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WP CrI. No. 664 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19-08-2026

PRONOUNCED ON : 24-08-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP CrI. No. 664 of 2026

and

WPMP CRL. No. 217 of 2026

Suresh
S/o. Anumanthappa,
No.3/143/1, Thinnai, Devaganapalli,
Krishnagiri District.

..Petitioner(s)

Vs

1. State of Tamil Nadu Rep.by, The Additional
Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Director General of Prisons,
Prison and Correctional Service,
Whannels Road, Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
Central Prison, Vellore - 632 002.

..Respondent(s)

Prayer: Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Mandamus, directing the respondents to release
the petitioner's cousin brother namely Ganga @ Gangathar @



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Gangatharan S/o. Anjinappa, aged about 46 years, life Convict, Ct.No.16126, (PID No.36384) now confined in Central Prison, Vellore -2, immediately and thus render justice.

For Petitioner(s): Mr.P.Pugalenth

For Respondent(s): Mr.C.R. Malarvannan,
Counsel for Government of Tamil Nadu
(Criminal Side)

Order

(Order of the Court was delivered by Sunder Mohan J.)

The cousin brother of the convict, viz., Ganga @ Gangathar @ Gangatharan, S/o.Anjinappa, aged 46 years, has preferred the above writ of mandamus seeking a direction to the respondents, to release the convict forthwith.

2. The facts leading to the filing of the writ petition are as follows:

(i) The convict was the sole accused in SC.No.164 of 2000 on the file of the learned Additional District and Sessions Judge, Dharmapuri. He was tried for the offences under Sections 376 and 302 of the IPC for committing rape of a 12 year old girl and causing her death by cutting her



with an '*aruval*'. The trial Court convicted the convict prisoner and sentenced him to undergo life imprisonment.

(ii) On appeal, this Court in CrI.A.No.365 of 2006, confirmed the conviction and sentence and dismissed the appeal. According to the learned counsel for the petitioner, the convict had not preferred any appeal challenging the said judgment.

(iii) The convict, thereafter filed WP No.2077 of 2025 before this Court claiming premature release on the ground that he was a juvenile on the date of the offence. This Court, hence directed the Juvenile Justice Board, Krishnagiri [in short, 'the JJB'] for determination of the convict's age as on 07.10.1996 (the date of offence) and pass appropriate orders.

(iv) The JJB by order dated 04.09.2025 had determined the age of the convict at the time of occurrence as 16 years 5 months and 2 days and also observed that he was a '*juvenile*'.



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(v) The learned counsel for the petitioner submitted that since the plea of juvenility can be raised at any stage and the JJB has now found that the convict was a juvenile at the time of the occurrence, further detention of the convict would be unwarranted and unjustified and prayed for a direction as aforesaid.

3. The respondents in their counter have not disputed the age of the convict. However, they would state that though the JJB had determined the age of the convict, the prison authorities who are bound to execute the sentence imposed by this Court cannot take any action for release unless suitable orders are passed by this Court or any competent Court.

4. As stated earlier, the convict was found guilty of the offences under Sections 376 and 302 of the IPC for committing rape and causing the death of a 12 year old girl. The crime committed by the convict is certainly heinous and he would not be otherwise entitled to premature release as stated by the respondents in their counter affidavit. However, it is well settled that the plea of juvenility can be raised at any stage even if the conviction and sentence has become final.



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5. (i) This Court in *Jayavel v. State*, reported in **2013 (2) MWN (Cr.) 48 (DB)** held that this plea can be raised in a petition under Article 226 of the Constitution of India, even after final disposal by the Hon'ble Supreme Court confirming the conviction. The relevant portion from the said judgment reads as follows:

“43. In pursuance of the Proviso to Section 7-A and Explanation to Section 20 and as per the dictum of the Honourable Supreme Court in Hari Ram v. State of Rajasthan and another, 2009 (6) CTC 464 (SC), and in Amit Singh v. State of Maharashtra, 2011 (3) MWN (CrI.) 572 (SC), he can claim juvenility in any proceedings, before any Court and at any stage of the case. It includes, a Habeas Corpus Petition under Article 226 of the Constitution of India. By its nature, it is also a Criminal proceeding. Article 21, Constitution of India guarantees that no one shall be jailed except as per law. It also guarantees that no one shall be punished, detained in jail except in accordance with law. So, no one shall be jailed as against the provisions of J.J. Act, more particularly, in violation of Sections 15 & 16 of New J.J. Act, 2000 (also see Section 7-A & Section 20, New J.J. Act, 2000). Thus, even after the final disposal of his case by the Honourable Supreme Court, in this independent proceedings under Article 226 of the Constitution of India, Petitioner can claim juvenility.”



