

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION

CRA (DB)/359/2024

In Re: - An appeal against the judgment and order dated 24/25.09.2024, passed by the learned Additional Sessions Judge, 1st Court, Berhampore, Murshidabad in ST No.01(06) of 2006, corresponding to SSL No. 784/2005.

In the matter of: - **SHERFUL MOLLA @ SERFUL MOLLA @ MD
SERFUL ALAM AND ANOTHER**

... appellants.

Mr. Niladri Sekhar Ghosh
Mr. Mujibar Ali Naskar
Mr. Sirajul Haque
Mr. M.A. Sardar

...for the appellants.

Mr. Debasish Roy, Ld. PP
Mr. Jaydeep Biswas
Mr. Karan Bapuli

...for the State.

Dictated by Apurba Sinha Ray, J.

1. Learned Counsel for the appellants submits that the juvenility of the appellants have been established and in view of the judgment of the Hon’ble Supreme Court in the case of ***Dharambir v. State (NCT of Delhi) & Anr.*** reported at ***(2010) 5 SCC 344***, the present appellants should be released from custody. Learned Counsel further submits that the appellants are not challenging the judgment of conviction. They are challenging the order of sentence since it has been proved that at the time of commission of the offence the present appellants were

juveniles. As the present appellants can be imprisoned or sentenced for a maximum period of three years due to their juvenility, they should be released from custody since by passage of time they have become major and they cannot be sent back to Homes (Juvenile Justice Board).

2. Mr. Bapuli, learned State Counsel, submits that he has also gone through the judgment in the case of ***Dharambir*** (supra). He submits that as the appellants have completed about one year in custody and as they have become major during pendency of the trial and this appeal, they cannot be sent back to Juvenile Justice Board. In view of the above decision he leaves the matter to the discretion of this Court.
3. We have considered the materials on record. During hearing of this appeal, steps were taken to ascertain the age of the appellants and it has been reported by the learned Additional District and Sessions Judge, 1st Court, Berhampore, Murshidabad, that the appellants were juveniles at the relevant point of time. We have also taken into consideration the judgment in the case of ***Dharambir*** (supra). The relevant paragraphs being 17-20 are reproduced hereinbelow:-

“17. Having held so, the next question for consideration is as to what order on sentence is to be passed against the appellant for the offences committed by him under Sections 302 and 307 read with Section 34 IPC, correctness whereof has not been put in issue before us.

18. Section 15 of the Act of 2000 provides for various orders which the Juvenile Justice Board (for short “the Board”) may pass against a juvenile when it is satisfied that the juvenile has committed an offence, which includes an order directing the juvenile to be sent to a special home for a period of three years. Section 16 of the Act of 2000 stipulates that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is so serious in nature that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under the Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government. Proviso to sub-section (2) of Section 16 of the Act of 2000 provides that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of the said Act, i.e., for three years.

19. In the instant case, as per the information furnished to us, the appellant has undergone an actual period of sentence of 2 years, 4 months and 4 days and is now aged about thirty-five years. We feel that, keeping in view the age of the appellant, it may not be conducive to the environment in the special home and to the interest of other juveniles housed in the special home, to refer him to the Board for passing orders for sending the appellant to special home or for keeping him at some other place of safety for the remaining period of less than eight months, the maximum period for which he can now be kept in either of the two places.

20. Accordingly, while sustaining the conviction of the appellant for the afore-stated offences, we quash the sentences awarded to him and direct his release forthwith, if not required in any other case. The appeal succeeds partly to the extent indicated above.”

4. We find that the present appellants were juveniles as per the enquiry report of the learned Additional District and Sessions Judge, 1st Court, Berhampore, Murshidabad. It is also admitted that the appellants, namely, Sherful Molla @ Serful Molla @ Md Serful Alam and Hasibur Molla @ Hashebul Molla, both sons of Kamaluddin Molla, were juveniles at the time of commission of the offence and as they have become major there is no scope for sending them back to Juvenile Justice Board. Hence, although the judgment of conviction is maintained, the order of sentence dated September 25, 2024, passed against the present appellants in connection with the judgment and order dated September 24, 2024 and September 25, 2024, passed by the learned Additional District and Sessions Judge, 1st Court, Berhampore, Murshidabad in Sessions SL No.784/2025/Sessions Trial No. 01(06) of 2006, is hereby modified.
5. It is thus ORDERED that the appellants, namely, **Sherful Molla @ Serful Molla @ Md Serful Alam and Hasibur Molla @ Hashebul Molla**, are hereby sentenced to suffer three years' imprisonment instead of life imprisonment as imposed upon them by the learned Additional District and Sessions Judge, 1st Court, Berhampore, Murshidabad. However, as the said appellants have become major, they cannot be sent to Juvenile Justice Board and accordingly,

they should be released from the Correctional Home(s), if not on bail.

6. However, learned Counsel for the appellants submits that the appellants are already on bail and accordingly, it should be presumed that they have completed their term sentence of three years. While sustaining the conviction of the appellants for the offences we quash the sentences awarded to them and direct their release forthwith if they are not required in any other case.
7. The appeal succeeds partly to the extent indicated above. Bail bonds stand discharged.
8. The appeal being CRA (DB)/359/2024 is accordingly disposed of.
9. Criminal Section is directed to make available certified copies of this order to the parties, if applied for, upon compliance with all requisite formalities.

(Apurba Sinha Ray, J.)

(Arijit Banerjee, J.)