

Mahapoobjan Vs. State

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Court : Chennai

Decided On : Jun-11-2013

Judge : V.Dhanapalan

Appellant : Mahapoobjan

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

11. 06.2013 CORAM: THE HONOURABLE MR.JUSTICE V.DHANAPALAN AND THE HONOURABLE MR.JUSTICE C.T.SELVAM H.C.P.No.1080 of 2011 Mahapoobjan .. Petitioner Vs. The State represented by its 1. The Secretary to Department of Home, Secretariat, St.George Fort, Chennai-9.

2. The Superintendent, Central Prison, Coimbatore-18.

3. The Inspector of Police, B.1 Bazaar Police Station, Coimbatore. .. Respondents (Third respondent--impleaded as per order of this Court, dated 29.8.2011 in M.P.No.1 of 2011 in H.C.P.No.1080 of 2011) Habeas Corpus Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Habeas Corpus to direct the respondents to produce the detenu Salavudeen, S/o Sydu Iqbal, Life Convict No.76888, detained at Central Prison, Coimbatore, before this Court and set him at liberty. For Petitioner : Mr.S.Manoharan For Respondents : Mr.S.Shunmugavelayutham, Public Prosecutor, assisted by Mr.A.N.Thambidurai,

ORDER

(The Order of the Court was made by V.Dhanapalan,J.) The prayer in the Habeas Corpus Petition is to direct the respondents to produce the detenu Salavudeen, S/o Sydu Iqubal, Life Convict No.76888, detained at Central Prison, Coimbatore, before this Court and set him at liberty.

2. Brief facts leading to filing of this petition are as follows: (a) The petitioner is the mother of the detenu Salavudeen @ Shanawaz. He was born on 4.12.1979 and Birth Certificate of the same was registered on 7.12.1979 by the Birth and Death Registrar of the Coimbatore City Municipal Corporation, which is a genuine document to substantiate the age of her son and he was less than 18 years of age on the date of occurrence of the alleged offence on 2.9.1997. (b) The petitioner sent a representation on 23.7.2011 to the first and second respondents, stating that the detenu was a ".juvenile". on the date of occurrence of the alleged offence on 2.9.1997. No action has been taken on the said representation. (c) The detenu was implicated as second accused in the alleged offence under Section 302 IPC said to have taken place on 2.9.1997; on the date of commission of the offence, the detenu was aged about 17 years 9 months and thus, he was a juvenile as per Juvenile Justice (Care and Protection of Children) Act, 2000, as amended (hereinafter referred to as 'the Act'), but he was tried as an adult in S.C.No.110 of 1999 on the file of the Sessions Court, Coimbatore and was convicted and sentenced to undergo life imprisonment, by judgment dated 30.12.1999, which was confirmed by this Court in CrI.A.No.238 of 2000, by a judgment dated 28.3.2003, which was also confirmed by the Supreme Court and thereafter, the detenu continued to languish in Central Prison, Coimbatore. (d) Section 7-A(1) of the Act, as amended by Act 33 of 2006, allows the claim of juvenility to be raised before any Court at any stage of the proceedings, even after disposal of the case, on the ground that the accused was a juvenile on the date of commission of offence. (e) The detenu was confined at Central Prison, Coimbatore for about 13 years. The continued detention of the petitioner's son in the hands of the second respondent is unjust, illegal and violative of Article 21 of the Constitution of India.

Hence, the petitioner has filed this petition.

