

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.143 of 2018**

Arising Out of PS. Case No.-22 Year-1996 Thana- MIRGANJ District- Gopalganj

Manoj Bhagat S/o Late Babulal Bhagat, R/o Village- Chainpur, P.S.- Hathua,
District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Raghav Prasad, Adv.
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-09-2023

The appellant had earlier filed an application under the Juvenile Justice (Care and Protection of Children) Act, 2015, seeking his release on the ground of his juvenility and, in support of the aforesaid application, the date of birth mentioned in the School Leaving Certificate was relied upon.

2. The Bench hearing the matter on receipt of



such application vide its order dated 01.05.2018 passed in I.A. No. 1006/2018, observed that such application would be considered at the time of final hearing of the appeal. The aforementioned order was challenged by the appellant before the Supreme Court in Cr. Appeal No. 832/2019. The Supreme Court vide its order dated May 3, 2019 set aside the order passed by the Division Bench posting the interlocutory application, seeking release on the ground of juvenility, at the time of final hearing of the case. The Supreme Court was of the view that the High Court ought to have considered the application straightway to meet the ends of justice. The application was sent back to this Court to be decided on its merits.

3. The matter came up again before another Division Bench on 07.08.2019, when the matter was posted under the heading "Orders" for 28th of August, 2019.

4. Since then, the aforementioned application has



not been moved by the appellant.

5. The appellant in the meanwhile sought provisional bail for attending the marriage of his real sister in the month of February, 2023. The provisional bail was allowed and the appellant surrendered on the due date. Thereafter, realizing the mistake in filing the petition under Section 7-A of the earlier Act of 2000, a fresh application vide I.A. No. 2/2022 (U/s 9 of the J.J. Act, 2015) was filed by the appellant, seeking his release after declaration of his juvenility on the strength of the date of birth recorded in School Leaving Certificate.

6. Responding to such petition, a Co-ordinate Bench of this Court vide order dated 27.04.2023 referred the matter to the Juvenile Justice Board (JJB), Gopalganj for submitting a report on the point of the appellant's claim of juvenility. The JJB has sent its report, which is on record.

7. The Principal Magistrate, JJB, Gopalganj had



directed the District Education Officer to ensure the presence of the Principal of the Government Middle School, Jainpur in the district of Gopalganj with the Admission Register, Birth Certificate etc. before the JJB on 08.05.2023. The Principal of the said school appeared with the Admission Register, Birth Certificate and other documents. He disclosed before the JJB that the appellant was admitted in the school on 09.01.1988 in Class-2 and the Admission Register disclosed his date of birth to be 15.01.1980. In the same Admission Register, his younger brother's date of birth, who too had taken admission in Class-1, was recorded as 08.12.1984. With respect to the School Leaving Certificate, the Principal of the school certified that it was correct and had been issued by the then Principal of the school.

8. The Board examined all the documents brought before it and not finding any anomaly in any one of the documents specially with respect to the age of the



appellant, declared him to be a juvenile, as being of the age of 15 years 11 months and 29 days on the date of the occurrence (13.01.1996) for which Mirganj P.S. Case No. 22/1996 had been registered for investigation.

9. We have perused the report of the JJB, Gopalganj and have found that after due inquiry and relying upon the documents mentioned in Section-94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, namely, the Date of Birth certificate from the school, confirmed that the appellant was a juvenile as on the date of occurrence.

10. While going through the report of the JJB, Gopalganj, holding the appellant to be a juvenile as on the date of the occurrence, we found ourselves to be some what in a quandary as in a recent judgment of the Supreme Court in ***P. Yuvaprakash vs. State Rep. by Inspector of Police, 2023 SCC Online SC 846***, it was held that a school transfer certificate would not come within the enumerated documents under Section 94 of



the Act to give benefit of juvenility to any person.

