

State of Madhya Pradesh
v.
Ramji Lal Sharma & Another

(Miscellaneous Application No. 261 of 2024 in
Criminal Appeal No. 293 of 2022)

23 September 2024

**[B.V. Nagarathna* and
Nongmeikapam Kotiswar Singh, JJ.]**

Issue for Consideration

Matter pertains to the application filed by applicant seeking his release from further jail sentence, on the ground of his juvenility on the date of the offence and has already undergone a sentence of more than four years.

Headnotes[†]

Juvenile Justice (Care and Protection of Children) Act, 2015 – s.94 – Presumption and determination of age – As regards incident of 17.01.2002, the applicant convicted by the Special Sessions Judge, however, acquitted by the High Court – Subsequently, this Court convicted the applicant – Thereafter the applicant underwent sentence of four years and three months in all – Subsequently, miscellaneous application filed by the applicant seeking his release from further jail sentence, on the ground of his juvenility on the date of the offence and has already undergone a sentence of more than four years:

Held: Application for claiming juvenility may be made even after the judgment and order of conviction and sentence has been granted against a person which has attained finality – On basis of the report submitted by the Sessions Judge, pursuant to the directions of this Court, it is found that the applicant was below eighteen years of age as on the date of the incident – Date of birth of the applicant has been proved to be 04.10.1984 – Thus, the claim of juvenility made by the applicant, upheld – Conviction as recorded against him set aside and he is acquitted – As he is on interim bail, his bail-bonds stand cancelled. [Para 11]

* Author

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Abuzar Hossain v. State of West Bengal [2012] 9 SCR 244 : (2012) 10 SCC 489; *Pramila v. State of Chhattisgarh* Criminal Appeal No. 64/2012, dated 17.01.2004 – referred to.

List of Acts

Juvenile Justice (Care and Protection of Children) Act, 2015; Penal Code, 1860; Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

List of Keywords

Release from further jail sentence; Juvenility; Date of birth.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Miscellaneous Application No. 261 of 2024

In

Criminal Appeal No. 293 of 2022

From the Judgment and Order dated 09.03.2022 of the Supreme Court of India in CrI.A. No. 293 of 2022

Appearances for Parties

Amit Sharma, A.A.G., Yashraj Singh Bundela, Ramesh Thakur, Chanakya Baruah, Ms. Saloni, Rohan Singla, Advs. for the Petitioner.

M/s. Prashant Shukla Law Chambers, Prashant Shukla, Mrs. Anushree Shukla, Prabhat Chowdhary, Kartik Kumar, Ms. Ritika Raj, Akshat Mudgil, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Nagarathna, J.

The Applicant/Respondent No. 2 herein, i.e., Brijnandan @ Brajesh Sharma has filed the present Miscellaneous Application in the disposed of Criminal Appeal No.293 of 2002. seeking his release from further jail sentence, on the ground of his juvenility on the date of the offence, i.e., on 17.01.2002.

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2. Briefly stated, the facts of the case are that the Respondents in Criminal Appeal No.293 of 2022 were two of the four accused in the crime registered pursuant to FIR No.8/2002 dated 17.01.2002 at Police Station AJK Bhind, District Bhinda, Madhya Pradesh, for the offences committed under Sections 302, 307 and 34 of the Indian Penal Code, 1860 (in short "IPC"), read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act"). Pursuant to the trial in Special Case No. 74 of 2002 before the Ld. Special Judge, Bhind, the Respondents were convicted for the offences punishable under Section 302 read with Section 34 of the IPC and were awarded life imprisonment and fine of Rs. 5000/- *vide* judgment dated 24.02.2006.
3. Being aggrieved by the judgment of the Trial Court, the Respondents filed Criminal Appeal No.339 of 2006 before the High Court of Madhya Pradesh, Gwalior Bench. The High Court allowed the appeal preferred by the Respondents *vide* judgment dated 13.12.2018 and thereby set aside the conviction of the Respondents.
4. Being aggrieved by the judgment of acquittal passed by the High Court, the State preferred this Criminal Appeal No.293 of 2022 arising out of SLP (Criminal) No.1926 of 2022 before this Court. This Court, *vide* judgment dated 09.03.2022, allowed the appeal filed by the State and, resultantly, the Respondents were convicted and the sentence imposed by the Trial Court was restored. Hence, the Respondents were directed to undergo the remaining sentence as per the judgment and order of conviction passed by the Trial Court.

It is in these circumstances that the applicant/respondent No.2 has preferred the instant application seeking his release from further jail sentence on the ground that he was a minor on the date of commission of the offence i.e. 17.01.2002 and has already undergone a sentence of more than four years.
5. During the course of submissions, learned counsel for the applicant Brijnandan alias Brajesh Sharma submitted that although by the judgment of this Court the applicant herein was convicted and serving his sentence; thereafter, on becoming aware of the law the applicant has filed this application claiming juvenility as on the date of the incident, i.e. 17.01.2002.
6. During the course of submissions, it was borne out that while the date of birth of the applicant as per the school record is 04.10.1984, it is

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10.03.1984 as per the Aadhaar Card. We note that the date of the commission of offence was on 17.01.2002. It was therefore submitted at the Bar that the applicant's plea of juvenility be accepted as Applicant was a juvenile aged about 17 years and 3 months on the date of the commission of offence.

