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H.C.P.No.2098 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

H.C.P.No.2098 of 2023

Dhanalakshmi

... Petitioner

Vs.

1.The State of Tamil Nadu rep. By its
Superintendent of Central Prison,
Cuddalore, Cuddalore District.

2.The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of habeas corpus directing the respondents to produce the body of the detenu namely Dakshinamurthy, male, aged 31 years, S/o.Natarajan, Vairakannu Chettiar Nagar, Kannaarapettai, Karaikadu, Cuddalore Taluk, Cuddalore District, now confined in Central Prison, Cuddalore before this Court and set him at liberty.

For Petitioner : Mr.C.S.S.Pillai

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
assisted by Mr.C.Aravind



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ORDER

(Order of the Court was made by **SUNDER MOHAN, J.**)

This is an unfortunate case of a juvenile being tried as an adult, and convicted, and sentenced to imprisonment, and later found that he was a juvenile.

2. The brief facts leading to the filing of the above petition are as follows:

(a) The prison inmate who is the son of the petitioner was tried in S.C.No.181 of 2011;

(b) The learned Assistant Sessions Judge, Panruti by the judgment dated 14.10.2011 found the prison inmate guilty of the offence under Section 394 of the IPC and sentenced him to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,000/- in default to undergo one year of rigorous imprisonment;

(c) The prison inmate Dakshinamurthy filed an appeal before this Court in CrI.A. No.763 of 2011. This Court, by judgment dated 22.02.2019 confirmed the judgment of the trial Court and dismissed the appeal. Thereafter, the prison inmate is serving the sentence and is now confined in Central Prison, Cuddalore;



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(d) It appears that subsequently it was found that the prison inmate Dakshinamurthy was a juvenile at the time of the commission of offence on 03.07.2009, as he was born on 10.07.1991.

(e) Thereafter, the brother of the prison inmate filed a habeas corpus petition before this Court in H.C.P. No.2003 of 2019 stating that the prison inmate, who was a juvenile in conflict of law at the time of offence has been erroneously tried as an adult. This Court, after hearing the learned Additional Public Prosecutor, passed the following order:

'3. In such view of the matter, instead of keeping this writ petition pending, we direct the respondents to forward the representation made by the petitioner dated 27.08.2019 to the Juvenile Justice Board, Cuddalore. The Juvenile Justice Board, Cuddalore is directed to follow the procedure and take a decision in this regard within a period of three months from the date of receipt of a copy of this order.'

(f) Subsequent to the directions issued by this Court, the Juvenile Justice Board submitted a report to this Court dated 14.10.2019. The relevant portion of the said report sent to this Court reads as follows:



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'Hence, the Board conclude and determine that on the date of commission of offence i.e. 03.07.2009 the prisoner N.Dhakshanamoorthy has not completed the age of 18 years and he was at 17 years 11 month 23 days old. The claim of Juvenility for the Convicted Prisoner N.Dhakshanamoorthy, S/o.Natarajan by his brother N.Sivamani S/o.Natarajan, who is the Writ Petitioner in H.C.P.No.2003/2019 is found genuine and his claim based on school records issued to N.Dhakshanamoorthy is found as a sufficient proof.

(g) Subsequently, on 07.06.2023, the Juvenile Justice Board sent a report to the Principal District Court, Cuddalore, confirming that the prison inmate was a juvenile on the date of the commission of the offence and that he was born on 10.07.1991;

(h) The mother of the convict has now preferred the instant habeas corpus petition stating that the continued detention of her son, in view of the report of the Juvenile Justice Board, is illegal as he is serving sentence imposed on him for more than four years.

3. The learned Additional Public Prosecutor,



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on instructions, submits that pursuant to the directions of this Court in H.C.P. No.2003 of 2019, the Juvenile Justice Board conducted an enquiry and found that the prison inmate was born on 10.07.1991 and on the date of commission of the offence, he had not completed 18 years, and that the report of the Juvenile Justice Board was sent to this Court as early as on 24.02.2020.

