

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Writ Petition No. 1987 of 2013

Date of Decision : May 05, 2015

Parveen Kaur

....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present : Mr. Anil Bhardwaj, Advocate.

Mr. K.D.S. Sidhu, Additional Advocate General, Punjab.

T.P.S. MANN, J.

Prayer made in the petition filed under Articles 226 and 227 of the Constitution of India is for issuance of writ in the nature of *habeas corpus* directing the respondents to release the detenu, namely, Jasvir Singh, son of Jang Singh, husband of the petitioner, from Central Jail, Ludhiana forthwith as his detention is contrary to the fundamental rights guaranteed under Article 21 of the Constitution and the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended upto date, hereinafter referred to as 'the 2000 Act'.

The detenu was arrested on 26.2.1997 in case FIR No.22 dated 25.2.1997 registered at Police Station Baghapurana, District Faridkot under Section 302 read with Section 34 and Section 392 IPC. Vide judgment and order dated 22.5.2000, the Sessions Judge, Faridkot convicted him under Section 302 read with Section 34 IPC and sentenced him to undergo rigorous imprisonment for life and to pay a

fine of Rs.25,000/-. He was also convicted under Section 392 IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.3,000/-. Both the sentences of imprisonment were ordered not to run concurrently due to the ghastly murder of Vijay Kumar committed by the detenu and his co-accused, besides, committing robbery on the highway between sunset and sun-rise. Aggrieved of his conviction and sentence, the detenu, alongwith his co-convicts, filed Criminal Appeal No.278-DB of 2000, which was, however, dismissed by this Court vide judgment dated 14.9.2005.

The case of the petitioner is that her husband Jasvir Singh, the detenu, was a juvenile at the time of commission of the offence as he was born on 20.1.1980 and, thus, had not completed 18 years of age on the date of occurrence i.e. 24.2.1997. In order to substantiate the fact that the detenu was born on 20.1.1980, the petitioner has relied upon the birth certificate (Annexure P-4) and verification report (Annexure P-5). According to the petitioner, the Juvenile Justice Act, 1986, hereinafter referred to 'the 1986 Act', has already been repealed and replaced by the 2000 Act. Section 2(h) of the 1986 Act defined the 'juvenile', to be the one who had not attained the age of 16 years on the date of commission of offence. However, Section 2(k) of the 2000 Act, raised the age limit from 16 years to 18 years. The 2000 Act came into force on 1.4.2001. By that time, the trial stood concluded. Further, Section 15 of the 2000 Act dealing with the order to be passed in respect of a juvenile in conflict with law did not allow detention beyond

three years. However, the detenu is in custody and has served a period of more than 14 years. In this regard, the petitioner has placed reliance upon the custody certificate (Annexure P-3). It is also submitted that the detenu could not raise the issue of juvenility, first before the trial Court and, thereafter, before this Court as the 2000 Act was not made applicable with retrospective effect. Subsequently, by way of amending Act No.33 of 2006, Section 7A has been inserted in the 2000 Act which enables persons, like the detenu, to raise the claim of juvenility before any Court and it shall be recognised, at any stage, even after final disposal of the case. Submitting that the detenu has already undergone an actual period of fourteen years, nine months and one day as on 10.8.2013 as reflected in the custody certificate (Annexure P-3), it is claimed that the detenu is entitled to protection in respect of conviction for offences as enshrined in Article 20 of the Constitution and of his life and personal liberty as provided under Article 21 of the Constitution. Therefore, the further detention of the detenu is illegal and he be released forthwith.

Upon notice, reply has been filed by Rajpal Meena, Additional Director General of Police (Prisons), Punjab on behalf of respondent No.2, wherein it is mentioned that the birth certificate issued by the Additional District Registrar, Births and Deaths, Moga was got verified. Vide report dated 14.10.2004 (Anexure R-2/T), the Additional District Registrar, Births and Deaths, Moga stated that the date of birth of detenu Jasvir Singh, husband of the petitioner was 20.1.1980. It is further mentioned that though the detenu was less than 18 years of age on the date of commission of the offence yet he is not entitled to be

released from custody as he had not taken the plea of juvenility either during his trial or during the pendency of the appeal filed by him against his conviction and sentence.

On 25.3.2014, this Court, while noticing that the State had almost conceded the plea of the petitioner that her husband was born on 20.1.1980, directed the parties to appear before the Juvenile Justice Board, Moga so as to enable the Board to record evidence and determine the juvenility of the detenu as per the 2000 Act and submit a report. Pursuant thereto, report dated 24.4.2014 was received from the Principal Magistrate, Juvenile Justice Board, Moga, mentioning therein that after holding an enquiry, it was concluded that detenu Jasvir Singh was a juvenile according to Section 2(k) of the 2000 Act on the date of occurrence, i.e. 24.2.1997. Subsequent thereto, short affidavit was filed by Surinderpal Khanna, PPS, Superintendent, Central Jail, Ludhiana on behalf of the respondents, wherein it was mentioned that the factum of the Juvenile Justice Board, Moga verifying the date of birth of the detenu as 20.1.1980 has not been disputed. However, it is stated that on 22.5.2000, the detenu was twenty years, four months and two days old, and, thus, an adult.

