

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 101 OF 2014

Dinesh Jaiswal, S/o Ram Prasad, aged about 18 years, R/o Hikmipara,
Jagdalpur (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through Police Station Jagdalpur (C.G.)

... Respondent

For Petitioner	:	Ms. Smriti Shrivastava, Advocate.
For Respondent-State	:	Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Navin Sinha, Chief Justice

Hon'ble Shri Justice P. Sam Koshy

Order on Board

Per NAVIN SINHA, C.J.

02/03/2016

1. The Petitioner was charged, convicted and sentenced to life imprisonment under Section 302 and seven years rigorous imprisonment under Sections 307, 307/34 IPC by the Third Additional Sessions Judge, Bastar (Jagdalpur) on 27.10.1994 in Sessions Trial No. 64 of 1994, with regard to an occurrence on 23.3.1992. His age as on the date of occurrence was mentioned as 18 years in the charge-sheet.

2. It appears that two appeals were filed by the Petitioner against the same conviction, which were registered as Criminal Appeal Nos. 1519 of 1994 and 200 of 1995. Both the appeals were dismissed by a common order dated 15.2.2012. The Petitioner then wrote to this Court on 20.1.2014 from the jail that he was below 18 years on the date of occurrence. Injustice had been done to him due to lack of legal awareness on his part and that he was entitled to be set at liberty by

grant of benefit under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act, 2000').

3. On the date of occurrence the Juvenile Justice Act, 1986 (hereinafter called 'the Act, 1986') was in operation. Subsequently the Act, 2000 was enacted. Section 2(h) of the Act, 1986 provided the age of juvenility as below 16 years. Under the Act, 2000, Section 2(k) defines juvenile as one who has not completed 18 years of age. Section 20 of the Act, 2000 gives it retrospective effect and the explanation takes within its ambit the pending appeal of the Petitioner before this Court.

4. This Court therefore on his application, on 26.3.2015 directed an enquiry by the Third Additional Sessions Judge, Bastar with regard to his juvenility. The Third Additional Sessions Judge, Bastar after holding enquiry submitted his report dated 14.5.2015 opining that the Petitioner was 17 years 10 months & 4 days old at the time of occurrence. Photocopies of documents on which the enquiry report was based were enclosed with the report. Since certain doubts still persisted in the mind of the Court, on 16.12.2015 the original materials which were scrutinised by the Third Additional Sessions Judge, Bastar during the enquiry, were called for. They were received in a sealed cover and opened in Court.

5. Section 7A of the Act, 2000 provides the procedure to be followed when claim of juvenility is raised before the Court. The proviso explicitly states that it may be raised before the Court at any stage and even after final disposal of the case. The claim shall be determined in terms of the provisions contained in the Act and the rules even if the juvenile has ceased to be so on or before the date of commencement of the Act and if the Court finds that on the date of commission of the offence the

person was a juvenile, the matter shall be forwarded to the Board for passing appropriate orders and the sentence imposed by the Court shall have no effect. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 provides the procedure to be followed in determination of age. Section 12(3)(a)(ii) is considered appropriate to quote :-

“12. Procedure to be followed in determination of age.– (1)
In every case concerning a child or a juvenile in conflict with law, the Court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) xxx xxx xxx

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) xxx xxx xxx

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;”

6. The original Primary School admission register of Danteshwari Primary School, Jagdalpur called for by order dated 16.12.2015 has been examined by us. There can be no dispute about the authenticity of the register as being old from its very physical condition. It clearly records the date of birth of the Petitioner at the time of entry in the primary school as 19.5.1974, as claimed by the Petitioner. He joined the primary school on 3.6.1969 and left it on 30.4.1984 after passing Class-V. The Third Additional Sessions Judge has relied upon the same in support of his report with regard to the age of the Petitioner.

7. The Petitioner was taken into custody on 24.3.1992 and was released on bail on 9.7.1992. He was again taken into custody on 27.7.1994 and pronounced guilty on 27.10.1994. The Petitioner was subsequently released on bail during the pendency of the appeal on 31.1.2003 but again sent back into custody on 10.4.2012 after dismissal of his appeal. It is therefore apparent that he has already completed more than three years of custody, the maximum that could have been imposed on him under Section 15 of the Act, 2000.

8. Learned Counsel for the State points out that in view of Section 7A(2) of the Act, 2000 this Court is now required to forward the matter to the concerned Juvenile Board for passing appropriate orders with regard to sentence even if the Petitioner has completed more than the maximum period of custody permissible.

9. Let the records be forwarded to the concerned Juvenile Justice Board for passing of appropriate orders with regard to sentence under the law.

10. Considering that the Petitioner is in custody, the Juvenile Justice Board is required to pass such appropriate orders at the earliest without any unnecessary delay.

11. Let the original documents be put in sealed cover and returned to the Third Additional Sessions Judge, Bastar for in turn returning it back to the concerned.

12. The application is allowed.

Sd/-
(Navin Sinha)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge