

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 221

Case No. : Crl. Revn. No. 761 of 2016 (O&M)

Reserved On : March 23, 2017.

Pronounced On : May 25, 2017.

Vikas		Petitioner
vs.		
State of Haryana		Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. A. P. S. Deol, Senior Advocate
with Mr. Himmat Deol, Advocate
for the petitioner.

Mr. Manish Bansal, DAG, Haryana.

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DEEPAK SIBAL, J. :

At the age of 13 years, for having pumped three bullets into the young body of his school mate – Abhishek, an FIR dated 11.12.2007 under Section 302/34 IPC and Sections 25/54/59 of the Arms Act, 1959 (for short – the Act) was lodged against the petitioner and his co-accused Aakash. After being charged and having pleaded not guilty, the petitioner was put to trial before the Juvenile Justice Board, Gurgaon (for short – the Board). The prosecution having established its case beyond reasonable doubt, the petitioner was held guilty qua the above offences for which he was charged. Resultantly, in terms of Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short – the Juvenile Act), the

petitioner was directed to be sent to a Special Home for three years for the offence punishable under Section 302/34 IPC. It was further directed that the petitioner be sent to a Special Home for a period of one year for the offence punishable under Section 25 of the Act. Both the sentences were ordered to run concurrently.

The petitioner appealed against the judgment of conviction and the order of sentence, which, through an order dated 30.01.2016, was dismissed by the Additional Sessions Judge, Gurgaon. However, the order of sentence was modified and substituted as under :-

- “(i)** *the appellants shall appear before the Board within sixty days from today and they shall furnish a bond of good behaviour for a period of two years to the satisfaction of the board;*
- (ii)** *their conduct will be monitored by the Probation Officer, and*
- (iii)** *they shall be sent to a special home or may be kept in a Fit Institution in such manner as the State Government may deem fit and appropriate to enable them to serve the remainder period of their sentence. It is also observed that since the appellants are approximately 23 and 21 years of age respectively, they shall not be kept with juveniles, who are serving the sentence in terms of Section 15 of the Act or under-adults, who have just attained majority.*

The period of sixty days for appearance, is

given to enable the State Government of Haryana, to create Special Home or decide Fit Institution in consonance with provisions of Sections 9 and 64 of the Act, 2000, before surrender of appellants on dated 31.3.2016, at 9:30 a.m., before Juvenile Justice Board, Gurgaon, so that real justice is also done to victim's family and the Act, 2000, is also given its real effect and spirit behind framing of this legislation is fully honoured which is beneficial for juvenile but certainly not at the cost of victim's interest.”

A perusal of the afore-quoted modification by the Appellate Authority to the sentence awarded to the petitioner by the Board shows that the petitioner was directed to appear before the Board within 60 days from the dismissal of his appeal; to furnish a bond of good behaviour for a period of two years to the satisfaction of the Board; his conduct was to be monitored by a Probation Officer; since the petitioner was now about 21 years of age, it was directed that he shall be sent to a Special Home or be kept in a Fit Institution in such manner as the State Government may deem fit to enable him to serve the remainder period of his sentence and that the petitioner shall not be kept with juveniles, who are serving the sentence in terms of Section 15 of the Juvenile Act or under-adults, who have just attained majority.

The afore-referred period of 60 days was granted by the Appellate Authority to enable the State Government to create a Special Home/Fit Institution in consonance with the provisions of Sections 9 and 64 of the Juvenile Act, where the petitioner, in terms of the order of the

Appellate Authority, could be housed for the remaining part of his sentence.

Being aggrieved by the afore-referred orders passed by the Board as also the Appellate Authority, the petitioner approached this Court through the present petition, in which, on 26.02.2016, notice was issued to the State in the main petition as also regarding the plea of the petitioner for suspending the awarded sentence.

While the above petition was pending consideration before this Court, as directed by the Appellate Authority, on 31.03.2016 i.e. on the expiry of 60 days from the order of the Appellate Authority, the petitioner surrendered and was accordingly sent to a Special Home at Ambala but since such Special Home had merely been carved out from an existing Observation Home, a plea was raised before this Court to admit the petitioner to interim bail till a Special Home was set up by the State. Such plea was considered by this Court and after ascertaining that no such Special Home, in terms of Section 9 of the Juvenile Act had been set up and after considering the submissions made on behalf of the State that such Special Home would be set up in 2-3 months, till such Special Home came in existence, the petitioner was admitted to interim bail. However, at the time of grant of interim bail, this Court noted an undertaking given by learned senior counsel appearing on behalf of the petitioner that as soon as the Special Home is set up by the State, the petitioner would surrender.

In December 2016, a Special Home was set up by the State at Sonapat and as undertaken by learned senior counsel, on 07.03.2017, the petitioner surrendered, where he continues to be till date.

The Court is informed by the State that such Special Home is

where neither juveniles nor under-adults, who have just attained majority, are kept. It has been created to house persons like the petitioner, who were juveniles at the time of commission of the offence and are to undergo the remainder of their sentence beyond the period after having attained majority.

At the time of hearing of the matter, Mr. A.P.S. Deol, learned senior counsel, who appeared on behalf of the petitioner, submitted that the petitioner does not challenge the impugned judgments on merits. However, since the petitioner was now 21 years of age and thus not a juvenile, while relying on a judgment of the Apex Court in **Babban Rai and another vs. State of Bihar – (2007) 13 SCC 88**, Mr. Deol submitted that the petitioner could not be sent back to undergo the remaining part of his sentence.

