

SUPREME COURT OF INDIA

Before: Justice Indira Banerjee , Justice J.K. Maheshwari.

ASHOK – Petitioner,

versus

THE STATE OF MADHYA PRADESH – Respondent.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 643/2020 (Arising out of impugned final judgment and order dated 14-11-2017 in CRA No. 455/1999 passed by the High Court Of M.P. at Gwalior) (IA No. 27334/2020 – GRANT OF BAIL)

29.11.2021

(i) Juvenile Justice Act, 1986, Section 7A of the 2000 Act as inserted by Act 33 of 2006 with effect from 22.08.2006 – Plea of the petitioner being a juvenile was for the first time contended before the Supreme Court – The claim of juvenility can be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to 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 – Even though the offence may have been committed before the enactment of the Act of 2000, the petitioner is entitled to the benefit of juvenility under Section 7A of the Act of 2000, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence. [Para 9, 10]

(ii) Juvenile Justice (Care and Protection of Children) Act, 2015, Section 21 – Considering that the Trial Court has recorded the age of the petitioner as 16 years and odd, and has been in actual custody in excess of three years, which is the maximum for a juvenile, we deem it appropriate to grant the petitioner interim bail. [Para 16]

For Petitioner(s) Mr. M.P. Parthiban, AOR Mr. Hardik Gautam, Adv. For Respondent(s) Mr. D.S. Parmar, AAG Mr. Gopal Jha, Adv. , Mr. Nishant Verma, Adv. , Mr. Shreyash Bhardwaj, Adv.

UPON hearing the counsel the Court made the following

ORDER

(29.11.2021) – By a judgment and order dated 29.07.1999, the Additional Sessions Judge, Gohad, District Bhind, Madhya Pradesh, convicted the petitioner *inter alia* for offence under Section 302 of the Indian Penal Code and sentenced him *inter alia* to life imprisonment in Sessions Trial No. 260 of 1997. In the cause title of the said judgment and order, the petitioner has been described as Ashok, S/o Balram Jatab age 16 yrs 9 months

and 19 days, R/o Village Anjani Pura, District Bhind.

2. The petitioner filed an appeal being Criminal Appeal No. 455 of 1999 challenging his conviction and sentence. The said criminal appeal has been dismissed by the High Court by an order dated 14.11.2017, which is impugned in the Special Leave Petition(Crl.) No. 643 of 2020, filed by the petitioner.

3. The incident which led to the conviction of the petitioner, took place on 26.07.1997. The petitioner claims that the petitioner was born on 05.01.1981. The petitioner was, therefore, approximately 16 years and 7 months old on the date of the incident.

4. In this Court, the petitioner has for the first time contended that he was a juvenile on the date of the incident. His conviction and sentence are, therefore, liable to be set-aside. The claim of juvenility was not raised in the High Court.

5. The learned Additional Advocate General, appearing on behalf of the State argued that the claim of juvenility has been raised for the first time in this special leave petition.

6. The Juvenile Justice Act, 1986, which was in force on the date of commission of the offence as also the date of the judgment and order of conviction and sentence by the Sessions Court was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act of 2000 received the assent of the President of India on 30.12.2000 and came into force on 01.04.2001. The Act of 2000 defined juvenile in conflict with the law to mean a juvenile, who was alleged to have committed an offence and had not completed 18th year of age as on the date of commission of such an offence.

7. Under the 1986 Act, the age of juvenility was upto the 16th year.

8. Section 7A of the 2000 Act as inserted by Act 33 of 2006 with effect from 22.08.2006 provided 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 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.

9. The claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to 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.

10. Even though the offence in this case may have been committed before the enactment of the Act of 2000, the petitioner is entitled to the benefit of juvenility under Section 7A of the Act of 2000, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence.

11. It is true as pointed out by the learned Additional Advocate General appearing on behalf of the State that the certificate of Akikrit Shash. High School School, Endouri, District Bhind, Madhya Pradesh relied upon by the petitioner is stated to have been issued on 17.07.2021. The said certificate does not specifically mention that the date of birth 01.01.1982 had been entered at the time of first admission of the petitioner at the primary school level.

12. Furthermore, there is a birth certificate issued by the Gram Panchayat, Endouri, District Bhind, Madhya Pradesh which indicates the date of birth of the petitioner as 05.01.1982 and not 01.01.1982 as recorded in the school certificate referred to above.

13. The entry in the records of the Gram Panchayat, Endouri, District Bhind, Madhya Pradesh, also do not appear to be contemporaneous and the certificate has been issued in the year 2017.

14. However, as pointed out by Mr. M.P. Parthiban, learned counsel appearing on behalf of the petitioner that the Sessions Court has recorded the age of the petitioner as 16 years, 9 months and 19 days. The petitioner has been in actual custody for over three years.

15. The 2000 Act has been repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 21 of the 2015 Act provides as follows:

“21. Order that may not be passed against a child in conflict with law. – No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force.”

16. Considering that the Trial Court has recorded the age of the petitioner as 16 years and odd, and has been in actual custody in excess of three years, which is the maximum for a juvenile, we deem it appropriate to grant the petitioner interim bail on such terms and conditions as may be imposed by the Sessions Court. We further direct the Sessions Court to examine the claim of the petitioner to juvenility in accordance with law, and submit a report to this Court within one month from the date of communication of this order.

17. The concerned Sessions Court shall be entitled to examine the authenticity and genuineness of the documents sought to be relied upon by the petitioner, considering that the documents do not appear to be contemporaneous.

18. In the event the documents are found to be questionable/unreliable, it will be open to the Sessions Court to have the petitioner medically examined by taking an ossification test or any other modern recognized method of age determination.

19. List after the ensuing winter holidays.

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