

GAHC010025552018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(CrI.)/116/2018

NAWAS SARIF
S/O- MD. ALIMUDDIN, R/O- IRONG KHUNAO, P.S. LILONG, DIST-
THOUBAL, MANIPUR

VERSUS

UNION OF INDIA
REP. BY NCB

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : SC, NCB

IN Case : CrI.A./405/2017

NAWAS SARIF
S/O MD. ALIMUDDIN
R/O IRONG KHUNAO
P.S. LILONG
DIST. THOUBAL
MANIPUR

VERSUS

UNION OF INDIA

REPRESENTED BY NCB

Advocate for : MS.N DAS
Advocate for : SC
NCB appearing for UNION OF INDIA

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER (CAV)

21.06.2024

(A.D.Choudhury, J)

1. Heard Ms. S. K. Nargis, learned counsel appearing for the applicant/appellant. We have also heard Mr. S. C. Keyal, learned Standing Counsel, NCB appearing for the respondent.
2. The applicant/appellant herein was convicted under Section 21(c) of the NDPS Act' 1985, by the learned Additional Sessions Judge No. 1, Kamrup (M), Guwahti under its Judgment and Order dated 04.09.2017, passed in connection with NDPS Case No. 09/2017 and was sentenced to suffer rigorous imprisonment of 12 years.
3. During the pendency of the appeal, plea of juvenility was raised by way of filing the instant application.
4. This Court under its order 05.04.2018, directed the learned Trial Judge to conduct an enquiry in terms of the provision of Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 (hereinafter referred to as Rules 2007) so as to ascertain the age of the applicant and submit a report before this Court.

5. Pursuant to such direction, an enquiry was conducted and a report was submitted on 03.05.2018. From the report, this Court found that while conducting the enquiry and preparing the report dated 03.05.2018, neither Rule 12 of the Rules 2007 nor Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 were followed. Accordingly, this Court under its order dated 18.02.2021, directed the learned Trial judge to conduct a de-novo enquiry to determine the age of the applicant/appellant as per Rule 12 of the Rules, 2007.

6. The learned Trial Judge conducted a de novo enquiry in terms of the aforesaid order. The learned Trial Judge, submitted an enquiry report on 12.06.2023. During enquiry, opinion of Medical Board was obtained. As per the ossification test, the age of the applicant, on the date of commission of the offence was 20 years 03 months and 03 days. However, after giving benefit of 2 years of margin of error to such determination of age, the learned trial judge opined that the applicant convict was 18 years 03 months 03 days at the time of commission of the offence.

7. None of the parties have raised any dispute as regards the correctness of the ossification test conducted upon the applicant. However, Ms. S. K. Nargis, learned counsel for the applicant/appellant argues that though the learned trial Court had granted benefit of margin of error of 2 years and held the applicant to be 18 years 03 months 03 days on the date of commission of the offence, the applicant/appellant is entitled for benefit of margin of error of an additional one year i.e. total three years, in terms of the ratio laid down by the Hon'ble Apex Court in the case of **Darga Ram –Vs- State of Rajasthan** reported in **(2015) 2 SCC 775**. According to her, though statutory prescription for calculation of margin of error is one year, however, the Courts,

more particularly, the Hon'ble Apex Court had already laid down the proposition that additional two years margin of error, on either side, over and above one year margin prescribed, is to be given when age is determined on the basis of ossification test.

8. Per contra Mr. S. C. Kayal, learned Standing Counsel, NCB submits that a specific direction was issued by this Court under its order dated 05.04.2018 that the age should be determined in terms of Rule 12 of the Rules 2007. Therefore, in terms of Rule 12 of Rules 2007, the applicant/appellant cannot be granted the benefit of deduction of more than one year on account of margin of error, beyond the statutory prescription.

9. We have given our thoughtful considerations to the arguments advanced by the parties. Also perused the materials available on record including the Enquiry Report.

10. The Hon'ble Apex Court in the case of **Jaya Mala –Vs- Home Secretary, Government of Jammu & Kashmir** reported in **1982 2 SCC 538**, held that margin of error of 2 years on either side is required to be given, when age is ascertained by radiological and orthopaedic examination. Accordingly, the learned Trial Judge opined that the age of the applicant was 18 years 03 months 03 days on the date of commission of the crime, though as per ossification test, the age was 20 years 03 months 03 days.

11. Rule 12 of the Rules 2007, provides that the age determination enquiry shall be conducted seeking evidence by obtaining the matriculation or equivalent certificate, if available and in absence whereof, the date of birth certificate from the Schools (other than a play school) first attended shall be relied on; and in absence whereof; birth certificate given by corporation or a Municipal Authority or Panchayat can be relied on. The said rule further provides that in absence of any of the aforesaid

materials/evidence, the Board is required to seek medical opinion from a duly constituted medical board, which will declare the age of the juvenile or child in conflict with law.

12. Rule 12 (3)(b) of the Rules 2007 further provides that in case exact assessment of the age cannot be made, the Court or the Board, as the case may be, can give benefit by considering the age of the child on the lower side within the margin of one year. Thus margin of benefit under Rule 12 of the Rules 2007 can be granted, when exact age cannot be assessed. In the present case, the age has exactly been assessed after relaxing the age by two years. Therefore, the question of extending concession of another one years, in our opinion would not arise in the facts of the present case.

13. Coming to the judgment of the Hon'ble Apex Court in the case of **Darga Ram** (supra), the accused therein was held to be 17 years 02 months on the date of commission of the offence and thus was held to be a juvenile within the meaning of the expression used in the Juvenile Justice (Care and Protection of Children) Act, 2000. However, The Hon'ble Apex Court expressed its dissatisfaction over the decision of the Medical Board to estimate the age of the applicant therein in the range of 30 to 36 years on the date of the Medical examination. The Hon'ble Apex Court observed that the general rule about age determination is that the age as determined can vary plus minus two years but the Medical Board had spread it over a period of six year. The Court had also expressed its dissatisfaction in taking the mean age (33 years) to be the age on the date of examination. The Hon'ble Apex Court further expressed that it is not sure whether such estimation is the correct way of the estimation or not. As the estimation was made by an Expert Board, the Hon'ble Apex Court persuaded itself to go by the age

estimation given by the Medical Board. In the aforesaid context, the Hon'ble Apex Court observed as regards grant of additional one year of margin of error. However, no law has been laid down in the said decision to the effect that in every case, after giving two years of benefit of margin of error, an additional relaxation of one year is to be given in each and every case.

14. That being the position, this Court is of the unhesitant view that the determination made in the case of **Darga Ram** (supra) was made in the given facts of that case and no ratio was laid down as projected by Ms. S. K. Nargis, learned counsel for the appellant/applicant.

15. Accordingly, this Court is of the view that the applicant/appellant was not a juvenile on the date of commission of the offence.

16. Accordingly, the present application stands dismissed.

JUDGE

JUDGE

Comparing Assistant