

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.34871 OF 2016

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking to issue a writ or order or direction, more particularly, one in the nature of writ of Mandamus to declare the action of respondent Nos.1 and 2 in not releasing the petitioner (convict No.7912) under the provisions of G.O.Ms.No.16, dated 17.2.2016, of respondent No.1 basing upon the age proof of Aadhar Card and Ration Card of the petitioner and not referring him to the Medical Board for determination of age as illegal and arbitrary and consequently, to direct respondent Nos.1 and 2 to release the petitioner forthwith by extending the benefit of the said Government Order following the age proof of Aadhar Card and Ration Card of the petitioner, and the report of the Medical Board duly constituted for the purpose of determination of age of the petitioner and to award costs.

2. Case of the petitioner is that on 9.5.2010, he was convicted for an offence under Section 302 I.P.C. in Sessions Case No.26 of 2008 on the file of the Judge, Family Court-cum-Additional District and Sessions Court, Medak District at Sanga Reddy. Challenging the same, he preferred Criminal Appeal No.45 of 2012 before this Court and the same is pending. He also filed CrI.A.M.P.No.1158 of 2016 seeking a direction to respondent No.2 to refer him for medical examination to determine his age as per the procedure prescribed under law and the same was dismissed on 16.9.2016 by passing the following order:

“We find merit in the contention of the learned Public Prosecutor, State of Telangana, that this kind of application may not fall within the scope of an appeal under Section 374(2) Cr.P.C.

The petitioner is desirous of seeking the benefit of a Government Order issued by the State in relation to remission of sentence and in that context, seeks medical examination for determination of his age. This exercise cannot be undertaken by the appellate Court which is seized of an appeal filed under Section 374(2) Cr.P.C.

The application is accordingly dismissed leaving it open to the petitioner to take recourse to appropriate remedies as may be available to him in law.”

The grievance of the petitioner is that now, he is aged 69 years, but in the judgment copy in S.C.No.26 of 2008, his age was reflected as 55 years as on the date of the judgment, which comes to 63 years now, which is incorrect. If his age is considered as 69 years, he is entitled for the relief of remission as per G.O.Ms.No.16, dated 17.2.2016, of respondent No.1. The said mistake crept inadvertently without his fault. Hence, he prays to extend the benefit of the said Government Order to him and release him immediately.

3. Heard and perused the material available on record.
4. Admittedly, the petitioner could not establish his age except on the basis of Aadhar Card and Ration Card issued in his favour. Hence, this Court is of the view that the petitioner can file a representation before the jail authorities for sending him to the Medical Board for determination of his age. On such

representation, the jail authorities shall send the petitioner to the Medical Board for determination of his age. Basing on the report of the Medical Board, the jail authorities are at liberty to consider the case of the petitioner for remission as per the aforesaid Government Order.

5. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs.

6. Miscellaneous Petitions pending, if any, in this Writ Petition shall stand closed.

31.10.2016
AMD



JUSTICE RAJA ELANGO

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Date: 31.10.2016

AMD