3. On behalf of the third respondent, the Inspector of Police, B-8 Variety Hall Road Police Station, Coimbatore City, has filed a counter affidavit, dated 10.10.2011, stating as follows: (i) On bifurcation of B.1 Bazaar Police Station, B.8 Variety Hall Road Police Station was formed in 1998 and number of pending cases including Tikmaram murder case was transferred to the new Police Station. On the statement of one Devilal on 2.9.1997 at about 11.30 am that his nephew Tikmaram, aged 24 years was stabbed with knives by some persons on the same day at 10.15 am and he succumbed on the way to hospital, a case was registered in B.1 Bazaar Police Station in Crime No.1545/1997 under Section 302 IPC. After due investigation, the charge-sheet was laid in the Magistrate Court against two persons, namely (i) Haroon Batcha and (ii) Salavudeen and the third accused Shahul Hameed died subsequently. The case was tried as S.C.No.110 of 1999 by the learned First Additional District and Sessions Judge, Coimbatore, who delivered the judgment on 30.12.1999 and convicted both the accused for the offence under Section 302 read with 34 IPC and sentenced each of them to undergo life imprisonment. (ii) Against the said judgment of conviction, both the accused filed appeal in Crl.A.No.238 of 2000 before this Court and the judgment was delivered by this Court on 28.3.2003, confirming the conviction and sentence imposed on both the accused. After a lapse of eight years, the mother of Salavudeen, one of the two convicts, filed this Habeas Corpus Petition on the ground that her son Salavudeen was aged about 17 years and 9 months only, on the date of commission of the offence on 2.9.1997. The alleged representation, dated 23.7.2011 of the petitioner to the first and second respondents have not reached the third respondent and hence, he had no occasion to peruse the same. (iii) The petitioner's son Salavudeen was tried in the case and his appeal was also heard by this Court and both the trial Court and this Court delivered concurrent conviction judgments against Salavudeen and his co-accused. The petitioner's son is not in illegal custody in the hands of the second respondent as alleged by the petitioner. The petitioner suppressed the real colour of her son Salavudeen, who figured as A.102 in the Serial Bomb Blasts which occurred on 14.2.1998 in Coimbatore City and he was found guilty in the said case of Coimbatore City B.1 Bazaar Police Station in Crime No.151 of 1998 for charges under Sections 120-B

read with 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465 and 471 IPC, Sections 3, 4(b), 5 and 6 of the Explosive Substances Act, Section 3 read with 25(1-B)(a) of the Arms Act and Section 3(i) and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act and sentenced to undergo rigorous imprisonment for 13 years; for another charge under Section 153(a)(1) IPC, he was sentenced to undergo rigorous imprisonment for three years; he was also found guilty under a charge of Section 307 IPC (three counts) and sentenced to undergo rigorous imprisonment for seven years; he was also found guilty under a charge of Section 3 of the Explosive Substances Act and sentenced to undergo rigorous imprisonment for nine years; he was also found guilty under a charge of Section 4(b) of Explosive Substances Act and sentenced to undergo rigorous imprisonment for seven years; he was also found guilty under a charge of Section 148 IPC and sentenced to undergo rigorous imprisonment for three years; he was also found guilty under a charge of Section 307 IPC and sentenced to undergo rigorous imprisonment for seven years, and hence, his present custody in the Central Prison, Coimbatore as a convict prisoner, is legal and not illegal as averred by the petitioner. (iv) The petitioner claims that her son was aged 17 years and 9 months only, on the date of 2.9.1997, when he murdered Tikmaram, but when the accused was arrested by the third respondent in the murder case, he claimed to be 19 years old, which has been carried over in all the records. In the charge-sheet, his age was mentioned as 19 years. He evaded the Police arrest and surrendered before the learned Judicial Magistrate and was taken on Police custody and reproduced in the Magistrate's Court after the Police custody. He was produced in the Magistrate's Court every time for remand extensions. But no such plea was made regarding his age on his behalf before the learned Magistrate. In the Sessions Court, the trial took place from 30.4.1999 to 30.12.1999 on 28 days. But the question pertaining to his was not raised at all by him during the Sessions trial also. Such a plea was not taken before this Court also, when the appeal was made on his behalf. The petitioner has filed a Birth Certificate, dated 09.08.2011, issued by the Coimbatore Municipal Corporation, to convince this Court that her son Salavudeen was born on 4.12.1979. Hence, the third respondent verified with the records of Birth Register and connected papers maintained by Coimbatore Municipal Corporation and the third respondent came to know that the petitioner

Mahapoobjan filed an application on 1.8.2011 with Coimbatore Municipal Corporation for issuance of Birth Certificate by providing the name of the child born to her on 4.12.1979 for the first time to Coimbatore Municipal Corporation, thirty two years after the birth of the child. Only on receipt of such application, the Corporation Officials entered the name of Salavudeen for the first time in the Birth Register and issued the Birth Certificate on 9.8.2011. The Birth and Death Registrar of Coimbatore Municipal Corporation gave a letter dated 24.9.2011 to the third respondent, stating that Salavudeen's name was entered in the Birth Register for the first time only on the application of the petitioner Mahapoobjan, dated 2.8.2011, and hence, the present plea of the petitioner that her son Salavudeen was a juvenile on the date of the occurrence, has become infructuous.

