
(2019) 05 UK CK 0035

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 644 Of 2019

Avnesh Kumar

APPELLANT

Vs

State Of Uttarakhand

RESPONDENT

Date of Decision : 03-05-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 299, 482
Indian Penal Code, 1860 — Section 109, 420
Prevention Of Corruption Act, 1988 — Section 12
Juvenile Justice (Care And Protection Of Children Act, 2000 — Section 2(k), 7A, 16(2), 20, 64
Juvenile Justice ("Care And Protection Of Children") Act, 2015 — Section 25, 111
Juvenile Justice Rules Of, 2007 — Rule 12, 97, 98, 97(2)

Citation : (2019) 05 UK CK 0035

Hon'ble Judges : Ravindra Maithani, J

Bench : Single Bench

Advocate : Bhupesh Kandpal, Manisha Rana Singh

Final Decision : Allowed

Judgement

Ravindra Maithani, J

1. Present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") has been filed by the

petitioner to quash the order dated 02.04.2019, passed by learned Special Judge, Almora, in Case No. 31 of 1997, State Vs. Avnesh Kumar, (for short

"the Case"), under Section 420, 109 I.P.C. and Section 12 of Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act").

By the impugned order, it was observed that the petitioner can be tried by the Court of Special Judge/District and Sessions Judge, Nainital and

accordingly directions have been issued to transfer the case from the court at Almora to the court at Nainital. A request has been made in the petition

that after setting aside the impugned order, the court below be directed to consider the bail application of the petitioner, as early as possible.

2. Before arguments are appreciated, the facts in brief may be recapitulated. In the instant case, FIR was lodged on 29.01.1997 under Sections, 420 &

109 I.P.C. After investigation, charge sheet under Section 420 and 109 I.P.C. and Section 12 of the Act was submitted against the petitioner. The trial

proceeded, but it appears that the petitioner did not appear during the trial and in his absence proceedings under Section 299 of the Code were

initiated. Subsequent to it, on 02.04.2019, the petitioner appeared and he was taken into custody and the impugned order dated 02.04.2019 was passed.

Aggrieved, the instant petition.

3. Learned counsel for the petitioner would argue that the petitioner is in judicial custody but his trial is not proceeding, because in view of the

impugned order, trial has to be conducted by the court at Nainital, therefore, bail application has also not been considered. A prayer is made that a

direction may be issued so that the bail application of the petitioner may be considered as expeditiously as possible.

4. Heard learned counsel for the parties and perused the record.

5. This is the case, which is revealed by the petitioner. But behind it, there are some other issues. Initially, the petitioner was granted bail on

25.02.1997 by the court of learned Sessions Judge, Almora. The bail order is annexure no.3 to the petition and in this bail order, it is categorically

stated that on the date of incident, i.e. on 29. 01.1997, the petitioner was below 18 years of age. Now, question is that although, when the offence was

committed, the petitioner was not juvenile in view of the Juvenile Justice Act, 1986 (in short '1986 Act') which was applicable at that time, but

when the Juvenile Justice (Care and Protection of Children Act, 2000 (for short '2000 Act') came into force, the definition of juvenile has

undergone a change. According to Section 2(k) of it, 'juvenile' or 'child' means a person who has not completed eighteen years of age and

sub Section (l) defines 'juvenile in conflict with law' which means a juvenile who is alleged to have committed an offence and has not completed

eighteen years of age as on the date of commission of such offence.

6. The date of incident is 29.01.1997. High school marksheet has been filed by the petitioner, which reveals that his date of birth is 2.07.1979, it means

that on the date of occurrence, the petitioner's age was 17 years 6 months and 27 days. This may not be in dispute in view of the fact that at the time, when the bail was granted, it was recorded that the petitioner had not completed 18 years of age.

7. There are various provisions in the 2000 Act, which should come into play in the instant case, which are Sections 7A and 20 of the 2000 Act, and Rule 97 (2) of the Juvenile Justice Rules of 2007 (for short 2007 Rules).

8. According to Section 7A of the 2000 Act, claim of juvenility may be raised before any court, at any stage, at any time. There have been various pronouncements of the Hon'ble Supreme Court on the subject. It would be apt to reproduce Section 7A & 20 of the 2000 Act and Rule 97 (2) of the 2007 Rule, which are as hereunder:-

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.

