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H.C.P.No.2305 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.08.2024

CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM**

H.C.P.No.2305 of 2023

M.Murugan

.. Petitioner/detenu

Versus

1. The State of Tamil Nadu,
Rep. by its Superintendent of Central Prison,
Puzhal, Chennai, Tamil Nadu - 600 066.
2. The Inspector of Police,
Madhavaram Police Station,
Chennai.

.. Respondents

Prayer : Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Habeas Corpus, for a direction to the respondents to produce the body of the detenu namely M.Murugan, aged 32 years, S/o.Mari, No.12 Telugu Colony, Madhavaram, Thiruvallur, Tamil Nadu - 600 060 now confined in Central Prison, Puzhal before this Court and set him at liberty.

For Petitioner : Mr.C.S.Pillai

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor



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ORDER

(Order of the Court was made by **V.SIVAGNANAM, J.**)

The Writ of Habeas Corpus has been instituted to direct the respondents to produce the body of the detenu namely, M.Murugan, now confined in Central Prison, Puzhal, Chennai before this Court and set him at liberty.

2. The petitioner was convicted by the Trial Court in S.C.No.67 of 2012 by the judgment, dated 09.11.2016 and sentenced to life. The convict preferred Crl.A.No.56 of 2017 and the sentence was confirmed by the High Court vide judgment, dated 20.02.2017. Thereafter, the present Habeas Corpus Petition has been instituted on the ground that the petitioner was a minor on the date of offence.

3. This Court sought for a report from the Juvenile Justice Board, Thiruvallur to fix the age of the petitioner/accused. In pursuance of this direction, the Juvenile Justice Board fixed the age of petitioner as 16 years 9 months and 15 days. We have considered the age. In view of the report of the Juvenile Justice Board, this Court considers that the petitioner was a



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juvenile at the time of commission of offence. This fact was not brought to the Trial Court at the time of conducting the trial. The Trial Court found guilty and convicted and sentenced.

4. In this regard, the legal principles are no more *res integra* and settled by the three judges bench of the Hon'ble Supreme Court of India in the case of ***Karan alias Fatiya Vs. State of Madhya Pradesh***, reported in **(2023) 5 SCC 504**. The Apex Court considered the cases where plea of juvenile has been taken after conviction. However, in the present case, the conviction was confirmed by the High Court in the Criminal Appeal. The relevant portion of the judgment are as under:-

" 32. It will be pertinent to mention that in this judgment also there is no discussion with regard to the issue as to whether the conviction should be set aside. This judgment also does not lay down any ratio that if with respect to a juvenile a trial has been conducted by a Sessions Court without the accused having claimed juvenility before it, conviction could be set aside as being vitiated in law if subsequently it is held that the accused was a juvenile.

....

34. There is another reason why a trial conducted and conviction recorded by the Sessions Court would not be held to be vitiated in law even though subsequently the person tried has been held to be a child.

35. The intention of the legislature was to give benefit to a person who is declared to be a child on the date of the offence only with respect to its sentence part. If the



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conviction was also to be made ineffective then either the jurisdiction of regular Sessions Court would have been completely excluded not only under Section 9 of the 2015 Act but also under Section 25 of the 2015 Act, provision would have been made that on a finding being recorded that the person being tried is a child, a pending trial should also be relegated to the JJB and also that such trial would be held to be null and void. Instead, under Section 25 of the 2015 Act, it is clearly provided 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.

...

37. Having considered the statutory provisions laid down in Section 9 of the 2015 Act and also Section 7-A of the 2000 Act which is identical to Section 9 of the 2015 Act, we are of the view that merits of the conviction could be tested and the conviction which was recorded cannot be held to be vitiated in law merely because the inquiry was not conducted by JJB. It is only the question of sentence for which the provisions of the 2015 Act would be attracted and any sentence in excess of what is permissible under the 2015 Act will have to be accordingly amended as per the provisions of the 2015 Act. Otherwise, the accused who has committed a heinous offence and who did not claim juvenility before the trial court would be allowed to go scot-free. This is also not the object and intention provided in the 2015 Act. The object under the 2015 Act dealing with the rights and liberties of the juvenile is only to ensure that if he or she could be brought into the mainstream by awarding lesser sentence and also directing for other facilities for welfare of the juvenile in conflict with law during his stay in any of the institutions defined under the 2015 Act.

38. In view of the above discussion and the position in law as laid down by the aforesaid judgments and many others referred to in the above judgments, we approve the view taken by this Court in *Jitendra Singh* [*Jitendra Singh v. State of U.P.*, (2013) 11 SCC 193 : (2013) 4 SCC (Cri) 725] , *Mahesh* [*Mahesh v. State of Rajasthan*, (2021) 18 SCC 582 : 2018 SCC OnLine SC 3655] and *Satya Deo* [*Satya Deo v. State of U.P.*, (2020) 10 SCC 555 : (2021) 1 SCC (Cri) 61] .



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39. For all the reasons recorded above, it is ordered as follows : The conviction of the appellant is upheld; however, the sentence is set aside. Further as the appellant at present would be more than 20 years old, there would be no requirement of sending him to the JJB or any other child care facility or institution. The appellant is in judicial custody. He shall be released forthwith. The impugned judgment [*Karan v. State of M.P.*, 2018 SCC OnLine MP 1849] shall stand modified to the aforesaid extent."

5. As per the judgment cited supra, the conviction cannot be held to be vitiated in law merely because the enquiry was not conducted by the Juvenile Justice Board. Therefore, the Habeas Corpus Petition is not maintainable. The only option left open to the convict is to prefer an appeal in the manner known to law against the conviction.

6. This Habeas Corpus stands dismissed.

[S.M.S., J]

[V.S.G., J]

22.08.2024

Index : yes

Speaking order/Non-speaking order

Neutral Citation : yes/no

grs

To

1. The Superintendent of Central Prison,
Puzhal, Chennai, Tamil Nadu - 600 066.



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2. The Inspector of Police,
Madhavaram Police Station,
Chennai.
3. The Public Prosecutor,
High Court of Madras.



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**S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.**

grs

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