7. Considering the aforesaid inconsistency, this Court, *vide* order dated 16.05.2024, had directed the Sessions Court, District Bhind, Madhya Pradesh to conduct an enquiry with regard to the claim of juvenility made by the applicant herein and to submit a report to this Court in accordance with law. The said enquiry has been conducted and by report dated 16.07.2024, the learned Special Judge (Atrocities), Bhind, M.P. has held that the applicant's date of birth is 04.10.1984 and consequently on the date of the incident, i.e. on 17.01.2002, he was 17 years 3 months and 13 days old (though wrongly typed as 17.03.2002 and 17 years 5 months and 13 days in the order dated 16.07.2024). Therefore, the applicant being a juvenile on the date of the commission of the offence is entitled to the benefit of the provisions of Juvenile Justice (Care and Protocol of Children) Act, 2015 is the submission. Learned counsel for the applicant contended that having regard to the fact that the learned Sessions Judge has conducted a detailed enquiry by examining not only the applicant but also his mother and in-charge Head Teacher Government Primary School, Deori, Police Station Mehgaon, District Bhind, Madhya Pradesh. Finally, it was contended that the said report, which is in favour of the applicant herein, may be considered and the benefit of juvenility be granted to the applicant herein. Consequently, the conviction as against the applicant herein may be set aside.
8. *Per contra*, learned counsel for the respondent-State at the outset submitted that the plea of juvenility is highly belated inasmuch as the incident took place on 17.01.2002 but the applicant after being convicted by this Court has subsequently filed the application. The long delay in making the claim of juvenility must be accounted for at the first instance before considering other pleas made by the applicant. He also submitted that there is discrepancy in the name of the applicant in the special leave petition. The petition notes the applicant's name as Brijnandan alias Brajesh Sharma son of Ramji Lal Sharma, whereas in the school documents it is noted as Brijesh Kumar and in the Aadhaar Card it is just Brijesh. Therefore, the miscellaneous application may be dismissed.

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9. By way of reply, learned counsel for the applicant placed reliance on a judgment of this Court in *Abuzar Hossain vs. State of West Bengal* (2012) 10 SCC 489 to contend that the claim for juvenility may be made at any stage of the criminal proceedings and even after final conviction and sentence being imposed. Therefore, the said argument of the learned counsel for the respondent-State is without any substance. He further submitted that although the name of the applicant as stated by the informant and the prosecution may be slightly at variance with the name of the applicant in the school records as well as in the enquiry that has been conducted on the basis of the documents but the fact remains that the applicant is the son of Ramji Lal and there being no dispute about the same, a slight discrepancy in the name would not negate his claim for juvenility.

He further submitted that pursuant to the order of this Court a comprehensive enquiry has been conducted. The applicant, his mother and the head master of the school where the applicant was studying have all been examined. There has been no cross examination of the said witnesses in the enquiry by the respondent-State. Therefore, there can now be no objection raised by the State to the said report submitted by the learned Sessions Judge. In the circumstances, he contended that the report may be taken into consideration and relief may be granted to the applicant herein.

10. We have considered the submissions advanced at the Bar.
11. It is noted that in respect of the incident dated 17.01.2002, the applicant was convicted on 24.02.2006 by the Special Sessions Judge, Bhind. Thereafter, he was acquitted by the High Court *vide* judgment dated 13.12.2018. Subsequently, in the appeal filed by the respondent-State, this Court by judgment dated 09.03.2022, convicted the applicant. It is thereafter that the applicant has undergone sentence of four years and three months in all. Subsequently, this miscellaneous application was filed and this Court *vide* order dated 16.05.2024 directed that the enquiry be conducted. Subsequently, the learned Sessions Judge has passed his order on 16.07.2024 and has submitted his report to this Court. Pursuant to the order of this Court on 16.05.2024, the applicant has been released on interim bail. Therefore, on perusal of this report, we note that not only the applicant herein, but the mother as well as the Head Master of school have been examined as PW-1, PW-2 and PW-3

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respectively and as many as five documents were also considered by the learned Sessions Judge. It is on consideration of the same and having regard to Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 that the learned Sessions Judge found that the applicant was below eighteen years of age as on the date of the incident. Although the application has been filed subsequent to the conviction ordered by this Court, we have regard to the judgment of this Court as noted above and in judgment dated 17.01.2004 in Criminal Appeal No.64/2012, titled as ***Pramila vs. State of Chhattisgarh***, that an application for claiming juvenility may be made even after the judgment and order of conviction and sentence has been granted against a person which has attained finality.

Bearing in mind the aforesaid judgments and the report submitted by the learned Sessions Judge, pursuant to the directions of this Court, we find that the date of birth of the applicant has been proved to be 04.10.1984. Consequently, the claim of juvenility made by the applicant, who was arrayed as accused no.3 is upheld and the conviction as recorded against him by this Court is set-aside and he stands acquitted. As he is on interim bail, his bail-bonds stand cancelled.

Consequently, the miscellaneous application is allowed in the aforesaid terms.

Result of the Case: Miscellaneous Application Allowed

[†]*Headnotes prepared by:* Nidhi Jain