20. Special Provision in respect of pending cases.-Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in

any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed

and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the

juvenile, forward the juvenile to the Board which shall pass orders in respect of

that juvenile in accordance with the provisions of this Act, as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation.- In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (1) of section (2), even if the juvenile ceases to be so on or before the date of commencement of this Act and the provision of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

Rule 97:-

97. Pending cases.-(1) No juvenile in conflict with law or a child shall be denied the benefits of the Act and the rules made thereunder.

(2) All pending cases which have not received a finality shall be dealt with and disposed of in terms of the provisions of the Act and the rules made thereunder.â??

9. In the case of Hari Ram Vs. State of Rajasthan 2009 (13) SCC 2011, it was observed that :-

â??The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 01 -04-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.â?? (Para 38)

10. A question which was posed by the Honâ??ble Supreme Court, in the case of Hari Ram (supra) is as hereunder:-

â??29. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 1-4-2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18

years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile relation to the offence alleged to have been committed by him?â??

11. Reference may also made to Section 64 of the 2000 Act which, inter-alia, provides that a juvenile in conflict with law, who is under-going any sentence of imprisonment at the commencement of the 2000 Act, shall in lieu of undergoing such sentence, be sent to a special home or be kept in fit institution, in such manner as, the State Government thinks fit for the remainder of the period of the sentence and according to it, the provision of 2000 Act shall apply to the juvenile as if he had been ordered by the Board to be sent to such special home or institution or, as the case may be, ordered to be kept under protective care under sub-Section 2 of the Section 16 of the 2000 Act.

12. After discussing various pronouncements as well as statutory provisions, in the case of Hari Ram (supra), it was held by the Court as hereunder:-

â??59. The law as now crystallized on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, placed beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convictedâ??

13. In fact recently in the case of Raju Vs. State of Haryana, 2019 SCC Online SC 25,8 Honâ??ble Supreme Court interpreted the provision of Section 7 A of the 2000 Act, as well as the Rules made thereunder. While holding that the petitioner, therein, was a juvenile on the date of the commission of the offence, orders were accordingly passed in that matter.

14. The Juvenile Justice (â??Care and Protection of Childrenâ?) Act, 2015 repeals 2000 Act (Section 111 of 2015 Act) but, it may be noted that age of the juvenile in the 2000 Act and 2015 Act is one and the same namely a child who has not completed 18 years of age. Secondly, Section 25 of the 2015 Act makes provision with regard to the pending cases which is as hereunder:-

â??25. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or

found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court

as if this Act had not been enactedâ??

15. In the instant case, the petitioner was above 16 years of age but below 18 years of age on the date when the offence was committed i.e on

29.01.1997. Under the 2000 Act, he was the juvenile in conflict with the law. His trial is still pending, therefore, this court is of the view that the

petitioner would be entitled to benefit of 2000 Act and accordingly matter has to be considered by the Juvenile Justice Board.

16. Learned counsel for the State would submit that they have no objection on this legal question of juvenility and accordingly record may be

forwarded to the Juvenile Justice Board, Almora for disposal in accordance with law.

17. Learned counsel for the petitioner would urge that till the matter is taken up by the Juvenile Justice Board, the petitioner may be enlarged on

interim bail.

18. In view of the foregoing discussion, this Court is of the view that the petitioner was 17 years 6 months and 27 days old on the date of commission

of the offence. Therefore, he was not a juvenile under Section 1986 Act but he was a juvenile in conflict with the law under 2000 Act. In view of the

settled legal position, he is entitled to the benefits of the 2000 Act. Accordingly, the record of the Special Sessions Trial No. 31 of 1997 has to be

forwarded to the Juvenile Justice Board, District Almora for disposal, in accordance with law, and the impugned order is liable to be set aside and

petition allowed.

19. The petition is allowed. Order dated 02.04.2019, passed by learned Special Sessions Judge, Almora in Special Sessions Trial No. 31 of 1997, State

Vs. Avnesh Kumar is hereby set aside.

20. The record of Special Sessions Trial No. 31 of 1997 shall be forwarded to the Juvenile Justice Board, District Almora. The Juvenile Justice Board,

District Almora shall decide the case, in accordance with law, as expeditiously as possible.

21. Petitioner is in judicial custody in the case. Therefore, as an interim measure, orders for his bail may also be passed. Let the petitioner be also

enlarged on bail, on his executing a personal bond and furnishing two reliable

sureties, each of the like amount to the satisfaction of the court concerned.

22. Stay Application no. 1045 of 2019 also stands disposed of accordingly.