

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (SJ) No.645 of 2010

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1. Sanjay Tanti S/o Sri Radhey Shyam Tanti R/O Vill-Kabil, P.S.-Laxhmipur, Distt-Jamui
 2. Vijay Tanti S/o Sri Radhey Shayam Tanti R/O Vill-Kabil, P.S.-Laxhmipur, Distt-Jamui
 3. Amarjit Tanti S/o Sri Radhey Shayam Tanti R/O Vill-Kabil, P.S.-Laxhmipur, Distt-Jamui

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Indu Bhushan, Advocate.

Mr. Narsingh Tanti, Advocate.

For the Respondent/s : Mr. Abhay Kumar, APP.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 15-05-2026

Heard Mr. Indu Bhushan, learned counsel along with Mr. Narsingh Tanti, learned counsel appearing on behalf of the appellants and Mr. Abhay Kumar, learned APP for the State.

2. The appellants have preferred the present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 14.06.2010 passed by the learned



Additional District and Sessions Judge, F.T.C.-IV, Jamui in S.T. No. 154 of 2007, whereby and whereunder, the appellants have been convicted for the offence punishable under Sections 363A, 120B and 201 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for seven years and Rs. 2000/- fine and in default of payment of fine, to undergo rigorous imprisonment for one year under Section 363A IPC; to undergo rigorous imprisonment for two years for the offence under Section 120B IPC and R.I. for three years and fine of Rs. 1000/- and in default of payment of fine, to undergo rigorous imprisonment for six months under Section 201 IPC. All the sentences were directed to run concurrently.

BRIEF FACTS OF THE CASE

3. The prosecution story, in brief, is that on 10.10.2000 co-accused Mania Devi came to the house of the complainant/informant Chameli Devi and requested her to send her son Sanjay Ram along with her sons Sanjay and Vijay to Delhi, but the complainant refused. It is alleged that on the same day at about 10:00 P.M., accused persons Radhey Tanti, Vijay Tanti, Sanjay Tanti and Amarjit Tanti came to the house of the informant and talked with her son Sanjay Ram. Thereafter, at about 3:00 A.M., the informant woke up on hearing some sound and allegedly saw the accused persons



persuading her son to accompany them on the assurance of earning handsome money, though he was refusing to go. It is further alleged that accused Vijay and Sanjay forcibly took away Sanjay Ram, while the other accused persons assured the informant that her son would safely return. The informant subsequently made enquiries from the accused persons, who allegedly kept giving false assurances and later demanded a sum of Rs. 80,000/- in lieu of her son. On the basis of the complaint petition, Luxmipur P.S. Case No. 85/2001 dated 07.08.2001 was instituted under Sections 120B, 363A and 201 of the Indian Penal Code against the accused persons. After investigation, charge-sheet No. 52/2004 dated 15.07.2004 was submitted against accused Vijay Tanti, Sanjay Tanti and Amarjit Tanti, while investigation against the remaining accused persons was kept pending.

ARGUMENT ON BEHALF OF THE APPELLANTS

4. Learned counsel appearing on behalf of the appellants submitted that there is no dispute in the present case with regard to the age of the appellants, who were juveniles on the date of the alleged offence. The judgment is of the year 2010, by which time the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as “ Act, 2000”) had already been amended by Act 33 of 2006, whereby Section



7-A was inserted with effect from 22.08.2006. The provisions of Section 7-A read 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 inquiry, 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 orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

5. Learned counsel submitted that a bare perusal of the provisions of Section 7-A and the procedure prescribed therein makes it evident that the learned trial court is required to determine the age of the appellants in accordance with the provisions of the Act, 2000 and the Rules framed thereunder. It is further submitted that if the court finds a person to be a juvenile on the date of commission of the offence, as contemplated under sub-section (1) of Section 7-A, the court is required to forward the juvenile to the Juvenile Justice Board for passing appropriate orders, and any sentence passed by the court is deemed to have no effect.