(v) The convicted person namely Salavudeen, Convict No.76888 of Central Prison, Coimbatore has undergone the imprisonment. When he was in the custody of jail authority on 6.6.2008, the said Salavudeen applied a petition to the Headmaster of Sri.S.P.Narasimmalu Naidu Memorial High School, Coimbatore, through the Jail Superintendent, Central Prison, Coimbatore, for obtaining the School Transfer Certificate for the studies of VI Std. in their School and the application was forwarded by the jail authority to the Headmaster of the said School and after receipt of the application, on 10.6.2008, the Headmaster of the School sent a reply to the jail authority stating that the applicant, the convicted person's name was mentioned as "iraJ cwnrd;. j-bg iraJ ,f;ghy;. rpiwthrp vz;;/76888". and after careful perusal of the School record in the name of iraJ cwnrd;. no student studied in VI Std. in the application mentioned year. But the Headmaster stated in his reply that one @iraJ cwnrd; vd;gt nu gs;spapy; Mwhk; tFg;g[goj;Js;sjhft[k; Fwpg;gpl;Ls;shh;@/ Due to the above reason, the Headmaster was not able to issue the School Transfer Certificate to the applicant. Subsequently, the applicant iraJ cwnrd; sent an application to the Headmaster for the same and on 13.06.2008, the Headmaster sent the same reply to the applicant and subsequently, on 19.06.2008, the convicted person (Convict No.76888) sent an application in the name of KfkJ cwnrd;. j-bg iraJ ,f;ghy; and in the said application, the applicant has signed his signature as iraJ cwnrd; and it was forwarded by the Jail Superintendent, Jail Authority, Coimbatore to the Headmaster and the Headmaster of the said School sent a reply to the Jail Authority stating that the

Convict No.76888 name is Salavudeen, S/o Syed Iqbal, but the same Convict No.76888 was mentioned in the application made by the applicant iraJ cwnrd;. and it creates doubt and contradiction between two names, that is, Salavudeen and Syed Hassain with the same Convict No.76888 in Central Prison, Coimbatore and for the said reason, the Headmaster was unable to issue the School Transfer Certificate to the applicant and further requested the Jail Authority not to send such application in future. (vi) After knowing the facts, the third respondent has given the requisition to issue the School T.C. of the said petitioner's son (Convicted person) before the School authority and the Headmaster of the abovesaid School has given the School T.C. of one iraJ cwnrd;/ In that T.C. iraJ cwnrd; (Syed Hassain's) date of birth is mentioned as 23.05.1979. Therefore, at the time of occurrence in Cr.No.1545/1997 of B-1 Bazaar Police Station, the detenu was aged about 18 years and 3 months. (vii) In the affidavit filed by the petitioner, her son namely Salavudeen's date of birth is stated as 4.12.1979. The convicted person, namely Salavudeen has not produced substantial document to show that his name is Salavudeen @ Syed Ussan @ Syed Hassain and date of birth mentioned in the two records, namely Birth Certificate of Municipal Corporation as well as School T.C. are different and these two Certificates create more suspicion and doubt. The petitioner alone is strictly liable to prove the genuineness of the Certificate. (viii) The third respondent, while respecting the golden principles laid down by the Supreme Court and this Court, states that they would have been useful to the petitioner before the trial Court only during the trial stage, but not at this highly belated stage. (ix) Section 7-A(1) of the Act, 2000, as amended by Act 33 of 2006, provides for the accused person to raise a claim of juvenility before any Court at any stage. But the present case of murder of Tikmaram is not existing now as on the date before any Court. The petitioner has no right to invoke the provisions of Section 7-A(1) of the Act. (x) The petitioner's son is confined at the Central Prison, Coimbatore from the date of conviction. The petitioner did not avail and exhaust all the possible legal remedies in the trial stage before filing the present Habeas Corpus Petition, which is meant in law only for any emergency. The Supreme Court held that a litigant must exhaust the alternative and efficacious statutory remedy available to him before invoking extraordinary and prerogative jurisdiction of a High Court, and hence prayed to

