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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2022

PRONOUNCED ON : 08.06.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

H.C.P.No.1919 of 2018

AND

CRL.M.P.No.859 of 2022

Selvarani

.. Petitioner/Petitioner

Vs.

1.State of represented by
The Inspector of Police
Jeyamkondam Police Station
Ariyalur District

2.The Superintendent of Police
Central Prison
Tiruchirapalli-20
Trichy District

.. Respondents/Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a WRIT OF HABEAS CORPUS directing the respondents to produce the detenu Sekar, son of Krishnamurthy, Life Convict C.No.11671, now confined at the Central Prison, Trichy and set him at liberty holding him as a "juvenile".

For Petitioner : Mr.R.Sankarasubbu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

P.N.PRAKASH, J.

While H.C.P.No.1919 of 2018 has been filed seeking a direction to the respondents to produce the detenu Sekar, son of Krishnamurthy, Life Convict C.No.11671, now confined at the



Central Prison, Trichy and set him at liberty holding him as a "juvenile", Crl.M.P.No.859 of 2022 has been filed seeking a direction to the Principal Sessions Judge, Perambalur to hold an enquiry under Section 7-A of the Juvenile Justice (Care and Protection of Children) Act (in short "the JJ Act") in S.C.No.16 of 2003.

2. The minimum facts that are required for deciding this petition are as under :

2.1. The petitioner viz., Selvarani is the wife of one Sekar. Sekar (A2) along with his brother Manikandan (A1) and father Krishnamurthy, fatally attacked one Ganesan on 19.07.2001, in connection with which, a case in Jayankondam P.S. Crime No.486 of 2001 was registered against them and they were prosecuted before the Sessions Judge, Perambalur in S.C.No.16 of 2003, in which, by judgment and order dated 21.07.2003, they were convicted of the offence under Section 302 IPC read with Section 34 IPC and sentenced to imprisonment for life and to pay a fine of Rs.2,000/- each, in default to undergo 3 months rigorous imprisonment.

2.2. Challenging the said conviction and sentence, they preferred Crl.A.No.1320 of 2003 and Crl.M.P.No.11263 of 2003 seeking suspension of sentence and bail. This Court, by order dated 09.12.2003, granted suspension of sentence and bail in Crl.M.P.No.11263 of 2003.

2.3. However, on 04.04.2006, their appeal in Crl.A.No.1320 of 2003 was dismissed by a Division Bench of this Court, confirming their conviction and sentence. While so, Sekar (A2) did not surrender to custody and was in abscondance and he was arrested by the police only on 06.01.2017, i.e., 11 years after his appeal was dismissed.

2.4. While in judicial custody, Sekar's wife Selvarani filed the present Habeas Corpus Petition in H.C.P.No.1919 of 2018, contending that his date of birth is 11.07.1985 and that, on the date of commission of the offence i.e., on 19.07.2001, he was less than 18 years of age and therefore, being a juvenile, he should be released from the prison. In support of this contention, she filed a photocopy of the 8th standard public examination (private study) marksheet dated 06.04.2018, in which, Sekar's date of birth has been shown as 11.07.1985.

2.5. On notice, the Inspector of Police, Jayankondam Police Station filed a counter affidavit dated 05.09.2019 contending that Sekar had studied in the Government Higher Secondary School, Utkottai and the school records reveal that he was born on 11.07.1983 and not on 11.07.1985.



2.6. In the meanwhile, Selvarani managed to obtain a birth certificate afresh dated 06.07.2019 issued by the Registrar (Birth & Death), Utkottai North Village Panchayat to the effect that Sekar's date of birth is 11.07.1985. She placed the documents viz., 8th standard marksheet and the birth certificate of Sekar obtained recently in her support and the police placed school records of Sekar in their support.

2.7. This Court, by order dated 25.09.2019 in H.C.P.No.1919 of 2018, directed the Juvenile Justice Board (in short "JJB"), Perambalur to conduct an enquiry and send a report to this Court. It may be pertinent to extract the relevant portion of the said order :

"3. The Juvenile Justice Board is directed to go into all aspects including the genuinity of the documents produced on behalf of the detenu as well as the State. We may notice that the learned Additional Public Prosecutor has opposed the documents produced by the petitioner on the ground that those documents have been obtained during the period of incarceration and very recently in the year 2019.

