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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.10.2015

CORAM:

THE HONOURABLE DR.JUSTICE S.TAMILVANAN

AND

THE HONOURABLE MR.JUSTICE C.T.SELVAM

H.C.P.No.27/2015

P.Vellaiyan .. Petitioner

Vs

1. The State of Tamil Nadu,
   represented by its Secretary,
   Department of Home,
   Fort St. George,
   Chennai-600 009.

2. The Superintendent of Central Prison,
   Vellore District, Vellore.

3. The Inspector of Police,
   Jamuna Marudur Police Station,
   Vellore District. .. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Habeas Corpus directing the respondents to produce the detenu Shankar, son of Vellaiyan, life convict, now confined at Central Prison, Vellore and set him at liberty.

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.A.N.Thambi Durai
Additional Public Prosecutor

ORDER

(Order of the Court made by S.TAMILVANAN,J.)

The detenu/accused faced the trial for the offences under Sections 302 and 307 of IPC and under Sections 25(1-B)(a) of the Arms Act and the conviction and sentence was passed by the learned Principal Sessions Judge, Vellore in S.C. No.356 of 2002 dated 23.09.2003, convicting the detenu for the offence u/s.302 IPC and sentencing him to undergo life imprisonment and to pay a fine of Rs.1,000/- in default to undergo rigorous imprisonment for a period of six months and convicting him for the offence u/s.307 IPC and

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sentencing him to undergo five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for a period of six months and convicting him to under section 25[1-A] of the Indian Arms Act and sentencing him to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to undergo rigorous imprisonment for a period of six months respectively. The said conviction and sentence imposed on the detenu/ accused was confirmed by a Division Bench of this Court in Criminal Appeal No.1637 of 2003 dated 16.06.2006.

2. It is the case of the petitioner that his son, the detenu/ accused herein, was a juvenile, as per 7-A of Juvenile Justice Act 2000, on the date of commission of offence, i.e., on 27.04.2001, and that the Trial Court did not conduct any enquiry, as per the procedure known to law and has erroneously convicted the detenu/ accused. Hence, this petition has been filed by the petitioner/father of the detenu Shankar, life convict, now confined at Central Prison, Vellore, to cause production of his son before this Court and to set him at liberty.

3. By way of filing additional typed set of papers, learned counsel for the petitioner drew the attention of this Court to the record sheet issued by the School Head Master wherein the date of birth of the detenu is stated to be as 24.05.1985.

4. Pursuant to the direction issued by this Court, the Inspector of Police/second respondent herein filed an affidavit stating that they have visited the detenu's last studied School i.e. P.U.Elementary School, Anaikat, Vellore District and verified with the school records with the help of the Head Master of the said school and the bonafide certificate issued by the school authorities has also been annexed, wherein the date of birth of the detenu was stated to be 24.05.1985.

5. On the aforesaid circumstances, this Court, to verify the factum as to whether the detenu was a juvenile as on the date of commission of offence, has passed orders on 07.09.2015, directing the learned Principal Sessions Judge, Vellore, to conduct an enquiry in this regard and to submit his report .

6. Pursuant to the direction, learned Principal Sessions Judge, Vellore submitted his report dated 08.10.2015 wherein it has been stated as follows:

> "....
> I further submit that as per the Radiologist Report, at present the convictor Sankar age is in between 25-40 years.
>
> I further submit that the date of commission of offence is 27.04.2001.

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I, therefore, assess the age of the convictor Sankar, S/o.Vallaiyan would be 16 (sixteen) years on the date of commission of offence, as per the School Records.
...."

7. In view of the above report filed by the learned Principal District and Sessions Judge, Vellore, we arrive at an irresistible conclusion that the detenu is found to be a juvenile as on the date of commission of the alleged offence.

8. In the result, this Habeas Corpus Petition is allowed. The detenu Shankar, son of Vellaiyan, life convict, now confined at Central Prison, Vellore, is directed to be released forthwith, unless his presence is required in connection with any other case.
Vga

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To

1. The State of Tamil Nadu,
   represented by its Secretary,
   Department of Home,
   Fort St. George,
   Chennai-600 009.

2. The Superintendent of Central Prison,
   Vellore District, Vellore.

3. The Inspector of Police,
   Jamuna Marudur Police Station,
   Vellore District.

4. The Public Prosecutor,
   High Court, Chennai.

5. The Superintendent of Central Prison,
   Vellore.

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6. The Joint Secretary to Government
   Public (Law and Order) Fort Saint
   George, Chennai - 600 009

+1 C.C. To Mr.R.Sankarasubbu, Advocate in SR.NO.56959

H.C.P. No.27/2015

AK(CO)
sd : 06/11/2015

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