6. Referring to the allegations made in the complaint petition, which was subsequently converted into an F.I.R., learned counsel submitted that, on the basis of the materials that surfaced during the course of inquiry and trial, no case is made out under Section 363A of the Indian Penal Code. At best, according to the learned counsel, an offence of wrongful confinement punishable under Section 341 of the Indian Penal Code is made out, and the sentence is required to be reduced accordingly, considering the juvenility of the appellants in light of the provisions of the Act, 2000. It is further submitted that the issue of juvenility was ignored by the learned trial court, and there is no dispute that all the appellants have since crossed the age of 18 years. Nevertheless, for the purpose of hearing the present appeal, the proceedings continue as if they are juveniles and there being serious procedural lapses, the impugned judgment is required to be interfered with.

ARGUMENT ON BEHALF OF THE STATE

7. *Per contra*, Mr. Abhay Kumar, learned APP appearing for the State submitted that the question of juvenility was never raised at any stage of the trial. However, he contends that the mandatory provision of Section 7-A of the Act, 2000, which is *para materia* with the provisions of sub-section (2) of Section 9 of the Juvenile Justice (Care and Protection of



Children) Act, 2015, permits the plea of juvenility to be raised in “any court” “at any stage”, even after final disposal of a Special Leave Petition under Article 136 of the Constitution of India.

8. He further submitted that, on the plain reading of Section 7-A, the courts are under an obligation to consider the plea of juvenility and to grant appropriate relief, if upon inquiry, it is found that the convict was a juvenile on the date of commission of the offence. In support of his submission, learned counsel has relied upon the judgment of the Apex Court in case of *Hansraj v. State of U.P., Writ Petition (Criminal) No. 340 of 2025*.

ANALYSIS AND CONCLUSION

9. Heard the parties.

10. Having heard the rival submissions made on behalf of the parties, it appears from the records that the question of juvenility was never raised at any stage during the trial, and the trial court proceeded in accordance with the provisions of the Code of Criminal Procedure. The alleged offence is said to have continued from 10.10.2000 to 12.12.2000. The complaint was subsequently converted into an F.I.R., being Laxmipur P.S. Case No. 85 of 2001, on



07.08.2001. The judgment was delivered on 14.06.2010 and on the date their statement was recorded under Section 313 Cr.P.C., i.e. on 19.05.2010, appellant no. 1 was 23 years old, appellant no. 2 was 26 years old, and appellant no. 3 was 22 years old. Thus, all the appellants were below 16 years of age on the date of the alleged occurrence. The Act, 2000 came into force with effect from 01.04.2001. The said Act has prospective effect and not retrospective effect, except in cases where the person concerned had not attained the age of eighteen years as on the date of commencement of the Act, 2000.

11. For the better appreciation of the case, I find it apt to reproduce Sections 363A, 120-B and 201 of IPC which is as under:

363A. Kidnapping or maiming a minor for purposes of begging.—

(1)Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor, in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

(2)Whoever maims any minor in order that such minor may be employed or used for the purposes of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

(3)Where any person, not being the lawful guardian of a minor, employs or uses such minor for the purposes of begging, it shall be presumed, unless the contrary is proved, that he kidnapped or otherwise obtained the custody of that minor in order that the minor might be employed or used for the purposes of begging.



(4) In this section,—

(a) ‘begging’ means—(i) soliciting or receiving alms in a public place, whether under the pretence of singing, dancing, fortune-telling, performing tricks or selling articles or otherwise;

(ii) entering on any private premises for the purpose of soliciting or receiving alms;

(iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal;

(iv) using a minor as an exhibit for the purpose of soliciting or receiving alms;

(b) ‘minor’ means—(i) in the case of a male, a person under sixteen years of age; and (ii) in the case of a female, a person under eighteen years of age.

120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence.— shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.— and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if



punishable with less than ten years' imprisonment. — and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

201. Causing disappearance of evidence of offence, or giving false information to screen offender.—

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence.— shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.— and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment. — and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both. Illustration A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

12. Subsequent amendment was brought in the Act, 2000 *vide* Amendment Act 33 of 2006. Section 2(l) of the Act, 2000 defines “juvenile in conflict with law” as under:



“2. (l) “juvenile in conflict with law” means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.”

(emphasis supplied)

13. In the present case, in terms of clause (l) of Section 2 of the Act, 2000, all the appellants were below 18 years of age on the date their statements under Section 313 Cr.P.C. were recorded, *i.e.*, on 19.05.2010, and were therefore juveniles on the date of commission of the offence.

