

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.678 of 2019

Arising Out of PS. Case No.-159 Year-1983 Thana- GORAUL District- Vaishali

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Umesh Malah@Umesh Kumar Sahani, son of Sri Ramchandra Sahani
Resident of Village - Rasulpur Daud, P.O.- Salempur Dumariya, P.S.- Goraul,
Dist.- Vaishali.

... .. Petitioner

Versus

1. The State of Bihar
2. The Superintendent of Police, Vaishali at Hajipur. Bihar

... .. Respondents

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Appearance :

For the Petitioner/s : Ms.Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s : Mr.Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 21-06-2022 Heard Ms. Vagisha Pragya Vacaknavi, learned counsel

for the petitioner and Mr. Akhileshwar Dayal, learned A.P.P. for

the State.

Petitioner, in the present case, is aggrieved by and
dissatisfied with the order dated 25.05.2017 passed in Sessions
Trial No. 39 of 1990 by the learned A.D.J.-III, Vaishali, Hazipur
whereby and whereunder the prayer of the petitioner declaring
him to be a juvenile on the alleged date of occurrence has been
rejected.

Learned counsel for the petitioner has raised a short
point for consideration in the present case. It is her submission
that the learned Additional District & Sessions Judge – III,
Vaishali at Hazipur has rejected the application filed on behalf



of the petitioner seeking declaration of juvenility of the petitioner firstly on the ground that the trial is pending in this case since the year 1990 and five prosecution witnesses had already been examined, the second ground on which the application of the petitioner has been rejected is that it has been filed belatedly that too the petitioner has not produced the admission register of the school and the certificate of the high school which could have prima-facie shown that the petitioner was a juvenile on the alleged date of occurrence.

Learned counsel submits that it would appear from the impugned order itself that the medical board had assessed the age of the petitioner in between 17 – 18 years on the alleged date of occurrence. It is her submission that in view of the settled legal position by virtue of the judicial pronouncements of the Hon'ble Supreme Court in the case of **Darga Ram @ Gunga Vs. State of Rajasthan** reported in **(2015) 2 SCC 775** the age of the petitioner would come down to 16 years and further on giving him the benefit of Rule 12(3)(b) of the Juvenile Justice Rules, 2007 (hereinafter referred to as the "Rules of 2007") the age of the petitioner would come down to 15 years.

Learned counsel submits that while the learned trial



court has failed to appreciate this aspect of the matter, the court also failed to appreciate that the plea of juvenility may be raised by an accused at any stage of the case and on the ground of delay the petition filed on behalf of this petitioner would not have been rejected. It is submitted that once the petition filed on behalf of the petitioner would have been entertained, the learned trial court was required to conduct an inquiry into the matter. The evidences by way of the school admission register or any other certificate of the school could have been adduced in course of inquiry.

In her submissions, the learned trial court rejected the application preferred on behalf of the petitioner without consideration and that would make the impugned order wholly arbitrary and bad in law.

Learned A.P.P. for the State has though supported the order passed by the learned trial court, but save and except to reiterate the rationale and reasoning provided in the impugned order the learned A.P.P. could not submit anything more.

Let it be recorded that in this case the informant was added as opposite party no. 2 but after his death one I.A. No. 01 of 2019 was filed on behalf of the petitioner which was allowed. The name of opposite party no. 2 has been struck out.



Having heard learned counsel for the petitioner and learned A.P.P. for the State as also on perusal of the records, this Court finds that in course of trial the petitioner raised a plea of juvenility before the learned trial court on the basis of a school transfer certificate issued on 16.04.2016 by Rajkiya Adarsh Middle School. The said school transfer certificate is with respect to Class – IV. The learned trial court took a view that for purpose of proving the juvenility the school admission register is required to be produced before the court and the school transfer certificate has no significance in the matter. The learned trial court further recorded that in paragraph 64 of the case diary it has come that the doctor had examined the applicant and found his age in between 17-18 years. The learned trial court takes a view that in terms of settled principles of law the age may be two years plus or minus, but then the court says that this case is of the year 1983 and the trial is pending as also that prosecution witnesses have already been examined and evidence has been closed, therefore, the accused has filed this application seeking juvenility at a much belated stage. The learned trial court seems to have been guided to take an adverse view of the matter because of the belated filing of the application seeking juvenility, this has been done despite an observation to the effect



that the plea of juvenility may be raised at any stage.

