

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 16 OF 2010

Amit Singh

.... Petitioner(s)

Versus

State of Maharashtra & Anr.

.... Respondent(s)

J U D G M E N T

P. Sathasivam, J.

1) The petitioner has filed this writ petition under Article 32 of the Constitution of India praying for issuance of an appropriate writ in the nature of *habeas corpus* directing the respondents to release him from Central Jail, Agra forthwith as the detention is contrary to the fundamental rights guaranteed under Article 21 of the Constitution of India and the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Act').

2) The facts of the case are:

(a) On 01.05.1999, at about 8.30 p.m., one Santosh Kumar (since deceased) along with his servant was returning to his house with daily earning cash from his shop. When he reached near the hospital of Dr. Desh Pandey at Ahmednagar, two unknown persons came on a Motorcycle and demanded the money bag which was in his hand but he refused to give that bag. Thereafter, the pillion rider got down from the Motorcycle and threatened to kill him if the bag is not given and taken out a revolver which was kept underneath his shirt and fired which resulted in injury on his chest. In spite of the injury, the deceased ran towards his residence which was nearer to the scene of occurrence but dashed against the window and fell down. His relatives came out and took him to the Hospital where he was declared dead at about 9.05 p.m.

(b) A complaint was registered by the police bearing Crime Case No. I-96/1999 under Sections 307, 392, 341, 34, 506 read with 34 of the Indian Penal Code, 1860 (hereinafter referred to as "the IPC") and Sections 3, 5, 25 and 27 of the Arms Act, 1959. The Investigating Officer arrested the

accused persons namely, Balu Rangnath Chintamani, Vithal Ramayya Madur, Intekhab Alam Abdul Salam Sain and Amit Singh Thakur, the petitioner herein, and Sessions Case No. 150 of 1999 was registered against the said four accused in the Sessions Court, Ahmednagar.

(c) The Additional Sessions Judge, Ahmednagar, vide order dated 16.04.2001 held all the four accused persons to be guilty of offences punishable under Sections 396, 506, 341, 379 read with Section 120-B of IPC and sentenced each of them to suffer life imprisonment and to pay a fine of Rs.3000/- and also under Section 3 read with Section 25(1-B) and Section 5 read with Section 27 of the Arms Act, 1959 and sentenced them to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.3000/-.

(d) Against the said judgment, all the four accused filed appeals before the High Court. The High Court, by judgment dated 05.08.2005, allowed the appeals filed by A-2 and A-3 and dismissed the appeals filed by A-1 and A-4 (appellant herein).

(e) Challenging the said judgment of the High Court, the appellant filed Special Leave Petition (Crl.) No. 1114 of 2006 before this Court which was dismissed on 05.01.2007.

3) Heard Mr. Brijender Chahar, learned senior counsel for the petitioner and Mr. Shankar Chillarge, learned counsel for the State-respondent No.1 and Mr. Ameet Singh, learned counsel for respondent No.2.

4) This writ petition is filed by the petitioner praying that he was a Juvenile at the time of the alleged offence and therefore, he could be tried only by the Juvenile Justice Board (in short 'the Board').

5) According to the petitioner, he had not completed 18 years of age as on the date of commission of the offence, i.e., 01.05.1999, though he had completed 18 years as on 01.04.2001 i.e. the date of implementation of the Act. According to amending Act 33/2006 in the Act, the benefit of juvenility shall be extended to the petitioner. It was further stated that he is entitled to get the benefit of the said law, which was after due consideration by this Court in the case of ***Hari Ram vs. State of Rajasthan and Others***, (2009) 13

SCC 211 settled the position, whereby this Court gave effect to the Proviso and the Explanation to Sections 20 and 7A which were introduced by the above said Amending Act by applying the provisions of the Act with retrospective effect. Accordingly, it is prayed that the petitioner is entitled to get the benefit of the Act, even after final conviction.