4. In the light of the above facts, this Court finds that the prison inmate who was convicted for the offence under Section 394 IPC is in custody since 15.07.2019 and is now aged 32 years. He cannot be sent to the Juvenile Justice Board, as the Juvenile Justice Board cannot send him to a Juvenile Home for a term exceeding two years. In similar circumstances where the accused after conviction was found to be a juvenile, the Hon'ble Supreme Court in ***Jitendra Singh alias Babboo Singh and Another Vs. State of Uttar Pradesh*** reported in **(2013) 11 SCC 193**, after discussing the earlier judgments on the issue observed as follows:

'23. On the sentence to be awarded to a convict who was a juvenile when he committed the offence, there is a dichotomy of views.

***24. In the first category of cases,** the conviction of the juvenile was upheld but the sentence quashed:*

***24.1.** In Jayendra v. State of U.P. [(1981) 4 SCC 149 : 1981 SCC (Cri) 809] the conviction of the appellant was confirmed though he was held to be a child as defined in Section 2(4) of the Uttar Pradesh Children Act, 1951. However, he was not sent to an "approved school" since he*



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was 23 years old by that time. His sentence was quashed and he was directed to be released forthwith.

24.2. Similarly, in *Bhoop Ram v. State of U.P.* [(1989) 3 SCC 1 : 1989 SCC (Cri) 486] this Court followed *Jayendra* [(1981) 4 SCC 149 : 1981 SCC (Cri) 809] and while upholding the conviction of the appellant who was 28 years old by that time, the sentence awarded to him was quashed.

24.3. In *Pradeep Kumar v. State of U.P.* [1995 Supp (4) SCC 419 : 1995 SCC (Cri) 395] yet another case under the *Uttar Pradesh Children Act, 1951* the conviction of the appellant was upheld but since he was 30 years old by that time, his sentence was set aside.

24.4. In *Bhola Bhagat v. State of Bihar* [(1997) 8 SCC 720 : 1998 SCC (Cri) 125] the conviction of the appellant was upheld by this Court but the sentence was quashed keeping in mind the provisions of the *Bihar Children Act, 1970* read with the *Bihar Children Act, 1982* and the *Juvenile Justice Act, 1986*.

24.5. In *Upendra Kumar v. State of Bihar* [(2005) 3 SCC 592 : 2005 SCC (Cri) 778] this Court followed *Bhola Bhagat* [(1997) 8 SCC 720 : 1998 SCC (Cri) 125] and upheld the conviction of the appellant but quashed the sentence awarded to him.

24.6. In *Gurpreet Singh v. State of Punjab* [(2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191] one of the appellants was a juvenile within the meaning of that expression occurring in Section 2(h) of the *Juvenile Justice Act, 1986*. This Court held that if the accused was a juvenile on the date of occurrence and continues to be so, then in that event he would have to be sentenced to a juvenile home. However, if on the date of sentence, the accused is no longer a juvenile, the sentence imposed on him would be liable to be set aside. In this context, reference was made to *Bhoop Ram* [(1989) 3 SCC 1 : 1989 SCC (Cri) 486] .

24.7. Finally in *Vijay Singh v. State of Delhi* [(2012) 8 SCC 763 : (2012) 3 SCC (Cri) 1044] the conviction of the appellant was upheld but the sentence was quashed since he was about 30 years old by that time.

25. The second category of cases includes:

25.1. *Satish v. State of M.P.* [(2009) 14 SCC 187 : (2010) 1 SCC (Cri) 1320] wherein the conviction of the appellant was upheld but the sentence awarded was modified to the period of detention already undergone.

25.2. Similarly, in *Dharambir v. State (NCT of Delhi)* [(2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274] the conviction of the appellant was sustained but since the



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convict had undergone two years and four months of incarceration, the sentence awarded to him was quashed.

26. The third category of cases includes:

26.1. *Hari Ram v. State of Rajasthan [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987]* wherein the appellant was held to be a juvenile on the date of commission of the offence. His appeal against his conviction was allowed and the entire case remitted to the Juvenile Justice Board for disposal in accordance with law.

