

(2004) 08 BOM CK 0009

In the Bombay High Court

Case No : Criminal Appeal No. 1297 of 2004

Master Salim Ikramuddin Ansari and Maharukh Adenwalla

APPELLANT

Vs

Officer-in-charge, The Superintendent and State of
Maharashtra

RESPONDENT

Date of Decision : 13-08-2004

Acts Referred:

Constitution of India, 1950 — Article 21

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 12, 12(1)

Penal Code, 1860 (IPC) — Section 392, 397

Citation : (2005) CriLJ 799 : (2004) 4 MhLj 725

Hon'ble Judges : Dalveer Bhandari, C.J.; D.Y. Chandrachud, J

Bench : Division Bench

Advocate : Y.M. Chaudhary, for the Appellant; F.R. Shaikh, Additional Public Prosecutor, for the Respondent

Judgement

Dalveer Bhandari, C.J.—This is a classic case of violation of human rights, fundamental rights under Article 21 of the Constitution and the Juvenile Justice (Care and Protection of Children) Act, 2000 ("the Act", for short).

2. The brief facts of this case are recapitulated as under:-

Petitioner No. 1, Salim Ikramuddin Ansari, aged about 15 years at the time of his arrest, has moved this petition with a prayer to declare his incarceration in Mumbai Central Prison unlawful and in violation of the Act.

3. The first petitioner has also prayed that the second respondent be directed to produce him before the Juvenile Justice Board. The further prayer is to shift him from Mumbai Central Prison to the Observation Home at Umerkhadi.

4. It is submitted that petitioner No. 1 has remained in unlawful custody of the Mumbai Central Prison from 16th November, 2001 to 11th February, 2003 and for that, he be awarded compensation of Rs. 2,50,000/-.

5. Petitioner No. 1 has also prayed that he be awarded compensation of Rs.

1,20,000/- for illegal detention in Mumbai Central Prison even after having been declared a juvenile by the Sessions Court in Sessions Case No. 326 of 2002. The petitioners have also prayed for issuance of some general directions.

6. The first petitioner was arrested on 16th November, 2001 when he was about 15 years of age by the first respondent, Borivali Police Station, in C.R. No. 377 of 2001 under Sections, 392 and 397 of the Indian Penal Code. A chargesheet was filed on 14th February, 2002 before the Additional Chief Metropolitan Magistrate, 26th Court, Borivali. Thereafter, the case was committed to the Court of Sessions on 3rd April, 2002 and bore Sessions Case No. 326 of 2002. Petitioner No. 1 was produced twice before the Metropolitan Magistrate at Borivali and then shifted to judicial custody on 23rd November, 2001.

7. The first petitioner was shifted to Mumbai Central Prison and thereafter, he was never produced before the Metropolitan Magistrate, Borivali. He was not produced on as many as ten consecutive dates of court-hearings, i.e., 7.12.2001, 21.12.2001, 3.1.2002, 16.1.2002, 30.1.2002, 14.2.2002, 20.2.2002, 6.3.2002, 20.3.2002 and 3.4.2002. It is astonishing that even when the case of the first petitioner was committed to the Court of Sessions on 3rd April, 2002, he was not produced before that Court on next eight consecutive dates, i.e., 5.8.2002, 17.9.2002, 17.10.2002, 13.12.2002, 17.2.2003, 26.2.2003, 21.3.2003 and 21.4.2003. It is also incorporated in the petition that the first petitioner was neither produced in Court when a chargesheet was filed on 14th February, 2002, nor when his case was committed to the Court of Sessions on 3rd April, 2002, nor when the Sessions Court granted him bail on 17th October, 2002. The respondents could not contradict these averments of the petition.