11. The entire claim of the appellant before this Court was on the strength of a School Leaving Certificate in which his date of birth was recorded. However, when we examined the report of the Juvenile Justice Board in detail, we found that such declaration of juvenility was not only on the basis of the School Leaving Certificate but also on the basis of the School Admission Register. The Principal of the school, as we find from the report, was summoned with all the documents which was examined by the Board and a conclusion was arrived at.

12. This, therefore, makes the report worthy of reliance.

13. We have also found that the State in its written response had agreed that the School Leaving Certificate which was produced by the appellant in the interlocutory application, seeking a declaration of his juvenility and consequent release from jail, was true but



demanded that the matter be sent to the JJB for a fresh determination of the age of the appellant.

14. Section-9 of the 2015 Act provides for the procedure to be followed by a Magistrate who has not been empowered under the Act. The section is extracted herein for the sake of completeness.

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act.-(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be



necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognized 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.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

15. The proviso to Section-9 declares in no uncertain terms that a claim of juvenility could be raised



before any court and it would be recognized at any stage, even after the final disposal of the case and such a claim shall be determined in accordance with the provisions contained in the Act and the Rules made thereunder even if the person had ceased to be a child on or before the date of commencement of the Act.

16. Sub-section (3) of Section 9, as can be noticed, further provides that if a person is found to be a juvenile on the date of commission of the offence, the juvenile shall be forwarded to the Board for passing appropriate orders and sentence and any order passed by any court would be deemed to have no effect.

17. The appellant seeks his release under the aforesaid provisions of the Act of 2015.

18. Additionally it has been urged that he has already remained in jail for the last eight years.

19. Since we have taken into account the argument of Mr. Raghav Prasad, learned Advocate, representing the appellant, that he for the moment is



only pressing his juvenility and has not addressed us on the merits of the case, we have also examined whether he has already undergone the maximum sentence which could have been awarded to him for having committed a heinous offence while he was less than 16 years of age. We say so for the reason of the provisions contained in Section 18 of the Act which lists the orders which could be passed by the Board regarding a child who is found to be in conflict with law. Sub-section (3) of Section 18 provides that where the Board after preliminary assessment under Section 15 passes an order that there is a need for trial of the child as an adult, the Board may order transfer of the Trial of the case to the Children's Court having jurisdiction to try such offence.

20. The circumstance before us is that the appellant never claimed juvenility before the Trial court. The State, therefore, never got an opportunity to rebut this claim which he has raised only at the appellate stage in the High Court. In such a situation, whether it would



be appropriate to hold that the trial itself stood vitiated for the lack of jurisdiction of the Trial court as only the JJB of the district could have inquired into the offence based upon the evidence led by the prosecution? This option would require the entire proceedings to be quashed.

21. We take a clue from the series of judgments of the Supreme Court on the said issue though all such judgments have been delivered under the Juvenile Justice (Care and Protection of Children) Act, 2000. In ***Jitendra Singh @ Babboo Singh and Anr. vs. State of Uttar Pradesh, (2013) 11 SCC 193***, a two Judges bench of the Supreme Court had confirmed the conviction but had remitted the matter to the JJB for determining the appropriate quantum of sentence/fine which could have been imposed on the appellant and the compensation that could have been awarded to the family of the victim. The Bench had held that in view of Section 20 of the Juvenile Justice (Care and Protection



of Children) Act, 2000 which is Section 25 under the Act of 2015, which provides for special provision in respect of pending cases, it is clear that the case of a juvenile has to be examined on merits and if it is found that the juvenile is guilty of the offence alleged to have been committed, he ought not to be allowed to go unpunished. The Bench further observed that as the law stands, the punishment which would be awarded to him or her must be left to the JJB constituted under the Act.