14. I also find that the Section 20 of the Act, 2000 provides a special provision in respect of pending cases, post the amendment *vide* Act 33 of 2006, reads as under:

“20. Special provision in respect of pending cases.— Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said



provisions had been in force, for all purposes and at all material times when the alleged offence was committed.”

(emphasis supplied)

15. The mandate of Section 20 provides that where a juvenile is found to have committed an offence, the court, instead of recording a finding of conviction, is required to forward the juvenile to the Juvenile Justice Board, which shall, thereafter, pass appropriate orders in accordance with the provisions of the Juvenile Justice Act, 2000, as if, the Board itself had conducted the inquiry and was satisfied that the juvenile had committed the offence.

16. Thus the expression “all pending cases” includes not only trials, but also subsequent proceedings by way of appeal, revision, or any other criminal proceeding. The Act is applicable even in cases where the accused was a juvenile on the date of commission of the offence, but had ceased to be a juvenile on or before the date of commencement of the Juvenile Justice Act, 2000.

17. Section 7-A of the Act, 2000 provides 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.

18. Section 64 of the Act 2000 provides 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.

19. In light of the provisions of the Juvenile Justice Act, 2000, and considering that the appellants were below 18 years of age on the date of commission of the offence, which continued from 10.10.2000 to 12.12.2000, whether they are entitled to the benefit contemplated under the Act, 2000?

20. The another question which arises for consideration whether after coming into force of the Juvenile Justice (Care and Protection of Children) Act, 2015 (“hereinafter referred to as “the 2015 Act”), in the case of the present appeal which is pending since year 2010 till date when we are in year 2026, the 2015 Act which is in force would be applicable?

21. This question was considered by the Apex Court in the case of *Satya Deo @ Bhoorey v. State of U.P.*, reported in *(2020) 10 SCC 555*, I find it apt to reproduce the following discussion made by the Apex Court, which *inter alia* is as under:

“17. This Court in *Dharambir v. State (NCT of Delhi)* [*Dharambir v. State (NCT of Delhi)*, (2010) 5 SCC 344 :



(2010) 2 SCC (Cri) 1274] had analysed the scheme and application of the 2000 Act to the accused who were below the age of eighteen years on the date of commission of offence which was committed prior to the enactment of the 2000 Act, to opine and hold : (SCC p. 348, paras 14-15)

“14. Proviso to sub-section (1) of Section 7-A contemplates that a claim of juvenility can be raised before any court and has to be recognised at any stage even after disposal of the case and such claim is required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile has ceased to be so on or before the date of the commencement of the 2000 Act. The effect of the proviso is that a juvenile who had not completed eighteen years of age on the date of commission of the offence would also be entitled to the benefit of the 2000 Act as if the provisions of Section 2(k) of the said Act, which defines “juvenile” or “child” to mean a person who has not completed eighteenth year of age, had always been in existence even during the operation of the 1986 Act.

15. It is, thus, manifest from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the 2000 Act, read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 that all persons who were below the age of eighteen years on the date of commission of the offence even prior to 1-4-2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of the commencement of the 2000 Act and were undergoing sentences upon being convicted. In the view we have taken, we are fortified by the dictum of this Court in a recent decision in Hari Ram v. State of Rajasthan [Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987] .”

18. In Mumtaz v. State of U.P. [Mumtaz v. State of U.P., (2016) 11 SCC 786 : (2017) 1 SCC (Cri) 610] , while referring to several earlier decisions, this Court dealt with the effect of Section 20 of the 2000 Act and its interplay with the 1986 Act, to elucidate : (SCC pp. 793-95, paras 18-21)

“18. The effect of Section 20 of the 2000 Act was considered in Pratap Singh v. State of Jharkhand [Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551 : 2005 SCC (Cri) 742] and it was stated as under : (SCC p. 570, para



31)

'31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence "notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile.'

19. In Bijender Singh v. State of Haryana [Bijender Singh v. State of Haryana, (2005) 3 SCC 685 : 2005 SCC (Cri) 889] , the legal position as regards Section 20 was stated in the following words : (SCC pp. 687-88, paras 8-10 & 12):

'8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to the age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age-limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter, the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile



could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short “the Board”) which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations. ...