26.2. *In Daya Nand v. State of Haryana [(2011) 2 SCC 224 : (2011) 1 SCC (Cri) 666]* this Court followed *Hari Ram [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987]* and directed the appellant to be produced before the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

27. The fourth category of cases includes: *Ashwani Kumar Saxena v. State of M.P. [Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750 : (2013) 1 SCC (Cri) 594]* in which the conviction of the appellant was upheld and the records were directed to be placed before the Juvenile Justice Board for awarding suitable punishment to the appellant.

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.'

5. In that case, the Hon'ble Supreme Court referred the matter to the Juvenile Justice Board as it found that the sentence of



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fine imposed by the regular Court was inadequate. However, in the facts of the case, this Court finds that there is no necessity to remit the matter to the Juvenile Justice Board as the prison inmate has suffered a sentence of imprisonment in jail for more than four years.

6.(i) The offence in the instance case had taken place on 03.07.2009. Therefore, the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, have to be applied. By Act 33 of 2006, some of the provisions were amended, and certain other provisions were inserted. Section 7(A), which was inserted, is relevant for the purpose of this case, and the same reads as follows:

"7-A. Procedure to be followed when claim of juvenility is raised before any court.—(1)

Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised



before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under subsection (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

(ii) By virtue of the above provision, the claim of juvenility can be raised at any stage, even after the final disposal of the case. Hence, if the accused person is found to be a juvenile, even after the disposal of the case, he has to be dealt with by the Juvenile Justice Board.

(iii) Section 64 of the 2000 Act was also amended by Act 33 of 2006, and by virtue of the amendment, the words 'may direct' were replaced with the words, 'shall direct'. Section 64, after amendment, reads as follows:

"64. Juvenile in conflict with law undergoing sentence at commencement of this Act-In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment



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at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of Section 16 of this Act:

Provided that the State Government, or as the case may be the board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act , and pass appropriate order in the interest of such juvenile.

Explanation :- In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (1) of Section 2 and other provisions contained in this act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in Section 15 of this Act."

The above provision deals with the situation where the juvenile in conflict with law is undergoing sentence of imprisonment on the date of commencement of the Juvenile Justice (Care and Protection of Children) Act, 2000. However, this provision in our view can be applied even in a case of this nature, where the juvenile who was tried as an adult is found to be a juvenile at a later point of time.



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(iv) From the above provision, therefore, it is clear that where a sentence of imprisonment is imposed on a juvenile, the juvenile shall, in lieu of undergoing such a sentence, be sent to a Special Home for serving the remainder of the period of the sentence. But in any case, such sentence shall not exceed the maximum period provided under Section 15 of the Act.

(v) Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2000, provides for various orders that may be passed regarding a juvenile. Section 15(g), which is relevant in the instant case, reads as follows:

(g) make an order directing the juvenile to be sent to a special home,-

(i) in the case of juvenile, over seventeen years but less than eighteen years of age for a period of not less than two years;

(ii) in case of any other juvenile for the period until he ceases to be a juvenile:

Provided that the Board may, if it is satisfied that having regard to the nature of the offence and the circumstances of the case it is expedient so to do for reasons to be recorded, reduce the period of stay to such period as it thinks fit."

7. The above provisions were dealt with by the Hon'ble Supreme Court in **2010 (SCC) 555 [Satya Deo Vs. State of U.P.]**. The relevant portion reads as follows:



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"13. By the amendment Act No. 33 of 2006, Section 7-A was inserted in the 2000 Act setting-out the procedure to be followed by the court to determine the claim of juvenility. Section 7A, which came into effect on 22.08.2006, reads:

"7-A. Procedure to be followed when claim of juvenility is raised before any court.—(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an enquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect."

14. The Proviso to Section 7A is important for our purpose as it states that the claim of juvenility may be raised before 'any court' 'at any stage', even after the final disposal of the case. When such claim is made, it shall be determined in terms of the provisions of the 2000 Act and the rules framed thereunder, even when the accused had ceased to be a juvenile on or before commencement of the 2000 Act. Thus it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 01.04.2001. He would be entitled to benefit of the 2000 Act.

