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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2103-2018(O&M)
Date of decision: 01.10.2024

ANWAR

...PETITIONER

VERSUS

STATE OF HARYANA

...RESPONDENT

CORAM: HON’BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Amandeep Kaur, Advocate
as *amicus curiae*.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision has been preferred against the judgment dated 14.05.2018 passed by learned Additional Sessions Judge, Faridabad, vide which, judgment of conviction dated 10.08.2017 and order of sentence dated 17.08.2017 passed by learned Juvenile Justice Board, Faridabad(hereinafter ‘JJB’), in case stemming from FIR bearing No.550 dated 23.08.2016 registered under Sections 342 IPC and Section 6 Protection of Children from Sexual Offences Act, 2012(hereinafter ‘POCSO Act’) at Police Station Women Faridabad, has been upheld. The petitioner was sentenced as under:

Offence	Sentence
Section 342 IPC and Section 4 POCSO Act	Imprisonment for 03 years at the Special Home, Sonapat

2. The case set up by the prosecution is that on 22.08.2016, at about 11 AM, the petitioner called the prosecutrix to her house. When she arrived, he locked the door and raped her. The mother of the prosecutrix arrived at the spot

but the petitioner concealed the prosecutrix on the roof and fled away. The prosecutrix reached her house at 1:30 PM and informed her mother of the same.

3. On assessing all the material available on the record, the petitioner was convicted vide judgment dated 10.08.2017 by the learned JJB. Aggrieved by the same, the petitioner preferred an appeal which was dismissed by the learned lower Appellate Court vide judgment dated 14.05.2018.

4. Since there is no representation on behalf of the petitioner, this Court deems it appropriate to appoint Ms. Amandeep Kaur, Advocate (PH/9262/2022) as *amicus curiae* to assist the Court.

5. Learned *Amicus Curiae* contends that the case of the prosecution is not corroborated by medical evidence since no semen was detected on the vaginal swab, secondly as per the MLR of the prosecutrix, no external injury was observed on her person, thirdly, there is also a delay of 24 hours in registration of the FIR(supra), which remains unexplained on part of the prosecution. Lastly, the petitioner and the prosecutrix are neighbours and know each other well and the story of the prosecution itself indicates that the prosecutrix herself came to the home of the petitioner. As such, the question of wrongful confinement does not arise.

6. *Per contra*, learned State counsel opposes the prayer of petitioner as the learned JJB has passed a well-reasoned judgment based on correct appreciation of evidence available on record and the same has also been upheld by the learned lower Appellate Court. As such, the petitioner does not merit any leniency.

7. I have heard learned counsel for the parties and perused the record with their able assistance. It appears that the petitioner has attained 18 years of age and has completed 01 years 04 months and 02 days of custody.

8. The legislature has consistently made it clear that a juvenile delinquent must only be kept in the observation home/special home, which is evidenced by the fact that both Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter ‘the Act of 2000’) as well Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter ‘the Act of 2015’) contain specific provision to that effect. Section 15(1)(g) of the Act of 2000 reads as follows:

15. Order that may be passed regarding juvenile.-

(1) Where a Board is satisfied on inquiry that a juvenile has committed an offence, then, notwithstanding anything to the contrary contained in any other law for the time being in force, the Board may, if t thinks so fit,-

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(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.

While Section 18(1)(g) of the Act of 2015 reads as follows:

18. Orders regarding child found to be in conflict with law.—

(1) Where a Board is satisfied on inquiry that a child irrespective of age has committed a petty offence, or a serious offence, or a child below the age of sixteen years has committed a heinous offence, or a child above the age of sixteen years has committed a heinous offence and the Board has, after preliminary assessment under Section 15, disposed of the matter then, notwithstanding anything contrary contained in any other law for the time being in force, and based on the nature of offence, specific need for supervision or intervention, circumstances as brought out in the social investigation report and past conduct of the child, the Board may, if it so thinks fit,—

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(g) ***direct the child to be sent to a special home***, for such period, not exceeding three years, as it thinks fit, for providing reformatory services including education, skill development, counselling, behaviour modification therapy, and psychiatric support during the period of stay in the special home"

9. As such, it is the mandate of law to remand a juvenile offender, tried under the Act of 2000 or the Act of 2015, to a special home only, on establishment of his guilt. It is trite law that if a certain method is prescribed by law, it must be followed to accomplish that specific task, necessarily forbidding the use of other methods. Reliance in this regard can be placed on the judgment rendered by the Hon'ble Supreme Court in ***Dharani Sugars and Chemicals Ltd. vs. Union of India and others (2019) 5 SCC 480***. Therefore, since a special law occupies the field and categorically prescribes for a juvenile delinquent to only be sent to a special home, he cannot be remanded to any other correctional facilities. However, due to the time consumed in adjudicating upon the revision petition filed by him, the petitioner, originally convicted as a juvenile, has now attained majority. Therefore, he cannot be ordered to undergo the sentence imposed upon him in a special home or a regular penitentiary. As such, this Court is of the considered opinion that ends of justice will be met if the sentence imposed upon the the petitioner is reduced to that already undergone by him.