11. ***

12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose.’

20. In Dharambir v. State (NCT of Delhi) [Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344 : (2010) 2 SCC (Cri) 1274] the determination of juvenility even after conviction was one of the issues and it was stated : (SCC p. 347, paras 11-12)

‘11. It is plain from the language of the Explanation of Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1-4-2001, when the 2000 Act came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.

12. Clause (l) of Section 2 of the 2000 Act provides that “juvenile in conflict with law” means a “juvenile” who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also



empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the 2000 Act.'

21. Similarly in Kalu v. State of Haryana [Kalu v. State of Haryana, (2012) 8 SCC 34 : (2012) 3 SCC (Cri) 761] this Court summed up as under : (SCC p. 41, para 21)

'21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation of Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed.'"

19. This position of law and principle in Mumtaz case [Mumtaz v. State of U.P., (2016) 11 SCC 786 : (2017) 1 SCC (Cri) 610] was affirmed by this Court for the first time in Hari Ram v. State of Rajasthan [Hari Ram v. State of Rajasthan, (2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987] in the following words : (SCC p. 223, para 39)

"39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and



the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.”

22. In the aforesaid case, the appellant Satyadeo @ Bhoorey was in judicial custody when the judgment was rendered by the Hon’ble Supreme Court and after setting aside the judgment and the sentence, direction was issued to the learned trial court, in terms of Section 20, to forward the case to the Juvenile Justice Board for passing sentence in accordance with law. Recently, the Hon’ble Apex Court, while entertaining Writ Petition (Criminal) No. 340 of 2025 (***Hansraj v. State of U.P.***), having considered the provisions of the Juvenile Justice Acts of 1960, 1986, 2000, and 2015 and after taking into account the judgment of the Constitution Bench in case of ***Pratap Singh v. State of Jharkhand***, reported in **(2005) 3 SCC 551**, and several other judgments finally concluded and held as under:

“12. No provision in the 1960 Act has been brought to our notice that creates a legal impediment and, thus, limits our authority to grant relief to the petitioner. Incidentally, the developments in legislation in relation to juvenile justice introduced by the Parliament from time to time can hardly be overlooked. The proviso to sub-section (2) of Section 9 of the Juvenile Justice (Care and Protection of Children)



*Act, 2015 is the new avatar of Section 7-A of the JJ Act, 2000. Section 7-A of the JJ Act, 2000, relevant for the present case, permits raising of a plea of juvenility in any court at any stage and even after final disposal of a special leave petition under Article 136 of the Constitution. On the plain terms of Section 7-A, the courts are under an obligation to consider the plea of juvenility and to grant appropriate relief if, in an enquiry, it is found that the convict was a juvenile on the date of offence. The object and purpose of the JJ Act, 2000 has been noticed in great detail by the coordinate Bench in Vinod Katara (supra). We share the view expressed therein. **Incidentally, in Vinod Katara (supra), the coordinate Bench, having regard to the facts and circumstances, had directed the Sessions Court, Agra, to examine the claim of the writ applicant that he was a juvenile on the date of the offence. In the present case, no such determination is required since the petitioner stands on firmer footing. The petitioner's date of birth and his age on the date of the offence are not disputed by the respondent and, therefore, no enquiry is needed to ascertain his age.***

13. Since there is no quarrel with the fact that the petitioner was a child at the time of commission of the offence and the petitioner has remained behind bars for more than three years, his liberty has been curtailed not in accordance with procedure established by law. **The breach of the right guaranteed under Article 21 is writ large and, hence, the benefit of release from detention ought to be extended to the petitioner.**

14. Accordingly, there shall be an order in terms of prayer (a) of the writ petition. The petitioner shall be immediately released, if not wanted in any other case."

(emphasis supplied)

23. Considering the mandate of Article 21 of the Constitution of India, and in view of the admitted position that the parties have not disputed the age of the appellants, who were admittedly less than 18 years of age on the date their statements under Section 313 Cr.P.C. on 19.05.2010 were



recorded, as well as, on the date of judgment, *i.e.*, 14.06.2010, and further considering that they remained in judicial custody from 18.05.2004 to 18.10.2004 for about five months, I hold that the appellants were juveniles on the date of commission of the offence, which continued from 10.10.2000 to 12.12.2000.