22. We deem it necessary to quote paragraph nos. 28, 29 and 30 of the judgment in Jitendra Singh (Supra).

"28. The sum and substance of the above discussion is that in one set of cases this Court has found the juvenile guilty of the crime alleged to have been committed by him but he has gone virtually unpunished since this Court quashed the sentence awarded to him. In another set of cases, this Court has taken the view, on the facts of the case that the juvenile is adequately punished for the offence committed by him by serving out some period in detention. In the third set of



cases, this Court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty. In the fourth set of cases, this Court has examined the case on merits and after having found the juvenile guilty of the offence, remitted the matter to the jurisdictional Juvenile Justice Board on the award of sentence.

29. In our opinion, the course to adopt is laid down in Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

30. It is clear that the case of the juvenile has to be examined on merits. If it found that the juvenile is guilty of the offence alleged to have been committed, he simply cannot go unpunished. However, as the law stands, the punishment to be awarded to him or her must be left to the Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000. This is the plain requirement of Section 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In other words, Ashwani Kumar Saxena [(2012) 9 SCC 750] should be followed.”

23. The provisions contained in Section 25 of the 2015 Act is in pari materia with the contents of



Section 20 of the 2000 Act. Section 25 of the 2015 Act is quoted below;

"25. Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

24. In the same judgment, it was further clarified that there was no provision in the 2000 Act suggesting any obligation for the Court before whom the claim for juvenility is made, to set aside the conviction of the juvenile on the ground that on the date of commission of the offence, he was a juvenile and therefore not triable by an ordinary criminal court. Applying the *maxim expressio unius exclusio alterius*, the Bench held that it would be reasonable to hold that the law, in so far as it requires a reference to be made to the Board, excludes by necessary implication any intention on the part of the Legislature requiring the



courts to set aside the conviction recorded by the Trial court. The Parliament, the Bench went on, was content with setting aside the sentence of imprisonment awarded to the juvenile and making of a reference to the Board without specifically or by implication, requiring the court concerned to alter or set aside the conviction.

25. That perhaps was found to be the reason why the Supreme Court in several of the decisions had set aside the sentence awarded to the juvenile without interfering with the conviction recorded by the court concerned and thereby having complied with the mandate of Section 7-A(2) of the 2000 Act.

26. Similar view was taken by the Supreme Court in ***Mahesh vs. State of Rajasthan and others, 2018 SCC Online SC 3655*** and ***Satya Deo @ Bhoorey vs. State of Uttar Pradesh, (2020) 10 SCC 555***.

27. The provisions contained in Sections 7-A and 20 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has been replicated in Section 9 and



25 of the Act of 2015. On a plain reading of Section 25 of the Act of 2015, it becomes very clear that the intention of the Legislature is only to accord benefit to a person who is declared to be a child on the date of the offence but only with respect to its sentence and not conviction (refer to ***Karan @ Fatiya vs. State of Madhya Pradesh, (2023) 5 SCC 504***).

28. If the conviction is also to be made ineffective then either the jurisdiction of the sessions court would have to be completely excluded not only under Section 9 of the 2015 Act but also under Section 25 of the 2015 Act.

29. Section 25 is clear in its import that any proceeding pending before any Board or Court on the date of commencement of the 2015 Act, shall be continued in that Board or Court as if this Act had not been enacted.

30. Since the conviction has not been challenged in the present petition but the appellant, we



repeat, has only sought his release on the ground of his juvenility on the date of occurrence, the claim thus boils down to the question of sentence for which the provision of 2015 Act would be attracted. Any other interpretation would amount to allowing the appellant who has committed a heinous offence, to go scott free which is not the object of 2015 Act.

31. In view of the aforementioned discussion, we uphold the conviction of the appellant but set aside his sentence.

32. Since the appellant now is more than forty (40) years of age, there would be no requirement of sending him to JJB or any other Child Care Facility or Institution.

33. He is in judicial custody.

34. He shall be released forthwith, if not detained or wanted in any other case.

35. The impugned judgment stands modified in case of the appellant to the extent aforesaid.



36. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

rishi/shahzad

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18.09.2023
Transmission Date	18.09.2023

