

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

Crl.A.M.P.Nos. 2700 and 2494 of 2017
And
Crl.A.No. 1272 of 2014

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. Crl.A.M.P.No. 2494 of 2017 is filed by the accused/appellant to enlarge him on bail by suspending the sentence of imprisonment passed in S.C.No. 149 of 2012 dated 11.11.2014 on the file of the XVI-Addl. Sessions Judge, Nadigama, Krishna district.
2. Crl.A.M.P.No. 2700 of 2017 is filed by the informant to suspend the operation of the order dated 24.4.2017 in Crl.M.P.No. 4 of 2016 on the file of the XVI-Addl. Sessions Judge, Nadigama, Krishna district wherein the appellant was declared as a minor.
3. The sole accused in S.C.No. 149 on the file of the XVI-Addl. Sessions Judge, Nadigama, Krishna district is the appellant herein. He was tried and convicted for the offence under Sections 302 and 376 IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.500/- in default to suffer simple imprisonment for one month for the offence under section 302 IPC and imprisonment for three years for the offence under Section 376 IPC. Both the sentences were directed to be run concurrently.
4. Pending the appeal before this Court, an application was received from the jail authorities by the learned Sessions Judge requesting to hold an enquiry for determining the age of the appellant.

By order dated 24.4.2017, the learned Sessions Judge declared the petitioner/appellant as a minor as on the date of offence i.e., 20.3.2010. In view of the above, the entire file was transmitted to the Juvenile Justice Board for further orders.

5. Since the appeal filed by the petitioner/appellant is pending, an application vide CrI.A.M.P.No. 2494 of 2017 came to be filed by the accused/appellant seeking his release on bail in view of the order dated 24.4.2017 passed by the learned Sessions Judge declaring him as minor, after disposal of the Sessions Case. To prove that the accused was a minor, he placed on record number of documents. At that point of time, the informant got himself impleaded in the said case contending that the trial Court has no jurisdiction to pass any orders after disposal of the Sessions Case and that the informant was not heard before declaring the accused as a minor.

6. Since the appellant *prima facie* appears to be a minor in view of the report of the learned Sessions Judge, this Court felt that it would be just and proper to direct the learned District and Sessions Judge to conduct a fresh enquiry and submit a report by taking into consideration all the documents filed by the accused and after giving an opportunity to the informant. The said order came to be passed by this Court on 16.11.2017. Pursuant thereto, the learned District & Sessions Judge conducted a detailed enquiry, examined PWs 1 and 2, looked into the documents filed by either side and then came to a conclusion that the appellant was aged 16 years, 11 months and 6 days as on the date of commission of offence i.e., 20.3.2010. The said

report was sent to the High Court, which was received by the Registry on 22.1.2018. Copies of which came to be furnished to both the parties and after perusing the same, the learned counsel for the informant Sri G.L. Nageswara Rao stated across the bar that an opportunity was given to the informant in the enquiry and that he has no complaint with regard to the age of the appellant.

7. Sri Srinivasa Rao Velivela, learned counsel for the appellant would submit that in view of the report of the learned Sessions Judge, the appellant shall be released on bail forthwith since he has completed three years of imprisonment in regular jail, which is the maximum period of imprisonment prescribed by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short "the Act"). He further submits that in view of the judgment of the Apex Court, it would be just and proper to remand the matter back to the Juvenile Justice Board or keep the appeal pending by releasing the appellant on bail on the ground that he is a juvenile and completed three years of imprisonment.

8. The fact that the appellant was a juvenile as on the date of commission of offence is not in dispute. It is also not in dispute that from the date of conviction by the learned Sessions Judge i.e., 11.11.2014, the appellant is in jail. Even the learned Public Prosecutor did not dispute the fact of the appellant being in jail since the date of his conviction by the learned Sessions Judge. That being the position, the question now that arises for consideration is,

Whether the conviction of the appellant can be set aside or whether the matter requires to be forwarded to the Juvenile Justice Board for determination of the cases in accordance with the provisions of the Act?

9. In *Hari Ram Vs. State of Rajasthan and another*¹ the Apex Court after referring to Ss. 20, 2 (k), 2 (l), 7-A and 49 of the Act and Rule 12 of the 2007 Rules, held that since the appellant was below 18 years at the time of commission of offence, the provisions of the Act would apply in full force and disposed of the appeal remitting the matter to the Juvenile Justice Board for disposal in accordance with law within three month from the date of receipt of a copy of the order. The Apex Court also observed that if the appellant has been in detention for a period which is more than the maximum period for which a juvenile may be confined to a special home, the Board shall release the appellant from custody forthwith. In view of this judgment, the learned counsel pleads that the matter may be remanded back to the Juvenile Justice Board while releasing him on bail since he has completed more than three years of sentence which is the maximum period prescribed by the Act.

