occurred on 13.10.2013, indicating that the applicant was minor at the time of commission of offence.

13. The learned Sessions Judge in his report had submitted that though the Headmaster of Dayalpur Nagaon Primary School, was directed to bring the admission register relating to the admission of the applicant, Sona Besra @ Mondal, in the school and also counterfoil book of certificate, but the Headmaster has failed to produce the documents in original at the time of examination on the plea that the said documents have been lost. Hence, learned Sessions Judge, Udalguri held that the said school certificate issued by the Headmaster of Dayalpur Nagaon Primary School, cannot be considered to be a genuine document. As such, the claim of juvenility cannot be established.

14. In absence of the certificate, the option left open to the Sessions Court was to obtain a medical opinion to ascertain the age of the applicant at the time of incident. Subsequently,

this Court has passed an order by stating that under Rule 12 (3) (a) and (b) of Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter, referred to as “the J J Rules”), in the event of non-availability of the matriculation certificate issued by the school or the birth certificate issued by the corporation, municipal authority or panchayat, the Sessions Court ought to have resorted to the procedure provided under the Rule 12 (3) (a) (i) and (ii) of the Rules, i.e., to seek a medical opinion from a duly constituted Medical Board to determine the age of the applicant and the record was remitted back to the learned Sessions Judge, Udalguri to determine the age of the applicant on the basis of the medical opinion, after duly constituting a Medical Board.

15. As per direction of this Court, the learned Sessions Judge, Udalguri has submitted his report along with the report of the Medical Board, from which it reveals that the age of the applicant is in between 23 to 25 years on the date of examination by the Medical Board, Udalguri, on 03.12.2022. It is also reflected in the order of the learned Sessions Judge, Udalguri that as per record available in the Court the occurrence took place on 13.10.2013 and if the date of occurrence is considered to be 13.10.2013 and if the present age of the applicant is considered to be 25 years of age, as higher side of age shown in the medical report, the age of the accused was below 18 years on the date of occurrence.

16. Hon’ble Apex Court in the case of Devilal and others vs. State of Madhya Pradesh, 2021 (5) SCC 292, has held that the appellant is free to raise ground of juvenility at any stage even at the stage of appeal. The issue *inter alia*, that arose before the Apex Court was –

(i) Whether the appellant who was more than 16 years of age on the day when the incident had occurred (and therefore was not a juvenile within the meaning of the 1986 Act) but was

less than 18 years of age on the day of the incident, benefit could be given to him in terms of the provisions of the Juvenile Justice (Care and [Protection of Children](#)) Act, 2000!

17. The Apex Court held that the appellant there to be a juvenile as he was less than 18 years on the day of commission of offence. As per Section 20 of Juvenile Justice Act, 2000, the matter was remitted to the Jurisdictional Juvenile Justice Board for further proceeding.

18. In the case of *Devilal (supra)* a plea of juvenility was raised for the first time before the Hon'ble Supreme Court. Hon'ble Supreme Court observed that [Section 20](#) also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board.

19. Section 25 of the J J Act, 2015 is a special provision in respect of pending case, according to which, all proceedings in respect of a child alleged or found to be in conflict with law, pending before any Board or Court, on the date of commencement of that Act shall as if this Act had not been enacted. Hence, this provision under Section 25 of the J J Act, 2015, empowers the Court to follow the procedure as laid down in the J J Act, 2000.

20. Clearly, the offence that is alleged to have been committed by the applicant/appellant during the time when the Act, 2000 was in force. Hence, in view of these observations and also in view of the guidelines in the case of *Devilal (supra)*, the Judgment of the Hon'ble Supreme Court, we are of the view that this application is fit to be allowed. Accordingly, the interlocutory application is allowed.

21. The sentence of Life Imprisonment pertaining to the applicant, Sri Sona Besra @ Mandal, in connection with Sessions Case No. 116(U) of 2014, is set aside and the matter is

remitted to the Jurisdictional Juvenile Justice Board through the Court of learned Sessions Judge, Udalguri, for necessary action in accordance with law.

22. It is provided that the applicant/appellant, Sri Sona Besra @ Mandal shall be released on bail on furnishing bail bond of Rs. 25,000/-, with one surety of the like amount to the satisfaction of the learned Sessions Judge, Udalguri, subject to his appearance before the Jurisdictional Juvenile Justice Board, **within 15 days from the date of release.**

23. Interlocutory Application stands disposed of.

JUDGE

JUDGE

Comparing Assistant