

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

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Reserved on: 18.05.2017

Delivered on: 24.05.2017

+ CRL.A.1119/2015 & CrI.M(B) 8034/15 & CrI.M.A. 15982/15

CHANCHAL

..... Appellant

versus

STATE

..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr.Faraz Maqbool with Mohd.Faraz

For the Respondent : Dr.M.P.Singh.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. Chanchal, the appellant was convicted under Sections 392 and 34 of the IPC and was sentenced to undergo RI for seven years, fine of Rs.5000/- and in default of payment of fine to undergo further RI for six months.

2. The appeal was admitted on 02.11.2005 and Trial Court records were called for. Along with the appeal, the appellant had also filed an application seeking suspension of sentence and another application seeking his release from custody on the ground that on the date of the occurrence i.e. 13.05.2013, the appellant was below 18 years of age. In support of the aforesaid contention, a school leaving certificate issued by

the Directorate of Education, Government of NCT of Delhi was brought on record. The aforesaid document at Annexure A to the application discloses that he was 17 years, 9 months and 22 days at the time of commission of offence.

3. By order dated 28.04.2016, the appellant was directed to furnish further information in terms of directions given by this Court in Crl.Appeal No.1008/2011 (Mohd.Wasim v/s State). Pursuant to the above directions, the petitioner has furnished the following information along with necessary certificates:-

- a. *Name of the Appellant – Chanchal*
- b. *Place of Residence – J-163, Lal Kuan, Pul Prahlad Pur, New Delhi*
- c. *Date of Birth of the Appellant is 14.07.1995. A copy of the Appellant's School Leaving Certificate confirming his date of birth (already attached with the above-mentioned Crl.M.A.No.15982/2015) is again attached herewith and marked as Annexure-1.*
- d. *Name of the Appellant's Father is Sh.Satish Chand who is aged 48 years. A copy of the Appellant's Father Voter ID card confirming these details is attached herewith and marked as Annexure-2.*
- e. *Name of the Appellant's mother is Smt.Vimlesh who is aged 43 years. A copy of the Appellant's Mother's Voter ID card confirming these details is attached herewith and marked as Annexure-3.*
- f. *Place of residence of Parents – J-163, Lal Kuan, Pul Prahlad Pur, New Delhi*
- g. *Total number of children of the Appellant's parents – 4 (including the Appellant himself)*
- h. *Sequence of birth along with date of birth of the above-mentioned children –*
 1. *The eldest sister of the Appellant and 1st child of his parents is Ms.Neelam whose date of birth is 31.12.1989. A copy of her matriculation certificate*

issued by the Central Board of Secondary Education and Character Certificate issued by 'Rani Jhasi Sarvodaya Kanya Vidyalaya', confirming her date of birth is attached herewith and marked as Annexure 4 (Colly).

- 2. The elder brother of the Appellant and 2nd child of his parents is Mr.Madan whose date of birth is 25.06.1992. A copy of Madan's Aadhar Card confirming his year of birth to be 1992 is attached herewith and marked as Annexure-5.*
- 3. The 3rd child of the Appellant's parents is the Appellant himself. As mentioned above, his date of birth is 14.07.1995.*
- 4. The younger brother of the Appellant and his parents 4th and last child is Mr.Sudhir whose date of birth is 01.05.1997. A copy of his matriculation certificate issued by the Central Board of Secondary Education, Delhi confirming his date of birth is attached herewith and marked as Annexure-6.*

i. Any Deceased sibling – Nil.”

4. The aforesaid information furnished by the appellant, on verification by the police was found to be correct and the status report reveals that as per record available, the date of birth of the appellant is 14.07.1995, the incident took place on 13.05.2013 and as such the real age of the appellant/applicant at the time of the incident was less than 18 years (17 years, 9 months and 22 days).

5. Section 7A of the Juvenile Justice (Care and Protection) Act, 2000 reads as hereunder:-

7A. Procedure to be followed when claim of juvenility is raised before any court.-(1)
Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused

person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.

6. In view of the law laid down that the plea of juvenility could be taken up by an accused at any stage of the proceedings, even after the disposal of the case from the Supreme Court, it leaves no option for this Court but to consider the release of the petitioner from jail. The nominal roll indicates that the appellant has already served more than four years in custody and as a juvenile, he could only have been sentenced for three years.

7. 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 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.

8. This court considered the desirability of sending the accused appellant/applicant to the Juvenile Justice Board so that necessary and sequel orders could have been passed. However, taking note of the provisions 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 more than 4 years.

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

10. The appeal and the applications are disposed of in terms of the above.

11. A copy of this order be sent to the concerned jail for information and needful.

ASHUTOSH KUMAR, J

MAY 24, 2017

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