

ITEM NO.14

Court 3 (Video Conferencing)

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Criminal) No.287/2020

MOHAMMAD MOIN FARIDULLAH QURESHI

Petitioner(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

(With appln.(s) for IA No.98541/2020-EXEMPTION FROM FILING O.T.)

Date : 27-11-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MS. JUSTICE INDU MALHOTRA
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Petitioner(s) Mr. S. Nagamuthu, Sr. Adv.
Mr. Mohd. Irshad Hanif, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

- 1 These proceedings arise out of a petition under Article 32 of the Constitution.
- 2 Following the serial bomb blasts which took place at Mumbai on 12 March 1993, the petitioner was arrested on 20 April 1993. He was arraigned as accused No 43. During the pendency of the trial, the petitioner moved an application before the Designated Court (Application No 416/2006 in BBC 1/1993) seeking the protection of the Juvenile Justice (Care and Protection of Children) Act 2000. The application was contested. On 22 November 2006, the Designated Court dismissed the application filed by the petitioner. By the judgment and order dated 4 December 2006 and 24 July 2007, the

Designated Court under the TADA convicted the petitioner and sentenced him to undergo rigorous imprisonment for life.

- 3 The petitioner filed statutory appeals against the final judgment and order of conviction before this Court, which was numbered as Criminal Appeal Nos 653-656 of 2008. He also filed an appeal before this Court challenging the order dated 22 November 2006, of the Designated Court TADA, Mumbai in Miscellaneous Application No 416 of 2006 on the issue of juvenility. The appeal against the order dated 22 November 2006 was disposed of by this Court on 19 February 2010, granting liberty to the petitioner to pursue his rights in the main appeal arising out of the conviction. On 21 March 2013, the appeal filed by the petitioner against his conviction, was dismissed by this Court. On the issue of juvenility, the court held that TADA, being an Act enacted for special purposes will have precedence over any other legislation. The relevant part of the judgment of this Court, so far as it pertains to the petitioner, has been annexed at Annexure P-8 to the petition under Article 32. The review petition filed by the petitioner was dismissed on 17 July 2014.
- 4 These proceedings have been instituted under Article 32 of the Constitution seeking a writ of certiorari for setting aside the sentence of the petitioner while maintaining his conviction and for the grant of the benefit of juvenility. The basis of the petition is that in another TADA case, this Court by an order dated 9 March 2011 in Criminal Appeal No 546 of 2004, had allowed the plea of juvenility to be raised. The relief which has been sought in the petition under Article 32 is extracted below:

“Issue a writ of Certiorari setting aside the sentence of the petitioner while maintaining his conviction and grant the benefit of juvenility to petitioner like the benefit granted to similarly situated person in TADA case by an order dated 09.03.2011 passed in Crl. A. No. 546/2004”
- 5 The order dated 22 March 2011 of a two-Judge Bench of this Court in Criminal Appeal No 546 of 2004 [***Mohd Jalees Ansari and Others vs Central Bureau of Investigation***] on the basis of which the above relief has been claimed is annexed at Annexure P-7 to the petition under Article 32.

- 6 The position which has emerged from the record is that the conviction of the appellant by the Designated Court has been upheld by the dismissal of his criminal appeal and by the rejection of the review. The issue of juvenility was raised before the Designated Court as well as before this Court when the appeal was heard and has been specifically dealt with. The reliefs which have been sought in the petition would essentially require this Court, in the exercise of its jurisdiction under Article 32, to overturn the sentence which has been imposed on the petitioner as an outcome of the TADA case before the Designated Court, when the conviction and sentence have been upheld by this court in the criminal appeal. The remedy of a petition under Article 32 would not be available in the above facts. The petition is hence dismissed on grounds of maintainability.
- 7 Mr S Nagamuth, learned senior counsel who has appeared in support of the petition, has stated that the petitioner would be advised to file a curative petition. We express no opinion on that course of action.
- 8 The Writ Petition is accordingly dismissed.
- 9 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Court Master