Having heard learned counsel for the parties, this Court finds that as per Section 2(h) of the 1986 Act, a person who had attained the age of 16 years or above on the date of commission of offence was not a juvenile. However, as per the 2000 Act and the subsequent amendment Act of 2006 read alongwith Juvenile Justice (Care and Protection of Children), Rules 2007 with retrospective effect, the age

limit was raised from 16 years to 18 years. Section 7A(1) of the 2000 Act lays down the procedure to be followed whenever a claim of juvenility is raised before any Court. The said provision is reproduced here-in-below :-

"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."

As per custody certificate (Annexure R-1), detenu Jasvir Singh had undergone an actual period of fifteen years and two days as on 10.12.2013. Even thereafter, he remains behind the bars. Section 15 of the 2000 Act enumerates orders which could be passed by the Juvenile Justice Board regarding the juvenile who had committed an

offence. Such like orders could require the juvenile to go home after advise or admonition, participate in group counselling, asked to perform community service, parent of the juvenile or the juvenile himself required to pay a fine or could be released on probation of good conduct or could be sent to a Special Home but not for a period of more than three years.

Section 15 of the 2000 Act is reproduced here-in-below

"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) The Board shall obtain the social investigation report on juvenile either through a probation officer or a recognised voluntary organisation or otherwise, and shall take into consideration the findings of such report before passing an order.
- (3) Where an order under clause (d), clause (e) or clause (f) of sub-section (1) is made, the Board may, if it is of opinion that in the interests of the juvenile and of the public, it is expedient so to do, in addition make an order that the juvenile in conflict with law shall remain under the supervision of a probation officer named in the order during such period, not exceeding three years as may be specified therein, and may in such supervision order impose such conditions as it deems necessary for the due supervision of the juvenile in conflict with law.

Provided that if at any time afterwards it appears to the Board on receiving a report from the

probation officer or otherwise, that the juvenile in conflict with law has not been of good behaviour during the period of supervision or that the fit institution under whose care the juvenile was placed is no longer able or willing to ensure the good behaviour and well-being of the juvenile it may, after making such inquiry as it deems fit, order the juvenile in conflict with law to be sent to a special home.

- (4) The Board shall while making a supervision order under sub-Section (3), explain to the juvenile and the parent, guardian or other fit person or fit institution, as the case may be, under whose care the juvenile has been placed, the terms and conditions of the order and shall forthwith furnish one copy of the supervision order to the juvenile, the parent, guardian or other fit person or fit institution, as the case may be, the sureties, if any, and the probation officer."

Provisions of the 2000 Act came for consideration in Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, 2012 (4) RCR (Criminal) 796, wherein it was held as under :-

36. Now, we summarise the position which is as under:-

- (i) A claim of the juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before the Supreme Court as well as after final disposal of the case. The claim of juvenility can be raised in appeal even if not pressed before the trial Court and can be raised for the first time before the Supreme Court though not pressed before the trial Court

and in appeal Court.

- (ii) For making a claim with regard to juvenility after conviction, the claimant must produce some material which may *prima facie* satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.
- (iii) As to what materials would *prima facie* satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for *prima facie* satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be *prima facie* accepted or rejected. In Akbar Sheikh and others Vs. State of West Bengal, 2010(5) RCR (CrL.) 341 and Pawan Vs. State of Uttaranchal, 2009(2) RCR (CrL.) 451 these documents were not found *prima facie* credible while in Jitendra Singh alias Babboo Singh Vs. State of Uttar Pardesh, 2011(1) RCR (CrL.) 917 the documents

viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents *prima facie* inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent.

- (iv) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.
- (v) The Court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act, cannot be defeated and persons who are entitled to get benefits of 2000 Act get such benefits. The Court should not be unnecessarily influenced by any general impression that in schools the parents or guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered *prima facie* on the touchstone of preponderance of probability.

- (vi) Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim or juvenility must be rejected by the Court at threshold whenever raised."

A perusal of Section 7A of the 2000 Act shows that the benefit of juvenility can be extended either during the trial of the case or during the pendency of the appeal. The law also allows such plea to be raised at any stage even after disposal of the trial or appeal.

It is not in dispute that as on 24.2.1997, detenu Jasvir Singh was less than 18 years of age. He is in custody for more than 16 years. Under these circumstances, the detention of detenu Jasvir Singh has become illegal and, therefore, he has to be released forthwith.

Resultantly, the petition is accepted and directions are issued to the respondents to release the detenu, namely, Jasvir Singh, son of Jang Singh, forthwith, from Central Jail Ludhiana in case FIR No.22 dated 25.2.1997 under Sections 302/34/392 IPC registered at Police Station Baghapurana, unless wanted in some other case.

(T.P.S. MANN)
JUDGE

(DARSHAN SINGH)
JUDGE

May 05, 2015
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