This court is in agreement with the submission of learned counsel for the petitioner that the learned trial court could not have rejected the application on the ground of delay in filing of the application even as the court was well aware of the settled principle that the plea of juvenility could have been raised at any stage.

Had the court entertained the application and proceeded to consider the same, an inquiry into the matter would have been conducted in which all documentary evidences or oral evidences could have been adduced but that has not been done because of the rejection of the application at the outset.

This court has further noticed that even as per the medical examiners' opinion the petitioner was aged between 17 – 18 years. In this facts situation, if the law laid down by the Hon'ble Supreme Court in the case of **Darga Ram @ Gunga (supra)** is looked into, it would be crystal clear that the age of the petitioner would come below 18 years. Paragraph 15, 16 and 17 of the judgment in **Darga Ram @ Gunga (supra)** are quoted hereunder for ready reference:

“15. Rule 12(3)(b) reads as under:

“12. **Procedure to be followed in determination of age.**

–(1)-(2) * * *

(3) ... (b) and only in the absence of either (i), (ii) or (iii)



of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

16. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine has determined his age to be “about” 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination, no matter the advances made in that field. That being so, in terms of Rule 12(3)(b) the appellant may even be entitled to the benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we



cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination.

17. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12(3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.”

In the case of **Karanvir Singh Vs. The State of Bihar (Criminal Revision No. 106 of 2019)** reported in **2020 (2) PLJR 279**, this court had occasion to consider a similar matter. This court in its judgment dated 14.02.2020 after taking note of paragraph 15, 16 and 17 of the judgment of the Hon’ble Apex Court in **Darga Ram @ Gunga (supra)** held as under:



“Apparently, in the aforesaid case the Hon’ble Apex Court took into consideration the upper extremity limit i.e. 36 years and then subject to variation of plus minus 2 years the age of the appellant was taken as 34 years on the date of the examination and then it was found that he would have been 18 years 2 months and 7 days on the alleged date of occurrence whereupon he would be entitled to additional benefit of one year in terms of lowering his age by one year under Rule 12(3)(b).

In the present case, on the date of his medical examination the upper age limit of the petitioner has been found at 21 years and plus minus 2 years thereof it would come to 19 years. The occurrence is of 20.06.2016 i.e. 2 years back, therefore, on the date of the alleged occurrence he would be around 17 years of age and still Rule 12(3)(b) if applied, there is no reason to take any other view than that the petitioner would be entitled to be declared juvenile under the provisions of the Act of 2015.”

In the light of the discussions made hereinabove, this Court would have no hesitation in coming to a conclusion that the impugned order dated 25.05.2017 is bad in law and the same is liable to be set-aside. This Court hereby sets-aside the impugned order dated 25.05.2017 passed by learned Additional District & Sessions Judge – III Court, Vaishali at Hazipur in Session Trial No. 39 of 1990.

This Court has been informed by learned counsel for the petitioner that perhaps the trial has been concluded and the



petitioner has been convicted, if it is so, this Court directs the Juvenile Justice Board, Vaishali at Hazipur to conduct an inquiry in accordance with law with regard to the age of the petitioner in the light of the discussions made hereinabove and pass an appropriate order thereon within a period of three months from the date of receipt/production of a copy of this order.

The petitioner will be at liberty to file an application enclosing a copy of this order before the learned Juvenile Justice Board, Vaishali at Hazipur.

This application stands allowed.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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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'.