8. It is submitted that the first petitioner for about one and a half years, was deprived of any opportunity of asserting his juvenility and number of Judges, who presided over his case, were denied an opportunity of seeing the first petitioner for themselves and realising the obvious fact that he was a juvenile. It is further mentioned that the first petitioner met Yug Mohit Chaudhary, Advocate, who was then the Duty Counsel appointed to provide legal aid at Mumbai Central Prison for the first time and had stated that he was a juvenile. Miscellaneous Application No. 1731 of 2003 was filed claiming that the first petitioner was a juvenile and praying for the transfer of his case to the Juvenile Justice Board. On 20th November, 2003, for the first time, the Sessions Court directed petitioner No. 1 to be medically examined to determine his age. The medical examination could not be taken up on 29th November, 2003. Thereafter, the Sessions Court directed the Registrar to issue a letter to the second respondent calling upon her to get the first petitioner medically examined before the next date. The first petitioner was medically examined by the Department of Forensic Medicine, J.J. Hospital / Grant Medical College on 9th December, 2003 and a report thereof was submitted before the Sessions Court on 11th December, 2003. The medical examination revealed the first petitioner to be between 17 and 18 years of age. Therefore, at the time of arrest, the first petitioner was about the age of 15

years.

9. The case of the petitioner was separated and transferred to the Juvenile Justice Board and the second respondent was directed to shift the first petitioner to the Observation Home forthwith. A copy of the order dated 11th December, 2003 passed by the Sessions Court in Miscellaneous Application No. 1731 of 2003 in Sessions Case No. 3326 of 2003 is at Exhibit "B" to the petition. The Registrar of the Sessions Court duly transmitted the said order of 17th December, 2003 to the second respondent. The letter was hand-delivered by the Sessions Court through the Mumbai Central Prison Court karkhoon on 17th December, 2003. It is mentioned that till date, the first petitioner has not been shifted to the Observation Home, nor have the papers and proceedings of Sessions Case No. 326 of 2002 been transferred to the Juvenile Justice Board in accordance with the order dated 17th December, 2003 passed by the Sessions Court.

10. It is submitted that though the first petitioner was 15 years of age on the date of offence, even then, he was treated as an adult and kept in a regular jail, in absolute violation of the juvenile legislation.

11. It is also incorporated in the petition that even after the first petitioner was granted bail on 17th October, 2002, he was not released because he could not fulfil the financial conditions attached to the bail order.

12. Even after the first petitioner was declared juvenile, he was neither produced before the Juvenile Justice Board, as directed, nor was he produced before the Sessions Judge on any of the days when his case was listed for hearing, i.e., 18.12.2003, 7.1.2004, 22.1.2004, 28.1.2004, 12.2.2004, 1.3.2004, 11.3.2004, 25.3.2004, 15.4.2004, and 7.5.2004. The first petitioner was produced, for the first time, before the Sessions Court on 18th June, 2004. On that day, the case was adjourned to 7th July, 2004. The petitioner was not shifted to the Observation Home, despite clear and categorical direction by the Court.

13. It is alleged that the main objective of the Act is to secure the best interest of the juvenile offender and properly reform and rehabilitate him." The main purpose of sending a juvenile to the Observation Home is to keep the juvenile away from the hardened criminals. The basic philosophy of the Act is to give a speedy trial in cases of the juveniles.

14. This Court issued a show-cause notice to the respondents. Pursuant to the notice of this Court, Swati Sathe, Superintendent of Mumbai Central Prison, Mumbai, has filed affidavit before this Court on 30th July, 2004. In the entire affidavit, all what happened before 3rd December, 2003 had not been mentioned or indicated. The affidavit narrates all what happened on 3rd December, 2003 and thereafter. The learned Sessions Judge had directed medical examination of the first petitioner. The Medical Officer had issued a certificate dated 11th December, 2003. The first petitioner could not be produced before the Sessions Court between 11th December, 2003 and 7th May, 2004 because of non-

availability of the police escort. The Registrar of the Sessions Court had issued letter on 17th December, 2003 by which the second respondent was directed to transfer the first petitioner to the Juvenile Observation Home, Umerkhadi, Mumbai. It is alleged in the affidavit that the letter was received on 17th December, 2003 and on the same day, 59 letters were received by the second respondent and out of them, 58 letters were given inward numbers in the Inward Register and only the letter of the first petitioner was misplaced due to oversight and overburden.