4. A report will have to be filed by the concerned Juvenile Justice Board before this Court within a period of three months from the date of receipt of a copy of this order."

2.8. Based on the aforesaid directions, the JJB, Perambalur headed by the Principal Magistrate conducted an enquiry and sent a report in JJB.D.No.19/2020 dated 08.01.2020 stating that Sekar's date of birth is 11.07.1983 and that, he was 19 years old when the offence was committed.

2.9. A copy of the said report was furnished to Mr.Sankarasubbu, learned counsel for Selvarani, who stoutly disputed the same by contending that Sekar was not at all examined by the JJB and that, the enquiry was not properly conducted.

2.10. Mr.Sankarasubbu produced a photocopy of the transfer certificate purported to have been issued by the Head Master, Government Higher Secondary School, Utkottai showing Sekar's date of birth as 11.07.1985. When the said document was produced, this Court passed the following order on 22.02.2022 :

"This petition has been filed seeking a direction to the learned Principal Sessions Judge, Perambalur to conduct an enquiry u/s.7A of the Juvenile Justice Act.



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2. Along with the typed set of papers, Mr.R.Sankarasubbu, learned counsel appearing for the petitioner, submitted a photocopy of a transfer certificate, purported to have been issued by the Head Master, Government Higher Secondary School, Utkottai, Perambalur District, showing the date of birth of Sekar s/o.Krishnamurthy as 11.07.1985, whereas, the Principal Magistrate, Juvenile Justice Board, has sent records, viz., record sheet and a certificate purportedly issued by the Head Master, Government Higher Secondary School, Utkottai, Ariyalur District, which shows the date of birth of K.Sekar as 11.07.1983.

3. Mr.R.Sankarasubbu, learned counsel, also submitted a photocopy of a birth certificate issued on 06.07.2019 by the Registrar (Birth and Death), Utkottai North Village Panchayat, which shows the date of birth of Sekar s/o.Kirushnamoorthy as 11.07.1985. This birth certificate shows the date of registration of the birth as 03.07.2019.

4. Since there are discrepancies in the above three certificates, we wanted the respondent police to conduct an enquiry and file a report about the genuineness of these documents. However, Mr.R.Sankarasubbu, learned counsel, submitted that it will not be proper to direct the respondent police to conduct enquiry, instead, an independent police officer may be appointed.

5. Considering the aforesaid submission, we direct the Deputy Superintendent of Police, District Crime Branch, Ariyalur, to collect the photocopies of these 3 documents from the office of the Public Prosecutor and file a report to this Court about the genuineness of these three documents on the next hearing date.

Call on 08.03.2022."

2.11. Accordingly, the Deputy Superintendent of Police (DSP), District Crime Branch (DCB), Ariyalur District conducted a thorough enquiry and has filed a detailed status report dated 18.03.2022, which reveal murky facts. Along with the said report, the DSP-DCB has also submitted copies of various documents to show that Sekar's date of birth is 11.07.1983, whereas, he has managed to create records to show his date of birth as 11.07.1985. Since the report of the JJB and the report of the DSP-DCB went against the case of the petitioner, she has filed a miscellaneous petition in CrI.M.P.No.859 of 2022 for a



fresh enquiry under Section 7-A of the JJ Act by the trial Court.

2.12. Sekar also filed an additional supporting affidavit dated 20.04.2022 disputing the report of the DSP-DCB and contending that his date of birth as 11.07.1985.

3. Heard Mr.R.Sankarasubbu, learned counsel for Selvarani and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents/State.

4. Mr.Sankarasubbu placed strong reliance on the following judgments :

i. Raju vs. State of Haryana [(2019) 14 SCC 401] ;

ii. Ashwani Kumar Saxena vs. State of Madhya Pradesh [(2012) 9 SCC 750] ;

iii. Rishipal Singh Solanki vs. State of Uttar Pradesh [2021 SCC OnLine SC 1079] ; and

iv. Jayavel vs. State [2013 SCC OnLine Mad 1355].