The following observations in **Babban Rai's** case (*supra*) were relied upon :-

“5. ...Now, the question arises in relation to sentences. In view of our aforesaid finding that these two appellants were juvenile on the date of alleged occurrence and they have now attained majority, it would be just and expedient to set aside their sentences and pass an order of releasing them as they cannot be sent to remand home.”

Learned State counsel countered the above submissions by placing reliance on a later judgment of the Apex Court rendered in **Salil Bali vs. Union of India and another – (2013) 7 SCC 705** to urge that even if the petitioner had attained the age of 18 years, he would still have to

undergo the imposed sentence of three years, which could spill beyond the period when he attained majority.

A juvenile, who is found to be in conflict with law, is sentenced under Section 15(1)(g) of the Juvenile Act, which provision, prior to the amendment to same, which came into effect from 22.08.2006, read as follows :-

“15. Order that may be passed regarding juvenile – (I) *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 so thinks fit, -*

- (a)

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- (b)

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- (c)

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- (d)

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- (e)

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- (f)

xx

xx

xx
- (g)

make an order directing the juvenile to be sent to a special home :

- (i)

in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;
- (ii)

in case of any other juvenile for the period until he ceases to be a juvenile :

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.”

As per the afore-quoted provision, a juvenile who was over 17 years but less than 18 years of age, could be sent to a Special Home for a period of not less than two years. So far as other juveniles were concerned, they could be sent to a Special Home till they ceased to be juveniles.

The afore-quoted provision was amended w.e.f. 22.08.2006, as a result whereof, Section 15(1)(g) of the Juvenile Act now reads as under :-

“15. Order that may be passed regarding juvenile – (I) *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 so thinks fit, -*

(a)	xx	xx	xx
(b)	xx	xx	xx
(c)	xx	xx	xx
(d)	xx	xx	xx
(e)	xx	xx	xx
(f)	xx	xx	xx
(g)	<i>make an order directing the juvenile to be sent to a special home for a period of three years:</i>		

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.”

The afore-quoted amendment did away with all conditions and limitations with regard to sentencing of juveniles which were found in the unamended Section 15(1)(g) of the Juvenile Act, particularly the limitation

imposed under Section 15(1)(g)(ii) that juveniles, who were under 17 years of age, could be awarded sentence only till the time they attained majority.

The amended Section 15(1)(g) of the Juvenile Act came up for consideration before the Apex Court in **Salil Bali's** case (*supra*) and the same was interpreted as under :-

“61. *One misunderstanding of the law relating to the sentencing of juveniles, needs to be corrected. The general understanding of a sentence that can be awarded to a juvenile under Section 15(1)(g) of the Juvenile Justice (Care and Protection of Children) Act, 2000, prior to its amendment in 2006, is that after attaining the age of eighteen years, a juvenile who is found guilty of a heinous offence is allowed to go free. Section 15(1)(g) , as it stood before the amendment came into effect from 22nd August, 2006, reads as follows :*

“15(1)(g) *make an order directing the juvenile to be sent to a special home for a period of three years :*

(i) *in case of juvenile, over seventeen years but less than eighteen years of age, for a period of not less than two years;*

(ii) *in case of any other juvenile for the period until he ceases to be a juvenile :*

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.”

62. It was generally perceived that a juvenile was free to go, even if he had committed a heinous crime, when he ceased to be a juvenile. The said understanding needs to be clarified on account of the amendment which came into force with effect from 22.08.2006, as a result whereof Section 15(1)(g) now reads as follows :

“15(1)(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.”

The aforesaid amendment now makes it clear that even if a juvenile attains the age of eighteen years within a period of one year he would still have to undergo a sentence of three years, which could spill beyond the period of one year when he attained majority. [Emphasis supplied]”

A reading of the afore-interpretation, as given by the Apex Court to the amended Section 15(1)(g) of the Juvenile Act, leaves no room for doubt that even if the juvenile has attained the age of 18 years, he would still have to undergo the sentence of three years, which could spill beyond the period of one year when he attained majority.

The occurrence in the present case is dated 11.12.2007 and since the same is after the amended Section 15(1)(g) of the Juvenile Act had

come into force, the present case would be governed by the amended

Section 15(1)(g) of the Juvenile Act, as also by the afore-interpretation given to it by the Apex Court in Salil Bali's case (*supra*).

It certainly cannot be disputed that the offence in question is heinous as the petitioner had been found guilty of having pumped in three bullets into his classmate's body leading to his death. Further, the stand of the State remains un-controverted that the Special Home at Sonapat, where the petitioner is being presently housed, is neither for juveniles nor for under-trials who have just attained majority. It has been created to house persons like the petitioner, who were juveniles at the time of commission of the offence and are to undergo the remainder of their sentence, which may spill beyond the period of one year after having attained majority.

Babban Rai's case (*supra*), on which Mr. Deol has solely relied upon, was a decision by the Apex Court on a Criminal Appeal filed before it in the year 2005, which necessarily implies that in that case, not only the occurrence, the order of the Juvenile Board, Appellate Authority as also the High Court, were much prior to the amendment to Section 15(1)(g) of the Juvenile Act, which came into force w.e.f. 22.08.2006. Thus **Babban Rai's** case (*supra*) would have no application to the facts of the present case.

In view of the above, the petitioner is held entitled to no relief.

Dismissed.

(DEEPAK SIBAL)
JUDGE

May 25, 2017
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Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.