

2022 LiveLaw (SC) 369

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

A.M. KHANWILKAR; ABHAY S. OKA, JJ.

April 13, 2022

M.A.No.1997 OF 2021 IN SPECIAL LEAVE PETITION (CRL.) No.5604 of 2009

Sanjay Patel & Anr. *Versus* The State of Uttar Pradesh

Summary - Juvenility Plea of applicant whose murder conviction was affirmed by Supreme Court by dismissing SLP in 2009 - Juvenile Justice Board passed an order holding that, on the date of commission of the offence, his age was 17 years 07 months and 23 days - Applicant has undergone the sentence for 17 years and 03 days - It will be unjust to send the applicant to the Juvenile Justice Board - He shall be forthwith set at liberty provided he is not required to be detained under any other order of the competent Court.

(Arising out of impugned final judgment and order dated 11-10-2018 in SLP (Crl) No. No. 5604/2009 passed by the Supreme Court of India)

For Petitioner(s) Mr. Mohd. Irshad Hanif, AOR Mr. Arif Ali, Adv. Mr. Rizwan Ahmad, Adv. Mr. Kailash U. More, Adv. Mr. Mujahid Ahmad, Adv. Ms. Nirmala Borade, Adv. Mr. Saleem Khan, Adv. Mohd. Wasiq Khan, Adv.

For Respondent(s) Mr. Vikas Bansal, Adv. Ms. Alka Sinha, Adv. Mr. Anuvrat Sharma, AOR

J U D G M E N T

Abhay S. Oka, J.

1. The applicant-petitioner no.1 in S.L.P.(Crl.) No.5604 of 2009 (accused no.2) was convicted by the Sessions Court on 16th May 2006 for the offence punishable under Section 302 of the Indian Penal Code. The applicant was sentenced to undergo life imprisonment. The offence was committed on 8th January 2004. Appeals preferred by the applicant and others before the High Court of Allahabad were dismissed. Being aggrieved, Special Leave Petitions (Crl.) Nos.5604-5605 of 2009 were filed by the applicant and others. By the order dated 13th August 2009, Special Leave Petition, as far as the present applicant is concerned, was dismissed by this Court.

The present Miscellaneous Application has been filed by the applicant-petitioner no.1 contending that the date of his birth is 16th May 1986 and, therefore, on the date of commission of the offence, he was a juvenile. By relying upon various documents such as High School results declared by the Board of High School and Intermediate Education, Uttar Pradesh, the applicant has claimed that he was a juvenile on the date of the incident.

By order dated 31st January 2022, this Court directed the Juvenile Justice Board, District Maharajganj to hold an inquiry into the claim of the applicant that he was a juvenile on the date of commission of the offence. In terms of the said order, after holding an

inquiry, the Juvenile Justice Board has passed an order dated 4th March 2022 holding that the correct date of birth of the applicant is 16th May 1986. Therefore, on the date of commission of the offence, his age was 17 years 07 months and 23 days. Oral and documentary evidence was adduced before the Juvenile Justice Board during the course of the inquiry. After considering the documentary evidence on record, the aforesaid finding has been recorded by the Juvenile Justice Board. This Order has not been challenged by the State and is allowed to become final.

When the offence was committed, the provisions of the Juvenile Justice (Care and Protection) Act, 2000 ('the 2000 Act') were in force. As per the 2000 Act, only the Juvenile Justice Board constituted under Section 4 thereof had jurisdiction to try a juvenile in conflict with the law. Under Section 7A of the 2000 Act, an accused was entitled to raise a claim of juvenility before any Court, even after the final disposal of the case. Such a claim was required to be determined in accordance with the provisions of the 2000 Act. Subsection (2) of Section 7A provided that if after holding an inquiry, the Court found the accused to be juvenile on the date of commission of the offence, the Court was under a mandate to forward the juvenile to the Juvenile Justice Board for passing appropriate orders. Subsection (2) of Section 7A further provided that in such a case, the sentence passed by Criminal Court shall be deemed to have no effect in such a case.

In view of the categorical finding recorded in this case by the competent Juvenile Justice Board, which is based on documentary evidence, in view of sub-section (2) of Section 7A, the applicant is required to be forwarded to the Juvenile Justice Board. Under Section 15 of the 2000 Act, the most stringent action which could have been taken against the applicant, was of sending the applicant to a special home for a period of three years.

The certificate dated 01st August 2021 issued by Senior Superintendent of the concerned jail at Lucknow, records that till 01st August 2021, the applicant has undergone the sentence for 17 years and 03 days. Therefore, now it will be unjust to send the applicant to the Juvenile Justice Board.

Therefore, we allow the application and direct that the applicant – Sanjay Patel, accused no.2 in Sessions Trial No.28 of 2004 decided by the learned Sessions Judge, Maharajganj – shall be forthwith set at liberty provided he is not required to be detained under any other order of the competent Court.

The Miscellaneous Application is allowed in the above terms.