5. One can have no quarrel with the law laid down in the aforesaid judgments, wherein, it has been held that, if a genuine doubt is raised with regard to the age of a prisoner juvenility can be claimed, even after the confirmation of the conviction and sentence by the superior Courts and an enquiry under Section 7-A of the JJ Act can be ordered by the Court.

6. In this case, the petitioner placed 8th standard marksheet to show that Sekar's date of birth is 11.07.1985. A perusal of the said marksheet shows that, Sekar had written the 8th standard examination in January 2018 as a private candidate. As stated above, he was in the prison from January 2017 onwards. While in prison, Sekar had given an application to the prison authorities to appear for the 8th standard examination, saying that he had not passed 8th standard. When a prisoner wants to study, all facilities would be provided by the prison authorities for pursuing his studies because, at the end of the day, it is the concern of the prison authorities that the prisoner should get reformed. While filling the application form for writing the 8th standard examination from the prison as a private candidate, Sekar had given his date of birth as 11.07.1985, which was accepted by the prison authorities and he was permitted to take up the 8th standard examination in January 2018. However, he failed in that examination, as could be seen from the marksheet. The marksheet clearly shows that he appeared for the 8th standard public examination via private study. From this, it is obvious that he had not taken his 8th



standard examination through school, but had written it during January 2018, when he was in prison.

7. The Inspector of Police, Jayankondam Police Station submitted the school records of Sekar, in which, his date of birth has been shown as 11.07.1983. Despite that, this Court, by order dated 25.09.2019, directed the JJB, Perambalur to conduct an enquiry and accordingly, the JJB conducted an enquiry and sent a report stating that Sekar's date of birth is 11.07.1983 and not 11.07.1985. Just because the report of the JJB is not favourable to the petitioner, she cannot keep on demanding further enquiries.

8. Mr.Sankarasubbu contended that the JJB had not examined Sekar and therefore, the report stands vitiated.

9. It is seen that the JJB had examined Selvarani and also collected the various records produced by her as well the records from the Government Higher Secondary School, Utkottai, where Sekar had studied. The fact that Sekar had studied in the said school is not in dispute. Again, when the matter came up before this Court on 22.02.2022, we wanted to satisfy, whether the photocopy of the transfer certificate purported to have been issued by the Head Master, Government Higher Secondary School, Utkottai, showing Sekar's date of birth as 11.07.1985, was a genuine document or not. Therefore, when we wanted to direct the Inspector of Police, Jayankondam Police Station to conduct an enquiry, Mr.Sankarasubbu submitted that it cannot be proper to entrust the enquiry to the same police and therefore, we acceded to his request and directed the DSP-DCB to conduct an enquiry and file a report.

10. Now, let us advert to the report that has been filed by the DSP-DCB, which reads as under :

"2. It is submitted that as per the direction of this Hon'ble High Court dated 22.02.2022, I started my enquiry about the genuineness of the said documents.

a) On 16.03.2022, I went to Utkottai Government Higher Secondary School, Jayamkondam Police Station Limit and enquired the School Headmaster Mr.Sivamani and after perusal of the detenu records, he stated that the detenu was studied in his school up to IX standard and discontinued in the mid of the IX standard itself. Also, he issued a copy of detenu's Transfer Certificate vide Serial No.13/05-06, Admission No.3859 in which the detenu's date



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of birth is mentioned as 11.07.1983.

b) The School Headmaster further provided the following details of the detenu is that on 29.07.1988, the detenu studied in I standard; on 01.06.1989 detenu studied in II standard; on 01.06.1990 detenu studied in III standard; on 01.06.1991 detenu studied in IV standard (detenu failed twice in IV standard) and on 01.06.1994, detenu studied in V standard and promoted (record sheet-annexed). Further, the school Headmaster provided the certified copy of VIII Std. 'B' Section attendance register for the year 1997 to 1998, in which the detenu name was listed.

The above school records clearly shows that date of birth of the detenu was 11.07.1983.

3. It is submitted that during the course of enquiry, I have enquired Tmt.Selvarani, wife of the detenu, and she has stated that all the documents including the birth certificate and school certificate of the detenu were destroyed in a fire accident when their house was set on fire. Further she has stated that she had approached the RDO to obtain the birth certificate for her husband/detenu since she does not possess any records, she gave a representation dated 26.11.2018 that her husband/detenu's date of birth was 11.07.1985 as per the detenu's information and sworn the affidavit on 01.03.2019 to that effect. She has further stated that the detenu already obtained aadhar card mentioned date of birth as 11.07.1985.