6) We have already adverted to in the earlier paras regarding the petitioner's involvement in the criminal charges framed against him and the orders of conviction imposed. From the materials, it is seen that the petitioner Amit Singh s/o late Bhikamsingh Thakur was born on 10.05.1982 in Jhansi, U.P. and his date of birth is registered with the Registrar, Births and Death, Nagar Palika Parishad, Jhansi. According to the record of Nagar Palika Parishad, Jhansi, the date of birth certificate of the petitioner is recorded as 10.05.1982 bearing registration No. 1184/97 dated 04.08.1997. The petitioner has produced a copy of birth certificate (Annexure-P1) issued by the Registrar, Nagar Palika Parishad, Jhansi. A perusal of the birth certificate issued by

the competent authority clearly shows that his date of birth is 10.05.1982.

7) Further information from the materials placed shows that the petitioner started his studies from St. Mark's College, Jhansi w.e.f. 12.06.1985. He left the school on 27.05.1996 and obtained a Transfer Certificate mentioning that his date of birth is recorded as 10.05.1982 in the admission register of the school. Transfer Certificate dated 14.06.1997 issued by the Principal, St. Mark's College, Jhansi has been marked as Annexure-P2. A perusal of the said Transfer Certificate clearly shows that his date of birth is 10.05.1982 and the same was duly noted by the School Authorities with the seal and signature of the Principal, St. Mark's College, Jhansi. Apart from the above materials, when the petitioner was arrayed as accused in Criminal Case No. 64 of 1997 entitled **Amit Singh vs. State of M.P.** he moved an application for bail being No. 935 of 1997 before the Special Judge, Murena, M.P. The learned Special Judge considered the above-mentioned High School Certificate, birth certificate, report of Civil Surgeon, report of Dental Surgeon, affidavit of his mother Shakuntala

Bai and report of Radiologist. The Special Judge, relying upon the above-mentioned reports, found that the date of birth of the petitioner is 10.05.1982 and his age was below 16 years on the date of occurrence, directed the police to produce him before the Juvenile Court for further action. Copy of the said order dated 13.08.1987 passed by the Special Judge, Murena is placed before this Court (Annexure-P3). A perusal of the order of the Special Judge, Murena also shows that considering various materials relating to the date of birth of the petitioner, he had concluded that the date of birth of the petitioner is 10.05.1982 and the alleged incident took place on 01.05.1999, on the date of the occurrence, the age of the petitioner was 16 years 11 months and 21 days. The Act came into effect from 01.04.2001 which provides that juvenile means who has not completed 18 years of age as substituted for 16 years which was the position under the old Act of 1986. According to the Act, the petitioner was juvenile at the time of commission of offence because he had not completed 18 years of age on the date of offence, and therefore, the petitioner is entitled to get the benefit of provisions under Sections 2(l), 7A,

20 and 64 of the Act.

8) The petitioner-(A-4) was convicted for the offence under Sections 307, 392, 341, 34, 506 read with Section 34 IPC and Sections 3, 5, 25 and 27 of the Arms Act and sentenced him to life imprisonment with fine of Rs.3,000/-. Though the above said conviction and sentence was confirmed by this Court, vide its impugned judgment and order dated 05.01.2007, the age of the petitioner and the benefit of the Act was not considered by this Court. No doubt, this plea and the benefit was not claimed by the petitioner earlier neither the same was raised before the trial Court nor thereafter up to this Court. We have already observed that from the materials placed, the petitioner had substantiated that he was a juvenile as per the Act and he could be tried only by the Board and hence the matter should be referred before the Board for trial. It is further seen that the proceedings were started against him on 01.05.1989 before the regular Court and during the pendency of the trial, the Act was enacted and it is his claim that inadvertently he was not advised that he is entitled to get the benefit under the Act after the enactment because he had

already completed the age of 18 years as on 01.04.2001. It is relevant to point out that the applicability of the Act was clarified by Amending Act 33/2006 which provided that the benefit of juvenility shall be extended even to juvenile who had completed the age of 18 years on 01.04.2001 and the Act shall have retrospective effect.

