

2023 LiveLaw (SC) 757 : 2023 INSC 800

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION**

B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J., SANJAY KUMAR; J.

September 05, 2023

WRIT PETITION (CRL.) No. 429 of 2022

MAKKELLA NAGAI AH *versus* THE STATE OF ANDHRA PRADESH

Juvenile Justice (Care and Protection of Children) Act, 2000; Section 16 r/w 15(1)(g) - If the date of birth of the petitioner is 02.05.1989, he was 16 years 7 months old as on the date of the crime, i.e., 21.12.2005. Accordingly, the petitioner was a juvenile in conflict with the law on the date of commission of the offence. The maximum period for which the petitioner could have been in custody is three years. However, as the plea of juvenility was raised for the first time in the present writ petition before us, the process of criminal law, which commenced in 2005, led to the petitioner being convicted and sentence for life imprisonment concurrently by the Trial Court, the High Court as well as the Supreme Court. In the meanwhile, the petitioner has undergone more than 12 years of imprisonment. Having accepted the report of the II Additional Sessions Judge, the petitioner can no longer be incarcerated. (Para 6 – 8)

For Petitioner(s) Mr. Rishi Malhotra, AOR

For Respondent(s) Mr. Sriharsha Peechara, Adv. Mr. Rajiv Kumar Choudhry, AOR Mr. Duvvuri Subrahmanya Bhanu, Adv. Ms. Pallavi, Adv. Ms. Kriti Sinha, Adv. Mr. S. Udaya Kumar Sagar, AOR

ORDER

1. This is a Writ Petition under Article 32 of the Constitution of India. Petitioner seeks verification of his claim of juvenility and consequential orders as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000¹. As such a plea can be raised at any stage, we called for a report after due enquiry. Having perused the report of the Additional Sessions Judge confirming the petitioner's juvenility at the time of commission of the offence, we have allowed the Writ Petition and directed the release of the petitioner, who has undergone much more than the maximum statutory punishment under the Juvenile Justice Act, 2000, i.e., three years of incarceration.

2. For an incident dated 21.12.2005, the petitioner was arrayed as an accused along with others in Crime No. 228/05, P.S. Sathupally, (A.P.). By its judgment dated 15.12.2009, the III Additional Sessions Judge (FTC), Khammam, convicted the petitioner and other co-accused persons, *inter alia*, under Section 302 read with Section 34 of the Indian Penal Code, 1860, and sentenced them to undergo imprisonment for life. The petitioner appealed against the conviction and the sentence to the High Court of Andhra Pradesh, which by its judgment dated 10.04.2014, dismissed the appeal and upheld the aforesaid conviction. The petitioner also filed a Special Leave Petition against the concurrent findings of the Sessions Court and the High Court, and this Court by its order dated 12.07.2022 dismissed the SLP, according finality to the conviction and the sentence.

3. Two months after the dismissal of the SLP, the petitioner filed the present Writ Petition praying that a Writ of Mandamus be issued to the State to verify his claim of juvenility and to pass necessary consequential orders.

¹ Hereinafter 'Juvenile Justice Act, 2000'.

4. As it is well settled that the question of juvenility can be raised before any Court and at any stage, as prescribed under Section 7A(1) of the Juvenile Justice Act, 2000, and confirmed by judicial precedents,² this Court issued notice in the Writ Petition. The State filed an affidavit through the Inspector of Police, PS Sathupally, Khammam District, Telangana, stating that the petitioner studied at the M.P.P. School, Putrela Main, Village of Vissannapet Mandal, Krishna District, Andhra Pradesh, from First to Third Standard from 1994 to 1997 and his date of birth is 02.05.1989. Since the juvenility was based on the petitioner's school documents, this Court considered it appropriate to direct the Additional Sessions Judge (Fast Track Court), Khammam, Andhra Pradesh, to conduct an enquiry with regard to the plea of juvenility raised by the petitioner. The Sessions Judge was directed to conduct an enquiry and to submit the report after recording necessary evidence by summoning the concerned officials for the production of school records.

5. The High Court of Andhra Pradesh has forwarded the report of the II Additional Sessions Judge, Khammam, on the issue of juvenility of the petitioner. In the report dated 13.05.2023, the FAC II Additional Sessions Judge, Khammam, has categorically come to the conclusion that the date of birth of Makkella Nagaiah is 02.05.1989. The report is based on a detailed examination of the documents, Exhibits C1 to C7, coupled with the oral evidence of witnesses CW-1 and CW-2. We have no hesitation in accepting the same.

6. If the date of birth of the petitioner is 02.05.1989, he was 16 years 7 months old as on the date of the crime, i.e., 21.12.2005. Accordingly, the petitioner was a juvenile in conflict with the law on the date of commission of the offence.

7. In view of Section 16 read with Section 15(1)(g) of the Juvenile Justice Act, 2000, the maximum period for which the petitioner could have been in custody is three years. However, as the plea of juvenility was raised for the first time in the present writ petition before us, the process of criminal law, which commenced in 2005, led to the petitioner being convicted and sentence for life imprisonment concurrently by the Trial Court, the High Court as well as the Supreme Court. In the meanwhile, the petitioner has undergone more than 12 years of imprisonment.³ Having accepted the report of the II Additional Sessions Judge, Khammam, the petitioner can no longer be incarcerated.

8. In view of the above we allow the Writ Petition and direct that the petitioner be released forthwith, if he is not required to be detained in any other case. There shall be no order as to costs.

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² *Hari Ram v. State of Rajasthan & Anr.* (2009) 13 SCC 211.

³ Although the Order of the Supreme Court dated 12.07.2022 notes that the petitioner has served 16 years of imprisonment, as per Letter No RC3/1009/2022 dated 13.12.2022, and Letter No. RC3/1009/2022, dated 21.01.2023, addressed by the Director General of Prisons to the Government, the Petitioner has only served 12 years 03 months and 10 days of sentence in present case Crime No. 228/05.