
(2009) 08 BOM CK 0193

In the Bombay High Court

Case No : Criminal Writ Petition No. 2137 of 2008

Vijay Narayan Patil

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 428

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 16, 2, 2(l), 7A

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2009) 08 BOM CK 0193

Hon'ble Judges : Roshan Dalvi, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : Rebecca Gonsalvez, for the Appellant; P.A. Pol and V.R. Bhosale, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.H. Marlapalle, J.—Heard Ms. Gonsalvez, learned Counsel for the Petitioner. Mr. Pol, learned Incharge P.P appears for the State of Maharashtra.

2. This Petition was received from the Jail and the Petitioner prays for the protection available to him under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short the Juvenile Justice Act).

3. In Sessions Case No. 92 of 1995 the Petitioner was tried as accused No. 4 and along with 3 others of his family members he came to be convicted for the offences punishable under Sections 302 and 307 r.w. Section 34 of the Indian Penal Code and was sentenced to suffer R.I for life and 7 years respectively, as per the order passed by the learned 5th Additional Sessions Judge at Sangli on 13th December, 1999. The said order was challenged in Criminal Appeal No. 23 of 2000 and the Appeal came to be dismissed on 18th October, 2004 by this Court. The Petitioner was taken in custody on 1st February, 1995 and the incident for which he was convicted had taken place on 29th January, 1995. He

has by now suffered a sentence of more than 10 years.

4. In this Petition he claims that he was born on 5th January, 1978 and in view of the law laid down by the Constitution Bench in *Pratap Singh Vs. State of Jharkhand and Another*, and followed subsequently in the case of *Hari Ram Vs. State of Rajasthan and Another*, , he was a juvenile on the date of the incident, as defined in Section 2(k) of the Juvenile Justice Act and thus a juvenile in conflict with law u/s 2(l) of the said Act. He, therefore, prays for being set at liberty forthwith in view of the provisions of Section 7A, 15 and 16 of the said Act.

5. We had granted time to the State Government to file reply as per our order dated 21st July, 2009 and though the State has not filed any reply Mr. Pol, the learned Incharge A.P.P states that even as per the record of the Investigating Officer concerned, the Petitioner was shown of the age of 17 years on the date of the incident and even after the charge-sheet was submitted before the Sessions Court, the Petitioner was shown of the age of 17 years on the date of the incident and therefore, he falls within the definition of juvenile in conflict with law.

6. Section 7A of the Juvenile Justice Act; (the Act) as amended by Act 33 of 2006 lays down the procedure to be followed when a claim of juvenility is raised before any Court. u/s 7A(1) this is called for when:

1. Such claim is raised and

2. When the Court is of the opinion that the accused was a juvenile on the date of the offence. It is an admitted position in this case and it is shown by the prosecution itself that the accused was 17 years old on the relevant date. No further inquiry is, therefore, warranted. Further under the proviso to Section 7A(1) of the Act the question of juvenility can be raised and is to be recognised for determination at any stage and even after the final disposal of the case and even if the juvenile had ceased to be so on or before the commencement of the Act. Hence the expression any Court in Section 7A(1) includes the Court of Appeal which hears the claim of juvenility after the case is disposed of in the trial Court. The Petitioner's case, therefore, is required to be seen as the case of a juvenile.

7. Section 15(g) of the Act provides for maximum detention of 3 years in case of the juvenile who is found to be guilty of the offences punishable under the Indian Penal Code and the proviso below 16 of the said Act imposes a maximum period of 3 years of sentence. As noted above, the Petitioner has already undergone more than 14 years of imprisonment (he was given the benefit of set-off u/s 428 of the Code of Criminal Procedure) and therefore, he deserves to be released forthwith, having regard to the observations made by the Apex Court in para 37 in *Hari Ram's* case (*Supra*).

8. Hence, the Petition is allowed and it is directed that the Superintendent of Central Prison at Yerwada, Pune shall set the Petitioner/accused free forthwith.