

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.738 of 2021

Arising Out of PS. Case No.-13 Year-2007 Thana- RAGHUNATHPUR District- Siwan

Sudhir Singh @ Sudhil Singh Son Of Late Suruj Singh Resident Of Village -
Jimichak, P.S. - Purpakari, District - Balia (U.P.)

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Prison, Bihar, Patna.
4. The Jail Superintendent, Siwan.
5. The Superintendent of Police, District - Siwan.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vikram Deo Singh, Advocate
For the Respondent/s : Mr. Deepak Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 20-07-2022 Heard Mr. Vikram Deo Singh, learned counsel for the petitioner and Mr. Deepak Kumar, learned AC to GP-4 for the State.

The petitioner is aggrieved by and dissatisfied with the order dated 10.02.2021 passed by learned Fast Track Court-IV, Siwan in Sessions Trial No. 03 of 2008. It appears that the petitioner has been convicted under Section 364-A/34 IPC in Sessions Trial No. 03 of 2008. He has been sentenced to life. The conviction and sentence passed against him has been upheld by the Hon'ble Supreme Court of India.

No plea of juvenility was raised either before the Juvenile Justice Board or the trial court or the Hon'ble Supreme



Court till disposal of the case. It is stated that the SLP (Crl.) No. 297 of 2017 was dismissed vide order dated 14.07.2017.

For the first time, after about 3 years from the date of dismissal of SLP, the petitioner raised a plea of juvenility before the learned trial court. Learned counsel for the petitioner submits that in an another case when the petitioner was convicted for the offence under Section 364A IPC and his appeal being Cr. Appeal (DB) No. 742 of 2012 was pending before the Hon'ble Division Bench of this Court, a plea of juvenility was raised in the said case and on such plea the Hon'ble Division Bench directed the learned Juvenile Justice Board to consider the plea of juvenility of the petitioner. It is submitted that after the order of the Hon'ble Division Bench of this Court, a Medical Board was constituted to assess the age of the petitioner and the Medical Board assessed his age as 22-23 years on 22.08.2014, the Board assessed the age of the petitioner as 15-16 years at the time of the alleged occurrence. Such order was passed by the Board on 18.03.2015.

Learned counsel submits that the plea of juvenility was, however, not raised in this case either before the Hon'ble Division Bench of the Court or before the Hon'ble Supreme Court of India.



Learned counsel has drawn the attention of this Court towards the proviso to Sub-Section (2) of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act of 2015') to submit that a claim of juvenility may be raised before any Court and it shall be considered at any stage, even after disposal of the case.

Learned counsel has further relied upon the judgment of the Hon'ble Supreme Court in the case of **Abuzar Hossain @ Gulam Hossain vs. State of West Bengal** reported in (2012) 10 SCC 489 in which the law on this subject has been summarised by the Hon'ble Supreme Court in paragraph '39'. It is submitted that the learned Fast Track Court could not appreciate the import of proviso to Sub-Section (2) of Section 9 and the judgment of the Hon'ble Apex Court and rejected the petition preferred on behalf of the petitioner holding that this Court has no jurisdiction to pass any order in this regard.

Mr. Deepak Kumar, learned AC to GP-4 for the State has opposed the present application. It is submitted that there is no quarrel with the propositions that a plea of juvenility may be raised at any stage and even after the final disposal of the case but the question in the present case is as to whether in the present case a plea of juvenility may be raised at this stage



before the Fast Track Court/Trial Court when the judgment of the learned trial court has merged with the judgment of the appellate court in Criminal Appeal and then a Special Leave Petition preferred before the Hon'ble Supreme Court against the judgment of the Hon'ble Division Bench of the High Court has already been dismissed.

To strengthen his submission that the learned trial court has committed no error in holding that it has no jurisdiction to entertain the application, learned counsel for the State has drawn the attention of this Court towards paragraph '39.1' of the judgment in **Abuzar Hossain @ Gulam Hossain (Supra)**. It is submitted that the Hon'ble Supreme Court has held that a claim of juvenility may be raised at any stage even after the final disposal of the case. The Hon'ble Apex Court has held in the said paragraph that “ it may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.”

Learned counsel, thus, submits that the learned trial



court has committed no error in rejecting the prayer.

Having heard learned counsel for the petitioner and the State as also on perusal of the materials available on the record, this Court finds that the proviso to Sub-Section (2) of Section 9 of the Act of 2015 reads as under:-

“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.”

Further in **Abuzar Hossain @ Gulam Hossain (supra)**, the Hon’ble Supreme Court has summarised the law in paragraph ‘39’ which reads as under:-

“**39.** Now, we summarise the position which is as under:

39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to



what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh*³ and *Pawan*⁹ these documents were not found prima facie credible while in *Jitendra Singh*¹¹ the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

3 Akbar Sheikh v. State of W.B. [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431]

9 Pawan v. State of Uttaranchal [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522]

11 Jitendra Singh v. State of U.P. [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857]



39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised.”

In the facts of the present case where a plea of juvenility was not raised either before the learned trial court or before the appellate court and the SLP has been dismissed by the Hon’ble Supreme Court way back in the year 2017, in the opinion of this Court, the learned trial court has not committed any error by holding that the trial court has no jurisdiction at this stage to entertain the application.

This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.