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(ii) Further, the Hon'ble Supreme Court in ***Om Prakash @ Israel @ Raju @ Raju Das v. Union of India and another***, reported in **2025 SCC OnLine SC 47** has also held that the plea of juvenility can be raised at any stage after conviction. The relevant portion from the said judgement is as follows:

“21. We place emphasis on the words “even after the final disposal of the case” in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul of the entire Act, must be given its fullest meaning and interpretation. If the offence is committed by a child, it cannot be treated otherwise than as provided under the 2015 Act. After finding out the truth, necessary consequences must follow. In a country like ours, where society is fragmented due to various reasons including, but not limited to illiteracy and poverty, the role which is assigned to the Court assumes great significance. Sufficient opportunities must be given to the child in conflict with law to get the benefit of the 2015 Act.

22. Merely because a casual adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently. This is for the simple reason that the plea of juvenility has not attained finality. So long as the right of a party subsists, one can never say that finality has been attained. In a case where a plea has been raised, but not adjudicated upon, the



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decision rendered thereunder would not amount to attaining finality. Likewise, when such a plea is not treated as one under Section 9(2) of the 2015 Act in compliance with the procedural mandate specified thereunder, an order rejecting such a plea would not be termed as a final one. To put it differently, even assuming a plea of juvenility was raised but not considered appropriately at the time of disposal of a Special Leave Petition/Statutory Criminal Appeal, a Review Petition, or a Curative Petition thereafter, it would not bar a competent Court from deciding the said issue by following due procedure. We make it clear that if an adjudication is based on due determination, then there may not be any room for another round of litigation. But, in a case where the plea was not treated as an application under Section 9(2) of the 2015 Act and, the procedure mandated thereunder was not followed, the principle as aforesaid would certainly apply as the right of raising the plea of juvenility has not ceased and, therefore, subsists.

23. Since the need for taking care of a juvenile in conflict with law is mandated by the Constitution, the role of the constitutional Courts is significant. Even after the dismissal of a Special Leave Petition/Statutory Criminal Appeal followed by incidental proceedings before this Court, where the plea of juvenility was not consciously considered, there would be no bar on the constitutional Courts to consciously take a deeper look. Doing so is not an exercise of the powers conferred under Articles 32, 136 or 226 of the Constitution, but an act in fulfilment of a mandated duty enjoined upon the Courts, to give



effect to the laudable objective of a social welfare legislation.....”

Hence, we are inclined to consider whether the convict can be released on the ground that he was a juvenile at the time of commission of the offence.

6. Although, the learned counsel for the petitioner would submit that the plea of juvenility was not raised before the trial Court or this Court, we find on perusal of the judgment of this Court passed in the appeal that the plea of juvenility was in fact raised and considered. This Court held that since the occurrence took place in the year 1996, the Juvenile Justice Act, 1986 [in short, ‘JJ Act, 1986’] was applicable as per which the convict who had completed 16 years as on the date of offence was not a juvenile. However, we find that the explanation to Section 20 of the JJ Act, 2000 was not brought to the notice of this Court while deciding the appeal on 20.11.2007.

7. (a) It is pertinent to point out that under the JJ Act 1986, a boy less than 16 years was considered to be a juvenile / child. In Juvenile Justice Act, 2000 [in short, ‘JJ Act, 2000’] a ‘juvenile /child’ is defined under Section 2(k) as follows:



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““juvenile” or “child” means a person who has not completed eighteenth year of age”

(b) Section 2(l) with effect from 22.08.2006 reads as follows:

“ juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence”.