10. A two Judge bench of the Hon'ble Supreme Court in ***Mahesh vs. State of Rajasthan and others 2018(2) R.C.R.(Criminal) 687***, dealt with a similar matter wherein the accused was convicted as a juvenile but had attained majority at the time of decision of the appeal. Taking into account the efflux of time and the fact that the accused was now a middle aged man who cannot be sent to a remand home, the following observations were made:

"9. The present is a case where the accused appellants though juveniles on the date of commission of the alleged crime are, as

on today, middle aged persons. The accused appellant - Mahesh in Criminal Appeal arising out of Special Leave Petition (Criminal) No.2934 of 2015 had undergone the custody for a period of nearly one year whereas the accused appellant - Arjun in Criminal Appeal arising out of Special Leave Petition (Criminal) No.5370 of 2015 had suffered custody for about eight (08) months. The maximum sentence, as already noted, is three years. Having regard to the long efflux of time we are of the view that it will not be necessary, in the facts of the present cases, to cause a remand of the matter to the Juvenile Justice Board for a decision on the quantum of sentence for the reason even if such a remand is made and the Juvenile Justice Board comes to a decision that in addition to the period of custody suffered by the accused appellants they need to suffer a further period of custody, such custody can only be in a remand home or a protection home to which places the accused appellants, because of their age as on today, cannot be sent.

10. On the contrary, **having regard to the period of custody suffered; the age of the accused appellants as on date; the efflux of time since the date of occurrence and all other relevant facts and circumstances we are of the view that while maintaining the conviction of the accused appellants the sentence imposed should be modified to one of the period undergone.** We order accordingly.” (emphasis added)

Reliance in this regard can also be placed upon the judgments rendered by the Hon'ble Supreme Court in ***Babban Rai and another vs. State of Bihar (2007)13 SCC 88, Pradeep Kumar vs. State of U.P. 1994 AIR SC 104*** and this Court in ***Sanjay alias Kala vs. State of Haryana 2011(2) R.C.R.(Criminal) 899, Rajesh Kumar vs. State of Haryana 2011(1) R.C.R. (Criminal) 830*** and ***Rohit vs. State of Haryana in CRR-56-2017 decided on 31.10.2017.***

11. In ***Deo Narain Mandal v. State State of UP (2004) 7 SCC 257***, a Three Judge Bench of the Hon'ble Supreme Court has opined that awarding of sentence is not a mere formality in criminal cases. When a minimum and maximum term is prescribed by the statute with regard to the period of sentence, a discretionary element is vested in the Court. Background of each case, which includes factors like gravity of the offence, manner in which the offence is committed, age of the accused, should be considered while determining the quantum of sentence and this discretion is not to be used

arbitrarily or whimsically. After assessing all relevant factors, proper sentence should be awarded bearing in mind the principle of proportionality to ensure the sentence is neither excessively harsh nor does it come across as lenient. Further, a two Judge Bench of the Hon'ble Supreme Court in ***Ravada Sasikala vs. State of AP AIR 2017 SC 1166***, has reiterated that the imposition of sentence also serves a social purpose as it acts as a deterrent by making the accused realise the damage caused not only to the victim but also to the society at large. The law in this regard is well settled that opportunities of reformation must be granted and such discretion is to be exercised by evaluating all attending circumstances of each case by noticing the nature of the crime, the manner in which the crime was committed and the conduct of the accused to strike a balance between the efficacy of law and the chances of reformation of the accused.

12. A perusal of the judgment of conviction passed by the learned trial Court indicates no perversity in its findings and the same is based on correct appreciation of evidence available on record. However, the FIR in the present case was lodged on 23.08.2016 and petitioner has been suffering the agony of protracted trial for more than last 8 years. As per his custody certificate, the petitioner has undergone actual sentence 01 year 04 months 02 days out of total sentence of 03 years, in the instant case.

13. In view of the discussion above, this Court is of the opinion that it would be in the interest of justice, if the sentence awarded to petitioner is reduced to the period already undergone by him. Consequently, the present revision petition is disposed of and the judgment dated 14.05.2018 passed by the learned Additional Sessions Judge, Faridabad, affirming the judgment of conviction is upheld, however, the order of sentence dated 17.08.2017 passed by Juvenile Justice Board, Faridabad is modified to the extent that the sentence

of imprisonment for 03 years in Special Home, Sonapat awarded to the petitioner is reduced to the period of sentence already undergone by him. Pending miscellaneous application(s), if any, shall also stand disposed of.

14. The High Court Legal Services Committee is directed to pay the remuneration to the *Amicus Curiae* as per Rules.

01.10. 2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No