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

Date of decision: 17.01.2020

+ CRL.M.C. 851/2019

FAEEM @ BONA

..... Petitioner

Through Mr. R. K. Tarun, Adv.

versus

THE STATE OF NCT OF DELHI

..... Respondent

Through Mr. Panna Lal Sharma, APP for State
SI Raj Malik, Security, IS Pawan
Kumar, PS S.P. Badli

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. The present petition is filed under Section 482 of Cr.P.C. on behalf of petitioner for setting aside the impugned order dated 14.01.2019 passed in SC No. 487/17 and as a consequence thereof transferring the case of the petitioner to the Juvenile Justice Board.

2. As stated in the present petition that the Ld. Trial Court at the time of taking cognizance of the alleged offence against the present petitioner was prima facie of the view that the petitioner's age has to be ascertained as from the face of records brought by the prosecution, his bone ossification test can

be of significance to ascertain his age and accordingly, the Ld. Trial Court vide order dated 12.05.2017 directed the medical board to get the ossification test conducted of the petitioner.

3. It is further stated in the present petition that the factum of the juvenility of the Petitioner at the time of alleged incident becomes evident from the report of Ossification Test dated 27.05.2017, giving a benefit of 2 years from the lower side as per JJB Act and rules read with several pronouncements of the superior courts. The ossification test report reveals the petitioner to be a Juvenile, thereby bringing forth the patent illegality in keeping the petitioner behind bars in gross violation of the Juvenile Justice Act and accordingly, an application was preferred before the Trial Court, by the petitioner, for transferring the case of the petitioner to the Juvenile Justice Board.

4. On perusal of the impugned order, it is revealed that the learned Trial Court inadvertently miscalculated the age of the petitioner from the lower side i.e. 20 years, thereby dragging the petitioner out of the ambit of the Juvenile Justice Act, to the peril of the petitioner. The age of the petitioner has been calculated as under:-

Date of Bone Age examination	27.05.2017
Date of alleged offence	20.02.2017
##### Difference between date of alleged offence and date of bone age examination.	03 months 07 days Between 20-22 years.
Age opined by the Medical Board	20 years
Age on the lower side of the applicant/accused	02 years
Benefit as per Juvenile Justice Rules	18 years
After giving benefit the age comes to:	17 years 08 months 23 days Approx. [At the time of alleged incident}. Hence, Juvenile.
##### Difference between date of alleged offence and date of bone age examination.	03 months 07 days

5. In view of above, as per the ossification test report dated 27.05.2017, the petitioner, as a Juvenile at the time of the commission of the alleged incident. Thus, liable to be sent to the proper Jurisdiction which lies with the Juvenile Justice Board to try the present petitioner.

6. In case of *Vikas Chaudhary Vs. State: 2007 [143] DLT 603*, thereby this Court held as under:-

"15. As far as the ossification test and the medical evidence are concerned there too the approach of the learned Additional Sessions Judge is, in my opinion, erroneous.

According to the expert the petitioner was 22-25 years on the date of his examination i.e. 09.08.2005. The learned Additional Sessions Judge acknowledged that such determination is a rough estimate and the individual would have to be given benefit by deducting some years but proceeded to do so from the outer age indicated. This is an incorrect approach as the Juvenile is entitled to beneficial interpretation in such case. Therefore, the two years deduction made would have to be from the lower age indicated namely, 22 years. That would mean that as in August, 2005 the petitioner was probably 20years; as on the date of incident [20.01.2003] in all probability he was less than 18years. This interpretation is also in consonance with the claims based on the Board Certificate relied upon by the petitioner."

7. In the present case, the learned Trial Court has calculated the age from the date of Ossification Test i.e. 27.05.2017, whereas the age is to be calculated from the date of offence i.e. 20.02.2017. If in the impugned order, three months are reduced from the petitioner's age, it comes out to be 17 years and 9 months, thus he is under the age of 18 years on the date of commission of offence.

8. Accordingly, I hereby set aside impugned order dated 14.01.2019 and consequently, the Trial Court is directed to transfer the case of the petitioner to Juvenile Justice Board for proceedings.

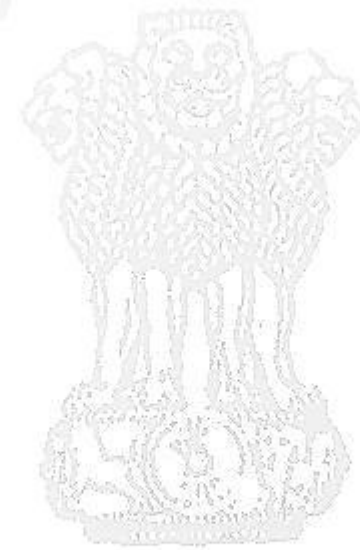
9. The petition is accordingly allowed and disposed of.

10. Order dasti under signatures of the Court Master.

11. Learned APP named above has pointed out to this Court that in this case, injustice has been caused to the petitioner and on his mentioning, the present petition is taken up for disposal. This Court appreciates the gesture advanced by learned APP named above.

(SURESH KUMAR KAIT)
JUDGE

JANUARY 17, 2019
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