



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P. (MD) No.921 of 2018

Manikandan

... Petitioner

vs.

1.State of Tamil Nadu,
rep. by the Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu, Secretariat,
St. George Fort, Chennai - 9.

2.The Additional Director General of Police/
Inspector General of Prisons,
C.M.D.A.Towers II,
No.1, Gandhi Irvin Road,
Egmore, Chennai - 8.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

4.The Inspector of Police,
Oomachikulam Police Station,
Madurai District.

... Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus directing the respondents to produce the detenu by name Manikandan son of Murugesan aged about 25 years, now lodged and confining at Madurai Central Prison before this Court and set the detenu at liberty by extending the benefits under Juvenile Justice (Care and Protection of Children) Act, 2000 and set aside the conviction and sentence against the detenu by V Additional District and Sessions Court, Madurai in Sessions Case No.87/2014 dated 09/03/2015.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Chandrasekar

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

This Habeas Corpus petition is filed seeking a direction to the respondents to produce the detenu and set him at liberty by extending the benefit available under the Juvenile Justice (Care and Protection of Children) Act, 2000, by setting aside the conviction and sentence awarded by the V Additional District and Sessions Court, Madurai in Sessions Case No.87 of 2014 dated 09.03.2015.

2.It is the case of the petitioner that at the time of occurrence he was only 17 years 10 months and 18 days old. Therefore, inasmuch as he is a juvenile in convict with law, benefits of enactment will have to be applied, more so, when he has been in incarceration from 09.03.2015 onwards. A case was registered in Crime No.327 of 2011 for the offence under Sections 147, 148, 341, 302, 506(ii) and 302 r/w 149 IPC based on the occurrence took place on 18.04.2011. The case of the prosecution is that all the accused joined together and attacked the deceased and thus, committed murder. The trial Court convicted all the accused including the petitioner. Unfortunately the trial Court has awarded double imprisonment for A1 and A2. The petitioner has been arrayed as A2. This has been done notwithstanding the fact that there is only one charge for the offence under IPC.

3.Before us, the learned counsel for the petitioner made reliance upon the Old Student's Bonafide Certificate. In the affidavit filed by the fourth respondent, at paragraph No.5, it is stated as follows:

"I humbly submit that as per the orders of this Hon'ble Court the 4th respondent Police obtained the bonafide certificate from the school namely Elementary School Thiruppalai, Madurai West Union and in the said certificate showed that the date of birth of accused namely Manikandan is mentioned as 25.05.1993 and he has completed 17 years 10 months 24 days at the time of occurrence."

4.Thereafter, we directed the Judicial Magistrate No.II, Madurai to file a report after examination of the author of Ex.C1, for the purpose of determining the age of the petitioner. Accordingly, the report dated 24.09.2018 was filed. The following is the relevant part of the report:

"I further humbly submit that by examined the court witness with the above documents that this court has ascertained and confirmed that the accused Manikandan's date of birth is 25.05.1993 has been proved by way of the Old Student's Bonafide Certificate



(Original) marked as Ex.C1 and Student's Admission Register (Attested Copy compared with original by this Court) marked as Ex.C2 and none other documents have been maintained in the above said school."

5. From the above, it is clear that the statement made by the petitioner is true. Thus, he was a juvenile in convict with law on the date of occurrence.

6. Law is quite settled that plea of juvenility can be raised at any stage. Once a juvenile is charged with an offence, then benefits of the enactment will have to be extended to him. Useful reference can be made on the law, governing the subject, in the following judgments:

- (i) 2013 (2) MWN (Cr.) 370 (DB) [Mahapoobjan Vs. State rep. by its Secretary to Department of Home, Secretariat, St. George Fort, Chennai - 9 and others];
- (ii) (2015) 16 SCC 186 [Mohd. Feroz Khan alias Feroz Vs. State of Andhra Pradesh] and
- (iii) (2015) 2 MLJ (Cr1) 96 (SC) [Abdul Razzaq Vs. State of U.P.].

7. Thus, in the light of the above coupled with the fact that the petitioner has been incarceration for more than three years, we are inclined to set aside the conviction and sentence awarded against the petitioner/detenu.

8. Accordingly, this Habeas Corpus petition is allowed and the conviction and sentence rendered by the V Additional District and Sessions Court, Madurai in Sessions Case No.87/2014 dated 09.03.2015 against the petitioner/detenu are set aside and the respondents are directed to set the petitioner/detenu at liberty forthwith.

Sd/-
Assistant Registrar (A.S)

/True Copy/

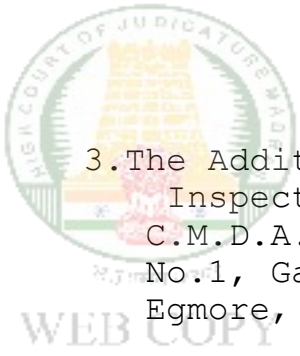
Sub Assistant Registrar (CS-II)

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To

1. The V Additional District and Sessions Court, Madurai

2. The Principal Secretary to Government,
Home (Prison) Department,
State of Tamil Nadu, Secretariat,
St. George Fort, Chennai - 9.



3.The Additional Director General of Police/
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4.The Superintendant of Prison,
Madurai Central Prison,
Madurai.

5.The Inspector of Police,
Oomachikulam Police Station,
Madurai District.

6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Alagumani, Advocate in SR No.91911

H.C.P. (MD) No.921 of 2018

NM/SKN/SAR II/22.11.18/2P/8C.