15. The first petitioner's letter was not entered in the Inward Register. Therefore, orders of the Sessions Court were not within the knowledge and notice of the staff. The explanation given is that the staff is very busy because, though the capacity of the Jail is only 804 prisoners, presently, there are 3200 prisoners lodged therein. It is further mentioned in the affidavit that the deponent was under training at Pune. On 8th July 2004, a telephonic message was received by her office from the Public Prosecutor, High Court, Appellate Side, Mumbai, to attend the Public Prosecutor's Office with all relevant papers in respect of the first petitioner. After receiving a copy of the writ petition, Jailor M. N. Jadhavar went to the Sessions Court and obtained order of the Learned Additional Sessions Judge and thereafter, on 9th July 2004, the first petitioner was transferred to the Observation Home. The second respondent has tendered unconditional apology for misplacing the order of the Sessions Court. This, indeed, is a gross case of violation of Article 21 of the Constitution. Because of sheer dereliction of duty and negligence, the first petitioner, a boy of just 15 years, was compelled to remain in prison for 25 months from 16th November 2001 to 11th December 2003 with adult and hardened criminals.

16. What is more shocking is that even after the first petitioner was declared a juvenile by the order of the Court of Sessions, he was not sent to the Observation Home until 9th July 2004. The startling facts of this case will shock anyone's conscience. A 15-year-old boy had to remain behind the bars for almost three years because of the sheer negligence, indifference and inhuman attitude adopted by the respondents. Looking to the extraordinary facts of this case, the demand of the first petitioner to claim compensation is fully justified. On consideration of the totality of the facts and circumstances of this case, the first petitioner is entitled to compensation of Rs. one lakh (Rupees one lakh only). We direct the respondents to deposit the compensation amount in this Court. The Registrar-General of this Court is directed to invest this amount in a Nationalised Bank in a long term Fixed Deposit and only the interest amount of this be given to the first petitioner till he attains the age of 21 years. The principal amount be released to the first petitioner immediately after he attains the age of 21 years.

17. We make it abundantly clear that in case the amount of compensation, as directed by us, is not paid within four weeks from today, the second respondent shall remain present in Court before us on 7th September, 2004.

18. Before we part with this case, we would like to deal with another significant aspect of this petition that the first petitioner was granted bail by the Court of Sessions on 21st February 2002, but he could not be released on bail because he could not fulfill the financial condition attached to the bail order. The root cause of this unfortunate occurrence and incident is the first petitioner's poverty, ignorance and illiteracy.

19. Section 12 of the Act would be relevant in dealing with this aspect of the matter, which reads as under:-

"12. Bail of juvenile.-

(1) When any person accused of a bailable or non-bailable offence, and apparently a juvenile, is arrested or detained or appears or is brought before a Board, such person shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that the release is likely to bring him in to association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice.

(2) When such person having been arrested is not released on bail under subsection (1) by the officer incharge of the police station, such officer shall cause him to be kept only in an observation home in the prescribed manner until he can be brought before a Board.

(3) When such person is not released on bail under subsection (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order." 20. According to this section, the first petitioner can be released on bail with or without surety. Looking to the peculiar facts and circumstances, we direct the Juvenile Justice Board to release the first petitioner on his executing personal bond only.

21. We direct that henceforth, in all cases in which bails are granted, the Sessions Courts and Magistrates Courts must get the compliance report of their orders after a period of six weeks. That would ensure whether their orders have been complied with or not or because of financial difficulties or otherwise, the accused could not be released. This would also ensure that similar unfortunate cases are not repeated.

22. The Writ Petition is accordingly disposed of.

23. The Registry is directed to submit a report indicating whether our order has been complied with and only for that purpose, this petition be listed for directions on 13th September, 2004.

24. The parties to act on authenticated copies of this judgment.