8. The proviso to Section 20 of JJ Act, 2000 and the explanation was brought into force on 22.08.2006 and Section 20 of JJ Act, 2000 after 22.08.2006, read as follows:

“20. Special provision in respect of pending cases:

Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which this Act comes into force in that area, shall be continued in that Court as if this Act had not been passed and if the Court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.



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Explanation. In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any Court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

9. The above referred explanation therefore makes it very clear that in all pending cases including the trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility shall be in terms of Section 2(l) of JJ Act, 2000 and the provisions of the Act shall apply as if the provisions had been in force, for all purposes, and at all material times when the alleged offence was committed.

10. In fact, in similar circumstances, the Hon’ble Supreme Court had taken into consideration the explanation to Section 20 of the JJ Act, 2000 in ***Dharambir v. State (NCT of Delhi) and Another***, reported in **(2010) 5 SCC 344** and held as follows:



“11. It is plain from the language of the Explanation to [Section 20](#) that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of Clause (l) of [Section 2](#), even if the juvenile ceases to be a juvenile on or before 1st April, 2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. Clause (l) of [Section 2](#) of the Act of 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. [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 concerned for passing sentence in accordance with the provisions of the Act of 2000.

12. At this juncture, it will be profitable to take note of [Section 7A](#), inserted in the Act of 2000 with effect from 22nd August, 2006. It reads as follows:

"7A. 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 recognised 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect."

Proviso to sub-section (1) of [Section 7A](#) contemplates that a claim of juvenility can be raised before any court and has to be recognised at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the Act of 2000 and the rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the Act of 2000. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the Act of 2000 as if the provisions of [Section 2\(k\)](#) of the said Act, which defines "juvenile" or "child" to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act. It is, thus, manifest from a conjoint reading of [Sections](#)



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2(k), 2(l), 7A, 20 and 49 of the Act of 2000, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the Act of 2000 and were undergoing sentences upon being convicted.”

11. Unfortunately, as stated above, this explanation in Section 20 of JJ Act, 2000, was not brought to the notice of this Court. By the virtue of this provision, the convict had to be treated as a juvenile. This Court would have certainly found the convict to be a juvenile, had the above provision been brought to its notice. Therefore, though the plea of juvenility was raised and decided, since a very important statutory provision was not considered, this case has to be treated on par with any other case where the plea of juvenility was not raised either before the trial Court or the appellate Court.

12. It is for this reason that this Court in WP No.2077 of 2025 had directed the JJB to determine the age of the convict as on the date of the offence. The JJB as stated above, by the order dated 04.09.2025, had



found the convict to be a juvenile as on the date of the offence and found his age to be 16 years 5 months and 2 days.

13. As rightly stated by the respondents, they have no authority to release the convict prisoner on that ground as they are bound to execute the sentence imposed by this Court. But this Court in exercise of its power under Article 226 of the Constitution of India having found that the convict was a juvenile at the time of commission of the offence in terms of Section 20 of the JJ Act, 2000, can certainly undo the error as the right of the convict under Article 21 of the Constitution of India has been violated. We are of the view that this would not amount to a review of the judgment passed by this Court in CrI.A.No.365 of 2006.

14. Incidentally we are informed by the learned counsel for the petitioner that the convict has been assigned responsible duties in the prison which is not denied by the respondents. Admittedly, the convict is in custody for almost 25 years. Hence, considering all the above facts and considering the fact that the convict could not have been confined for more than three years, we are inclined to direct his release forthwith.



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15. In view of the above observations, the Writ Petition stands allowed. The respondents are directed to forthwith release the petitioner's cousin brother/convict viz., Ganga @ Gangathar @ Gangatharan, S/o.Anjinappa, aged 46 years, Life Convict CT No.16126 (PID NO.36384), who is confined at Central Prison, Vellore, unless his confinement is required in connection with any other case. Consequently, the connected Writ Miscellaneous Petition is closed.

(A.S.M.,J.) (S.M.,J.)
24-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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Issue order copy today.



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**DR.ANITA SUMANTH J.
AND
SUNDER MOHAN J.**

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To

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Director General of Prisons,
Prison and Correctional Service,
Whannels Road, Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
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4. The Public Prosecutor,
High Court, Madras.

**Pre-delivery Order in
WP CrI. No. 664 of 2026
and WPMP CRL. No. 217 of 2026**

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