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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(CRL) 1663/2015

SANJEEV @ BAHUA

..... Petitioner

Through: Ms.Sunita Arora, Advocate with
Mr.Krishan Kumar, Advocate.

versus

STATE

..... Respondent

Through: Ms.Nandita Rao, ASC for the State
with SI Ramesh Kumar, PS Sultan
Puri.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

13.01.2016

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1. The present petition has been filed by the petitioner from Jail with the following prayers:-

(i) to quash the judgment dated 29.01.2003 and sentence dated 31.01.2003 the petitioner being a juvenile within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000; and

(ii) to direct the jail authorities to release the petitioner being a juvenile within the meaning of Juvenile Justice (Care and Protection of Children) Act, 2000 as held in the inquiry report duly accepted by this Court vide order dated 30.06.2015 in W.P.(Crl.) No.64/2013.

2. In compliance of order dated 10.08.2015, status report has been filed by the State mentioning therein as under:-

'Petitioner has taken birth in Delhi but his birth was not registered. His primary school record was also collected as

per which he got admission in school on the basis of affidavit and his D.O.B. mentioned in record is 22.07.1987. As per which he was juvenile in 2003 at the time of arrest. Hon'ble Court of Dr.Kamini Lau also declared him juvenile of its order dated 27.11.14, on the basis of his DOB mentioned in primary school record.'

3. Learned counsel for the petitioner submits that alongwith this petition, copy of the order dated 30.06.2015 passed in W.P.(Crl.) No.64/2013 filed by the co-convict Riazuddin @ Riyaz has also been annexed, wherein this Court observed as under:

'Clause 2 of Section 7A of the Act provides that if the Court finds a person to be juvenile on the date of commission of offence, it shall forward the juvenile to the Juvenile Justice Board for passing appropriate orders and the sentence if any passed by a Court, shall be deemed to have no effect. The import of this provision is that the sentence awarded will have no effect and the matter ought to be referred to Juvenile Justice Board for passing appropriate orders.'

This court considered the desirability of sending the accused to the Juvenile Justice Board so that necessary and sequel orders could have been passed. However, taking note of the provision in Section 15 of the Act, that the maximum period for which a juvenile can be sent to special home is 3 years, there does not appear to be any requirement of delaying the release of the petitioner as he has already remained in jail for about 11 years.

Thus without disturbing the conviction of the appellant, he is directed to be released forthwith from custody, if not required in any other case.'

4. Learned ASC for the State does not dispute that the present petitioner also needs to be treated on the same footing as his co-convict Riazuddin @ Riyaz (in case FIR No.213/2003, PS Sultanpuri, Delhi), who has been

ordered to be released by this Court vide order dated 30.06.2015 passed in W.P.(Crl.) No.64/2013.

5. In view of the above submissions made on behalf of the parties, the present petitioner, being a juvenile on the date of commission of offence (in case FIR No.213/2003, PS Sultanpuri), has to be treated on parity with his co-convict namely Riazuddin @ Riyaz. Thus, without disturbing the conviction of the present petitioner in case FIR No.213/2003 PS Sultanpuri, he is directed to be released forthwith, if not required in any other case.

6. Writ petition stands disposed of in above terms

7. The petitioner be informed through Jail Superintendent about the order passed.

A copy of this order be sent to the concerned Jail Superintendent for compliance.

As prayed, copy of the order be also given dasti to learned counsel for the parties.

PRATIBHA RANI, J.

JANUARY 13, 2016

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