15. Section 64 of the 2000 Act was also amended by Act No. 33 of 2006 by incorporating a proviso and explanation and by replacing the words 'may direct' with the words 'shall direct' in the main provision. Post the amendment, Section 64 reads as under:



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"64. Juvenile in conflict with law undergoing sentence at commencement of this Act- In any area in which this Act is brought into force, the State Government shall direct that a juvenile in conflict with law who is undergoing any sentence of imprisonment at the commencement of this Act, shall, in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution in such manner as the State Government thinks fit for the remainder of the period of the sentence; and the provisions of this Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-section (2) of section 16 of this Act.

Provided that the State Government, or as the case may be the board, may, for any adequate and special reason to be recorded in writing, review the case of a juvenile in conflict with law undergoing a sentence of imprisonment, who has ceased to be so on or before the commencement of this Act, and pass appropriate order in the interest of such juvenile.

Explanation :- In all cases where a juvenile in conflict with law is undergoing a sentence of imprisonment at any stage on the date of commencement of this Act, his case including the issue of juvenility, shall be deemed to be decided in terms of clause (I) of section 2 and other provisions contained in this act and the rules made thereunder, irrespective of the fact that he ceases to be a juvenile on or before such date and accordingly he shall be sent to the special home or a fit institution, as the case may be, for the remainder of the period of the sentence but such sentence shall not in any case exceed the maximum period provided in section 15 of this act."

8. Thus, from the observations made in the aforesaid judgment and the provisions of the law mentioned above, the following principles emerge.

(a) The claim of juvenility can be raised at any stage during the



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trial or even after conviction.

(b) If a juvenile has been sentenced to imprisonment and if it is found later that he was a juvenile, at the time of commission of the offence and has served a portion of the sentence, he has to be sent to the juvenile home to serve the remainder of the sentence; and

(c) The sentence in any case shall not exceed the maximum period prescribed in Section 15 of the 2000 Act, which is two years.

9. As stated earlier, the prisoner in the instant case has served the sentence of imprisonment for more than four years. He is now aged 32 years. Having regard to the fact that he ought not to have been tried as an adult; that the sentence of imprisonment imposed on him cannot be sustained, and having regard to the fact that no useful purpose would be served in remanding the matter to the Juvenile Justice Board, this Court is of the view that the prison inmate has to be released forthwith.

10. Before we bring down the curtain in the instant appeal, we may remind ourselves and the trial Courts about the observations made by the Hon'ble Supreme Court in *Jitendra Singh's case* (cited supra) to avoid recurrence of such errors/illegalities in the trial. The Hon'ble Supreme Court ultimately after referring to the various provisions of the Juvenile Justice (Care and Protection of Children)



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Act, 2000 and Criminal Procedure Code, to ensure that a juvenile is not tried as an adult, held as follows:

"58. Keeping in mind our domestic law and our international obligations, it is directed that the provisions of the Criminal Procedure Code relating to arrest and the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 being the law of the land, should be scrupulously followed by the concerned authorities in respect of juveniles in conflict with law.

59. It is also directed that whenever an accused, who physically appears to be a juvenile, is produced before a Magistrate, he or she should form a prima facie opinion on the juvenility of the accused and record it. If any doubt persists, the Magistrate should conduct an age inquiry as required by Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine the juvenility or otherwise of the accused person. In this regard, it is better to err on the side of caution in the first instance rather than have the entire proceedings reopened or vitiated at a subsequent stage or a guilty person go unpunished only because he or she is found to be a juvenile on the date of occurrence of the incident."

11. For the aforesaid reasons, we direct the release of the prison inmate Thiru.Dakshinamurthy, aged 31 years, S/o.Thiru.Natarajan, who is now lodged in Central Prison, Cuddalore, forthwith unless his detention is required in connection with any other case.

12. The Habeas Corpus Petition is ordered accordingly.



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(S.S.S.R., J.) (S.M., J.)
06.11.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Superintendent of Central Prison,
Cuddalore, Cuddalore District.
- 2.The Inspector of Police,
Kadampuliyur Police Station,
Cuddalore District.
- 3.The Public Prosecutor,
High Court, Madras.



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