24. Now reverting to the question of conviction under Section 363A of the Indian Penal Code, this Court finds that the victim was admittedly a minor at the time of the occurrence. The essential ingredients of the offence, therefore, require determination, particularly as to whether the act of taking away the minor would constitute an offence punishable under Section 363A of the Indian Penal Code?

25. In the case of *S. Varadarajan v. State of Madras*, reported in *AIR 1965 SC 942*, the Hon'ble Supreme Court dealing with the provision of Section 363 IPC held that there is a clear distinction between "taking" a minor and merely allowing a minor to accompany a person, as the two expressions are not synonymous. It has been held in the said case that, where the minor, having sufficient understanding and capacity to know the consequences of her conduct, voluntarily leaves the protection of her guardian and joins the accused, the accused cannot be said to have "taken" her away from the lawful guardianship. The Court further held that in such cases,



something more is required to be established, namely, some form of inducement, enticement, or active participation on the part of the accused in the formation of the intention of the minor to leave the guardian's custody. Mere facilitation of the fulfillment of the minor's own intention would not amount to "taking" within the meaning of law.

26. The above proposition of law was reiterated by the Apex Court in case of *Anversinh v. State of Gujarat*, reported in *(2021) 3 SCC 12*.

27. Admitting to the facts of the case and the evidences available on record, it is admitted that the occurrence had taken place about eight years prior to the passing of the judgment. The mother of the victim was fully aware of the circumstances under which the victim had left the village and she herself admitted that after having conversation with the appellants, she had left for Calcutta on the same day. She was subsequently informed by her own sister that the victim had gone to Delhi along with the appellants. The victim ultimately returned on his own after about three years. It has also come in evidence that the Hotel Manager had paid a sum of Rs.1,00,000/- to the appellants. Moreover, the Investigating Officer has not been examined in the present case to establish the veracity of the allegation of sending the victim by these



appellants. In such facts and circumstances, I find that forwarding the case to the Juvenile Justice Board in accordance with the provision of Section 20 for determination of the age of the appellants will serve no purpose.

28. Upon appreciation of the evidences available on record and the settled principles of law governing the offence under Section 363A of the Indian Penal Code, this Court finds that the essential ingredients constituting the offence have not been established by the prosecution beyond reasonable doubt. To attract the offence under Section 363A IPC, the prosecution is required to prove not only the act of kidnapping or obtaining custody of a minor from lawful guardianship, but also that such kidnapping or custody was for the specific purpose of employing or using the minor for begging. The expression “kidnapping” contemplates taking or enticing a minor away from lawful guardianship without consent, whereas the offence under Section 363A further requires proof of intention that the minor be employed or used for begging. In the present case, there is no evidence on record to show that the victim was ever employed, used, or intended to be used for the purpose of begging, nor is there any allegation that the victim was forced to solicit alms or was maimed for such purpose. The prosecution has also failed to prove any act



of inducement or enticement on the part of the appellants sufficient to constitute kidnapping within the meaning of law. On the contrary, the evidence on record indicates that the victim had accompanied the appellants voluntarily and ultimately returned on her own after about three years. In absence of any cogent evidence establishing the necessary ingredients of kidnapping coupled with the object of begging, the conviction of the appellants under Section 363A IPC cannot be sustained in the eyes of law.

29. In the facts and circumstances of the case, and for the reasons recorded, hereinabove, so far as, the conviction of the appellants under Sections 363A, 120B and 201 of the Indian Penal Code is concerned, I do not find that the same can sustain, as such, the impugned judgment of conviction and order of sentence dated 14.06.2010 passed by the learned Additional District and Sessions Judge, F.T.C.-IV, Jamui in S.T. No. 154 of 2007 is hereby set aside and quashed. Consequently, the above-named appellants/accused are acquitted from all the charges levelled against them. Since the appellants are on bail, they are discharged from the liability of their bail bonds. The fine deposited by the appellants, if any, shall be refunded to them.

30. Accordingly, the present appeal stands allowed.



31. Office is directed to send back the lower court records along with a copy of this judgment to the learned court below forthwith.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	18.05.2026
Transmission Date	18.05.2026