4. It is submitted that during the course of enquiry, I have enquired the then VAO, Utkottai (now at Jayankondam) who without any proper verification of the documents submitted by the detenu's wife had mistakenly mentioned the date of birth of the detenu as 11.07.1985. Later, the VAO came to know that in order to release the detenu, the detenu's wife provided false information and obtained the date of birth of the detenu as 11.07.1985. The VAO came to know that the date of birth of detenu was 11.07.1983 after verifying documents from the Utkottai Government Higher Secondary School where the detenu pursued his school education.



5. It is submitted that the detenu had obtained a birth certificate from the above said authorities by approaching the State Human Rights Commission, Chennai to issue his date of birth certificate as 11.07.1985. In this regard, the State Human Rights Commission sent a letter to the District Collector, Trichy in case No.11453/2018/HC2 dated 16.04.2019 to provide the details of the detenu. The District Collector, Trichy sent a letter to the District Collector, Ariyalur dated 30.04.2019 to provide date of birth certificate to the detenu after conducting a detailed verification. Hence the District Collector, Ariyalur sent a letter to the Revenue Divisional Officer, Udayarpalayam dated 27.05.2019 to take effective steps in this regard. Therefore, the RDO based on the wrong report given by the VAO, without knowing the details behind in the marksheet (Jan-2018) submitted by the petitioner and detenu, issued a birth certificate mentioning detenu's date of birth as 11.07.1985. Under such circumstances, I have enquired RDO, Udayarpalayam. On enquiry, RDO, Udayarpalayam stated that only based on the VAO report and detenu marksheet Jan-2018 as per the proceedings vide No.A5/1284-2019 dated 21.06.2019, he issued the order to register the date of birth of the detenu as 11.07.1985.

6. It is submitted that I was completely gone through the order dated 25.09.2019 vide H.C.P.No.1919 of 2018, the Principal Magistrate, Juvenile Justice Board, Perambalur District vide JJB.D.No.19/2020 dated 08.01.2020 conducted detailed enquiry. After conducting detailed enquiry including the detenu's wife. Based on the said enquiry and perusal of records, it was ascertained that the date of birth of the detenu was 11.07.1983 and also highlighted that the age of detenu was 19 years old at the time of remand. The learned Principal Magistrate, Juvenile Justice Board has prepared a report dated 08.01.2020 and submitted the same before the Registrar General, Hon'ble High Court of Judicature, Madras.

7. It is further submitted that during the course of enquiry, the fraudulently created documents by the detenu and detenu's wife was found is as follows :



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S.N o.	Original documents available regarding detenu's D.O.B.	Fraudulently created documents regarding detenu's D.O.B.	Remarks
1.	School Certificate	Aadhar card	For the purpose of obtaining Birth Certificate as 11.07.1985 to show the detenu's age as 18, in order to utilise for juvenile
2.	Record Sheet	Birth certificate	
3.	Original Transfer Certificate	Transfer certificate	
4.	VIII std. Attendance Register	VIII std. examination (Jan-2018) - detenu written exam in private intentionally in order to show his date of birth as 11.07.1985	
5.	Principal Magistrate JJB Perambalur District Report		
6.	VAO statement		

8. It is submitted that so far enquiry reveals and confirmed that date of birth of the detenu is 11.07.1983. Hence the wife of the detenu colluded with others and manipulated the original documents namely Transfer Certificate vide Serial No.123/05-06, Admission No.3859 and obtained the fake date of birth certificate as 11.07.1985 for detenu from the concerned authorities. On naked eye, the difference between the original transfer certificate obtained during enquiry from the school authorities as well as the relied upon document of transfer certificate submitted by the petitioner herein in serial No.7-date of birth 11.07.83 was erased and changed the number "3" as "5" as well as in handwritten (d;W vd;gij Ie;J vd;W khw;wg;gl;Ls;sJ) also changed.

9. It is further submitted that during enquiry, it was also revealed that even though the detenu was passed in IX standard during the year 1999-2000 in the





was issued to him by the Government Higher Secondary School, Utkottai.