10. Two other judgments are also relied upon by the learned counsel for the petitioner/appellant. In *Abdul Razzaq Vs. State of UP*² the Apex Court while dealing with the provisions of the Act vis-à-vis the merits of the case set aside the sentence imposed and directed

¹ (2009) 13 SCC 211

² AIR 2015 SUPREME COURT 1770

release of the appellant from custody while maintaining the conviction. Similar view was taken by the Apex Court in ***Mahendra Singh Vs. State of Rajasthan***³. In both the cases the Apex Court went into the merits of the case, as well as plea of juvenility and while rejecting the case on merits, accepted the plea of the accused that he was juvenile and then released him by setting aside the sentence, while upholding the conviction. It will be appropriate to extract the relevant paragraphs in the judgment of Mahendra Singh's case,

“7. On behalf of the Appellant Ram Singh it is pointed out that the sole eye witness of alleged incident PW-2 Mahendra Singh s/o Suraj Bhan (in Sessions Case No. 95 of 2002), has assigned no role to Ram Singh. (Accused Mahendra Singh is different person, who is son of Dalip Singh). We have gone through the copy of the statement of witness Mahendra Singh s/o Suraj Bhan (Annexure P-4 in Criminal Appeal No. 1298 of 2007), examined in the subsequent Sessions Case, and found that he has nowhere stated that Ram Singh was present at the place of incident or that he assaulted the deceased. In his statement recorded on 6.4.2004, the sole eye witness has named all the accused except Ram Singh. On careful scrutiny of the evidence of the sole eye witness PW-2 Mahendra Singh s/o Suraj Bhan in Sessions Case No. 95 of 2002, we find that the trial court, as well as the High Court, has erred in law in concluding that the charge against accused Ram Singh stood proved on the record.

³ 2016 (1) ALD (CrL.) 228 (SC)

8. Therefore, we are of the view that Criminal Appeal No. 1298 of 2007, filed by Ram Singh, deserves to be allowed. Accordingly the same is allowed and conviction recorded against him by the trial court and affirmed by the High Court, is set aside. He is on bail and need not surrender.

9. As far as Appellant Mahendra Singh is concerned, we have already discussed that learned Counsel for said Appellant confined his submissions only regarding entitlement of benefit of Section 20 of Juvenile Justice (Care and Protection of Children) Act, 2000, as it stands today. Following Hari Ram (supra), we are of the opinion, he (Mahendra Singh) is entitled to the benefit as discussed in paragraph 4, 5 and 6. As such, while maintaining the conviction of said Appellant Mahendra Singh, we set aside the sentence awarded against him. To that extent the impugned order stands modified. Accordingly, D.B. Criminal Appeal No. 1336 of 2007 also stands disposed of.”

11. In the instant case, the plea of the appellant being juvenile came to be raised at the initial stage as such a report was called for from the District and Sessions Judge with regard to the age of the appellant. The report discloses that the appellant was a juvenile as on the date of commission of offence. The law permits a person to claim that he is a child and that such claim can be raised at any stage and even before the Court of appeal. It is undeniable that when a person alleged to have committed an offence claims before a Court other than a Board that the said person is a child on the date of the commission of the alleged offence and if the said claim is found to be true on such

enquiry as may be necessary in regard to determination of the age of such person, such Court shall forward the child to the Board concerned for passing appropriate orders and sentence in accordance with law applicable to the case of such child.

12. That being the legal position, given the fact situation coupled with the reliable documents produced by the appellant, we find that the appellant is a minor or child as on the date of the commission of the alleged offence.

13. In view of the said finding we hold that the conviction and the sentence imposed against the appellant in S.C.No.149 of 2012, have no effect in the eye of law.

14. Accordingly, the Criminal Appeal is allowed, setting aside the conviction recorded and the sentence imposed against the appellant, Singamsetti Tirupathirao, accused in S.C.No.149 of 2012 on the file of the XVI Additional District and Sessions Judge, Nandigama, for the offences punishable under sections 302 and 376 IPC. The fine amount, if paid already shall be refunded. As a sequel to the above findings, we direct the state to take appropriate steps for production of the appellant forthwith before the Board constituted for Krishna District, under the Juvenile Justice (Care and Protection of Children) Act, 2015, for proceeding against the appellant/accused in accordance with law and appropriate orders be passed after due enquiry as per law applicable to the case against him, as early as possible, preferably, within a period of six months from the date of receipt of a copy of this order. As the appellant has served more than three years of sentence

from the date of conviction, which is a maximum period prescribed under the Act, he shall be set at liberty forthwith, if he is not required in any other case or crime.

15. In view of the disposal of the main appeal, CrI.A.M.P.No. 2494 of 2017, CrI.A.M.P.No. 2700 of 2017 and other miscellaneous applications, if any pending, shall stand closed.

Dt.21.2.2018
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C.PRAVEEN KUMAR, J



J. UMA DEVI, J