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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 107/2015 & CRL.M.A. 2684/2015**

KISHAN CHAND

.....Petitioner

Through: Mr. P. Sureshan, Adv.

versus

DIRECTOR, CBI, & ANR

.....Respondents

Through: Mr. Ripu Daman Bhardwaj, SPP for
CBI with Insp. Jai Veer Bansal.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

ORDER

23.07.2024

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1. This revision petition was filed on 15th January, 2015, by the father of deceased for setting aside order dated 15th January, 2015 passed by Ld. ASJ in Crl. Appeal No. 27/2014, confirming the order of the Juvenile Justice Board declaring the respondent no.2 as a minor.
2. The other two co-accused Pawan and Sundar were declared as a majors on 26th March, 2015, while respondent no.2 was classified as a minor.
3. The petitioner's 20 years old son was murdered on 24th November, 2001 and FIR no. 50/2001 was registered.
4. The matter had been transferred to the Central Bureau of Investigation (CBI) pursuant to the directions of this Court on 29th March, 2007 and RC No. 3(5)/2007/CBI SCR-I was registered thereafter.
5. The CBI filed a charge-sheet on 09th September, 2008, accusing respondent no.2, Pawan Kumar and Sunder Singh for offences *inter alia*



302/120-B/201 IPC.

6. Pursuant to respondent no.2 being declared as a minor, an appeal was filed and directions were given to the Board to refer the matter for medical examination. Medical board given an opinion on 18th March, 2014 that the age of respondent no.2 would be between 20 to 40 at the time of examination.

7. Petitioner again challenged the order by Crl. Appeal No. 50/2014. The same was remanded back to the Court for afresh enquiry. The second enquiry by the board was through All India Institute of Medical Sciences.

8. On 19th November, 2014, the board estimated the age of respondent no.2, and declared it as 30 years at the time of examination, and thus 'juvenile' at the time of commission of the offence. The said opinion was confirmed and therefore the said Revision Petition was filed.

9. It had been specified on the last date that no adjournments will be granted since the matter has been pending for about 9 years.

10. Today, counsel for the petitioner as well as counsel for the CBI is present. Counsel for respondent No.2 is not present. However, their replies are on record.

11. The status report filed by the CBI has given a detailed narration of the sequence of events in the matter. The issue regarding juvenility finally culminated in the Appellate Court directing the Juvenile Justice Board for a fresh medical examination through AIIMS by which report was dated 19th November, 2014. As per the said report, the age was reported to be between 30 to 40 years of age and he was declared minor taking the lower limit. The year of incident was in 2001 and according to the medical report he would have been 16 years age at that time.

12. However, the status report by the CBI states quite categorically that the



accused could not provide any positive evidence documentary or otherwise in respect of juvenility during trial. Firstly, the driving licence which was provided show the dated of birth to be 01st February, 1980 but was found to be a fake document. Secondly, the school records of the accused were perused that the birth was mentioned as 01st February, 1984 that but that also seen to be manipulated since there was overwriting and instead of Jitender Kumar name was recorded as Vijender Kumar. This 01st February, 1984 date was taken by the Juvenile Justice Board despite the overwriting.

13. The CBI states that opinion of the Medical Board was neither confirmatory nor conclusive and the declarations of the juvenility were not based on cogent grounds nor medical jurisprudence. In this light, a refence is made to the medical literature in respect of the investigation of the *sacrum* to urge that the same ought to have been examined by the Medical Board constituted by All India Institute of Medical Sciences considering that gives a determinative assessment of the age of the person.

14. A perusal of the medical report dated 19th November, 2014 shows that even though there is a reference in the report of a literature relating to a *sacrum*, there is no conclusive finding in relation to the same.

15. Accordingly, it would be appropriate if the Medical Board in AIIMS carries out the age assessment of the respondent No.2 on the basis of the *sacrum* as well as any other medical parameters which used for age assessment.

16. Needless to state that the Medical Board will assess the age as per its own technical wisdom and state their conclusions and reasons, in order that the report is complete and comprehensive.

17. CBI shall present the said medical report before the Juvenile Justice



Board for their assessment in relation to the juvenility of respondent No.2 and Juvenile Justice Board may re-assess basis the medical report as well as other documentary evidence.

18. Accordingly, the petition is disposed of with the above observations.
19. The respondent no. 2 be intimated of this order by the CBI.
20. Order be uploaded on the website of this Court.

ANISH DAYAL, J

JULY 23, 2024/MK