13. Further, we compared the entries in the photocopy of the transfer certificate that was submitted by Mr.R.Sankarasubbu with the one submitted by the police and found that all the entries are perfectly matching, except the entry relating to date of birth, where, we are able to see an alteration both in the numerals as well in the letters, in the one submitted by Mr.Sankarasubbu as stated in paragraph 8 of the status report dated 18.03.2022 filed by the DSP-DCB. The investigation conducted by the DSP-DCB shows that after Sekar was taken into custody in the year 2017, in order to claim juvenility, he has informed the prison authorities that he had not passed 8th standard and therefore, he was permitted to take up the 8th standard examination and at the time of filling the application form as a private candidate appearing from the prison, he has given his date of birth as 11.07.1985, which the prison authorities had implicitly accepted because, it is their objective to permit prisoners to educate themselves.

14. That apart, the statement of the Village Administrative Officer shows that Selvarani had approached him for obtaining a birth certificate for her husband Sekar saying that all the records in their house were burnt and that his date of birth is 11.07.1985. Since there was a direction from the Human Rights Commission, which was approached by Selvarani, the Revenue authorities hurriedly issued a fresh birth certificate dated 06.07.2019 showing Sekar's date of birth as 11.07.1985.

15. The law does not say that the enquiry under Section 7-A of the JJ Act should be conducted only by the trial Court. In Raju (supra), the enquiry was conducted by the Registrar Judicial of the Supreme Court. In this case, this Court had directed the JJB to conduct an enquiry and the enquiry report of the JJB shows that Sekar's date of birth is 11.07.1983 and not 11.07.1985. Along with the status report, the DSP-DCB has placed the record sheet and the attendance register of 8th standard, B-Section from June 1997 onwards to show that Sekar had studied 8th standard in the Government Higher Secondary School, Utkottai.

16. This Court cannot keep ordering enquiry after enquiry merely to satisfy the petitioner, as that would amount to abuse of process of law. Only when the Court entertains a genuine doubt with regard to the age of an accused, should an enquiry be ordered and not merely on the whim of the accused.

17. In fine, we are convinced that Sekar's date of birth is 11.07.1983 and that, he was not a juvenile at the time of the



occurrence i.e., on 19.07.2001. Though we can direct the police to register an FIR for fabricating records, yet, we are not doing so, as we do not want to be harsh on the petitioner and her husband.

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18. However, we direct the Registry to send a copy of this order to the Director General of Prisons and Correctional Services, Whannels Road, Egmore, Chennai-8, whose office shall examine the modus operandi that has been adopted in this case for claiming juvenility by giving a false date of birth to the prison authorities for undergoing higher studies, and take remedial measures to ensure that such tactics are nipped in the bud. Appropriate circulars may be issued to all the Superintendents of Prisons to be more circumspect and careful, while accepting the ipse dixit of a prisoner about his date of birth.

19. In the result, this Habeas Corpus Petition stands dismissed. Connected Crl.M.P.No.859 of 2022 is closed. We place on record our appreciation to the Deputy Superintendent of Police, District Crime Branch, Ariyalur District, for the thorough manner in which, he has conducted the enquiry and for exposing the falsity in the claim of the petitioner.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gya

To

- 1.The Principal Sessions Judge
Perambalur
(S.C.No.16 of 2003)
- 2.The Deputy Superintendent of Police
District Crime Branch, Ariyalur District
(Crime No.486 of 2001)
- 3.The Inspector of Police
Jayankondam Police Station, Ariyalur District
(Crime No.486 of 2001)
- 4.The Superintendent
Central Prison, Trichy
(Crime No.486 of 2001)



5.The Chairman
Juvenile Justice Board
No.164, 2nd Floor, M.M.Plaza
Trichy Main Road, Perambalur
(JJB.D.No.19/2020)

6.The Public Prosecutor
Madras High Court, Chennai 600 104

Copy To:

The Director General of Prisons and
Correctional Services
Whannels Road, Egmore, Chennai-8.

+1cc to Mr.R.Sankara Subbu, Advocate, S.R.No.33536

H.C.P.No.1919 of 2018

PMK(CO)
SB(22/06/2022)