

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 24.08.2017

CRL.A. 654/2000

SANJAY KUMAR

..... Appellant

Through: Mr. Ajay Burman, Sr. Advocate with
Ms. Ruchi Kapur, Ms. Sadhvi Gaur,
Ms. Tanya Harnal and Mr. Sahil
Verma, Advocates

versus

STATE

..... Respondent

Through: Mr. Ravi Nayak, APP with Inspector
Anupam Shrivastav, PS- GTB
Enclave

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

HON'BLE MS. JUSTICE NAJMI WAZIRI

SIDDHARTH MRIDUL, J (ORAL)

CRL.M.A.3073/2017

1. The present application under the provisions of Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the said Act'), filed on behalf of the applicant/appellant prays for a direction to conduct an enquiry to determine the age of the applicant/appellant Sanjay Kumar and, thereafter, declare him to be a

juvenile at the time of commission of the offence; for which he has been convicted and sentenced to life imprisonment.

2. The learned Trial Court by way of the order on sentence dated 29.09.2000, whilst taking into consideration the report of the radiologist and the school leaving certificate of the applicant/appellant, had found that the applicant/appellant was above 16 years of age on the date of the commission of the offence.

3. This Court by way of the order dated 11.08.2017, whilst allowing CRL.M.A.13035/2017, directed the Delhi Police to verify the correctness of a document attached to the said application. The said document is a certificate dated 28.07.2017, issued by Ms. Seema Yadav, Principal, E.D.M.C. Primary School, East Rohtas Nagar, Shahdara North, Delhi-110032.

4. Pursuant to the directions of this Court, as contained in the previous order dated 11.08.2017, a status report has been filed on behalf of the Delhi Police, authored by Inspector Manjeet Tomar, Station House Officer, Police Station - GTB Enclave, District Shahdara, Delhi.

5. A perusal of the same would show that upon local enquiry being conducted into the additional documents *qua* the date of birth of the applicant/appellant Sanjay Kumar, it has been revealed that he studied from Class-I to Class-III in E.D.M.C. Primary School, East Rohtash Nagar, Shahdara North, Delhi and from Class-III to Class-V in E.D.M.C. Primary School, Ramnagar Extension, Shahdara, Delhi. It further reveals that Sh. Daryao Singh, father of the applicant/appellant Sanjay Kumar had procured

the latter's admission by furnishing an affidavit dated 21.07.1980 regarding the date of birth of the applicant/appellant Sanjay Kumar. The date of birth of the applicant/appellant Sanjay Kumar as recorded by the concerned school on the basis of the said affidavit dated 21.07.1980; at the time of the admission of Sanjay Kumar, is stated to be 25.10.1974.

6. In view of the foregoing, it is, therefore, an admitted position that on the 22.11.1991, when the said offence was committed, for which the applicant/appellant Sanjay Kumar has been convicted and sentenced to life imprisonment, he was less than 18 years of age (i.e. he was approximately 17 years and 1 month old).

7. In order to determine the issue raised in the present application, it would be profitable to reproduce the provisions of Section 9 of the said Act and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

“ **Section 9.** Procedure to be followed by a Magistrate who has not been empowered under this Act.

XXXXX XXXX XXXX

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be: Provided that such a claim may be raised before any court and it shall be recognised at any stage,

even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.”

“Rule 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) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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) the matriculation or equivalent certificates, if available; and in the absence whereof;
- (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
- (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will

declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

8. A plain reading of the above provisions would show that it is mandated by law that a claim of juvenility may be raised before any Court at any stage and if the Court finds a person to be a juvenile on the date of the commission of the offence, it will forward the juvenile to the Juvenile Justice Board for passing appropriate orders, in accordance with law. It further mandates that in respect of the enquiry to be conducted, in order to determine the age of the applicant claiming juvenility; in the absence of a matriculation or equivalent certificate, the date of birth certificate from the school (other than a play school) first attended will be considered. Lastly, it mandates that if after following the statutory procedure in relation to the determination of age, the Court is of the view that the convict, as in the present case, was a juvenile on the date of the commission of the offence, any sentence passed by a Court of competent jurisdiction; sentencing the convict for the said offence, shall be deemed to have no effect whatsoever, in law.

9. In view of the foregoing discussion, as well as the decision of the Hon'ble Supreme Court in **Jitendra Singh Alias Babboo Singh vs. State of Uttar Pradesh**, reported as (2013) 11 SCC 193, the sentence imposed by the Trial Court on the applicant/appellant is deemed to be set aside by operation of law. Therefore, although the conviction imposed by the Trial Court on the applicant/appellant is sustained, the sentence imposed on him is set aside. Furthermore, in view of the circumstance that the applicant/appellant Sanjay Kumar has already undergone more than six years' incarceration, it is

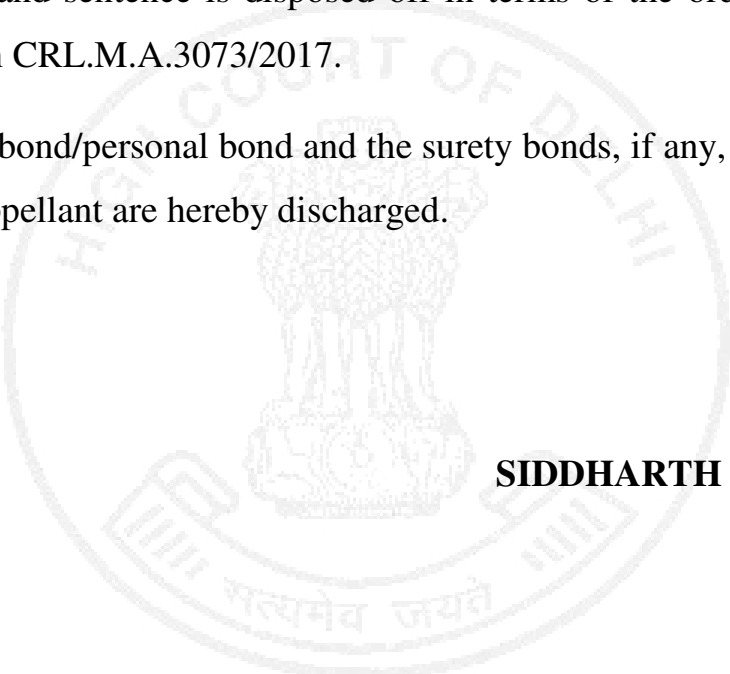
considered just and expedient not to refer the matter to the Juvenile Justice Board for further proceedings, in accordance with law.

10. In view of the foregoing, the present application is allowed and disposed off.

CRL.A.654/2000

1. The appeal preferred on behalf of the appellant Sanjay Kumar against his conviction and sentence is disposed off in terms of the order passed of the even date in CRL.M.A.3073/2017.

2. The bail bond/personal bond and the surety bonds, if any, furnished on behalf of the appellant are hereby discharged.



SIDDHARTH MRIDUL, J

NAJMI WAZIRI, J

AUGUST 24, 2017

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