9) The relief prayed for in this writ petition is squarely covered by the law laid down in the case of ***Hari Ram*** (supra) whereby this Court had occasion to consider the question elaborately regarding applicability of the Act. This Court considered the decision of the Constitution Bench in the case of ***Pratap Singh vs. State of Jharkhand & Anr.***, (2005) 3 SCC 551, wherein this Court formulated two points for consideration:

- A. Whether the date of occurrence will be the reckoning date for determining the age of the alleged offender as juvenile offender or the date when he is produced in the Court/Competent Authority?
- B. Whether the Act of 2000 will be applicable in the case a proceeding is initiated under the 1986 Act

and pending when the Act of 2000 was enforced with effect from 01.04.2001?

The Constitution Bench in the above case held that the benefit of juvenility cannot be extended to the person who has completed the 18 years of age as on 01.04.2001 i.e. the date of enforcement of the Act. In the background of this judgment, the Legislature brought Amendment Act 33/2006 proviso and explanation in Section 20 to set at rest doubts that have arisen with regard to the applicability of the Act to the cases pending on 01.04.2001, where a juvenile, who was below 18 years of age at the time of commission of the offence, was involved. The explanation to Section 20 which was added in 2006 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 juvenile ceased to be a juvenile on or before 01.04.2001, when the 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. 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 Board concerned for passing sentence in accordance with the provisions of the Act.

10) After the judgment of the Constitution Bench in **Pratap Singh** (supra), this Court in the case of **Hari Ram** (supra) considered the above question of law in the light of Amendment Act 33 of 2006 in the provisions of the Act which substituted Section 2(1) to define a “juvenile in conflict with law” as a “juvenile who is alleged to have committed an offence and has not completed 18 years of age as on the date of commission of such offence”. By way of Amendment Act 33/2006, Section 7A was inserted which reads as follows:-

“7A. 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 recognized 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. “

It is clear from the above provision, namely, Section 7A the claim of juvenility to be raised before any court at any stage, even after final disposal of the case and sets out the procedure which the court is required to adopt, when such claim of juvenility is raised. Apart from the aforesaid provisions of the Act as amended, and the Juvenile Justice (Care and Protection of Children) Rules, 2007, (in short ‘the Rules’) Rule 98, in particular, has to be read along with Section 20 of the Act as amended by the Amendment Act, 2006 which provides that even after disposal of cases of juveniles in conflict with law, the State Government or the Board could, either *suo motu* or on an application made for the purpose, review the case of juvenile, determine the juvenility and pass an appropriate

order under Section 64 of the Act for immediate release of the juvenile whose period of detention had exceeded the maximum period provided in Section 15 of the Act i.e. 3 years. All the above relevant provisions including the amended provisions of the Act and the Rules have been elaborately considered by this Court in ***Hari Ram*** (supra).

11) We have already referred to the entry relating to the date of birth of the petitioner in the Birth Certificate (Annexure-P1), entry relating to his date of birth in the Transfer Certificate (Annexure-P2), date of birth recorded in the mark sheet issued by the Council for the Indian School Certificate Examinations. In all these documents, his date of birth has been recorded as 10.05.1982 and duly certified and authenticated by the authorities concerned. In a recent decision of this Court dated 05.08.2011 in Criminal Appeal No. 1531 of 2011 arising out of SLP (Criminal) No. 3361 of 2011, ***Shah Nawaz*** vs. ***State of U.P.*** while considering similar documents, namely, certificate issued by the School Authorities and basing reliance on Rule 12 of the Rules held that all those documents are relevant and admissible in evidence. Inasmuch as the date of birth of the

petitioner is 10.05.1982 and on the date of the alleged incident which took place on 01.05.1999, his age was 16 years, 11 months and 21 days i.e. below 18 years, hence on the date of the incident, the petitioner was a juvenile in terms of the Act because he had not completed 18 years of age and is entitled to get the benefit of provisions under Sections 2(l), 7A, 20 and 64 of the Act. It is also specifically asserted that the petitioner had already undergone 12 years in jail since then which is more than the maximum period for which a juvenile may be confined to a special home.

12) Under these circumstances, the petitioner is directed to be released from the custody forthwith. The writ petition is allowed.

JUDGMENT

.....J.
(P. SATHASIVAM)

.....J.
(DR. B.S. CHAUHAN)

NEW DELHI;
AUGUST 08, 2011.