dismiss the Habeas Corpus Petition filed by the petitioner to release her son Salavudeen, son of Sydu Iqubal, who is detained at the Central Prison, Coimbatore for life imprisonment, on the orders of the First Additional District and Sessions Judge, Coimbatore in S.C.No.110 of 1999 on 30.12.1999, which was confirmed by this Court in Crl.A.No.238 of 2000 on 28.3.2003, as devoid of merits.

4. To the above counter affidavit filed on behalf of the third respondent, the petitioner has filed a reply affidavit, dated 8.11.2011, stating as follows: (a) The petitioner has been advised to state that it is the duty of the investigating agency to ascertain the age of the accused, if the accused is appearing to be less than 21 years of age. No enquiry whatsoever has been conducted to ascertain the age, except the ipse-dixit of the investigating officer. The petitioner obtained the Birth Certificate of the detenu from the Coimbatore City Municipal Corporation and the said primary document categorically stated that the detenu's date of birth is 4.12.1979 and the said fact was further affirmed by the Chainrai Tikibai Maternity (CTM) Home Hospital, Coimbatore Corporation, Seenivasapuram, Coimbatore-9, in its records and if proper enquiry is held, it could be easily proved that the detenu was less than 18 years of age on the date of commission of offence and hence, the detenu is entitled to the benefits conferred under the Act, as per the judgment of the Supreme Court of India. (b) The petitioner denies the allegation that the name was added first time only on 2.8.2011, but the fact remains that the Hospital authorities immediately informed on 4.12.1979 that the son was born to Mahapoobjan, the wife of Sydu Iqubal and the name was only mentioned subsequently. The elders of the family, in order to seek admission, would have wrongly mentioned the name and date of birth, but the primary document, namely the Birth Certificate, the earliest document, would prevail over all other subsequent documents including primary School Certificate. (c) The petitioner denies that there is suspicion and doubt in the determination of the detenu's age and the petitioner asserts that the detenu was born on 4.12.1979 and the same was fortified by the Hospital authorities which attached the clear documents to support the case. The third respondent has not denied the genuineness of the detenu's Birth Certificate and this Court may be pleased to accept the Birth Certificate supported by Hospital records, which is the earliest document to prove the age. Therefore, this Court may release the detenu forthwith by accepting the Birth

Certificate of the detenu and declare him as a juvenile.

5. To the above reply affidavit, the Inspector of Police, B-8 Variety Hall Road Police Station, Coimbatore City, has filed a further counter affidavit, dated 30.12.2011, on behalf of the third respondent, alleging as follows: (i) The case was originally registered and handled by B.1 Bazaar Police Station, Coimbatore and it was subsequently transferred to B.8 Variety Hall Road Police Station, Coimbatore City on bifurcation. The averment of the petitioner that Salavudeen did not claim to be 19 years old at the time of arrest, is denied. In the third respondent's earlier affidavit, dated 10.10.2011, he has stated that the accused maintained his age to be 19 years from the beginning till the filing of the present petition, in all the Courts. When the detenu Salavudeen himself claimed that his age is 19 years and further that the Coimbatore City Municipal Health Officer issued a Birth Certificate for him on the basis of the information furnished by Chainrai Tikibai Maternity (CTM), which is not the conclusive proof of his averment of his age for the reason that even in the said Municipal Corporation's original Birth Register, the name of Salavudeen was not entered and the petitioner has not furnished any Certificate from the said Hospital to prove his averment. As such, Salavudeen is not entitled to the benefits conferred under the Act. The petitioner herself admitted that the birth of a male child alone was informed and not the name of the male child. (ii) The name of Salavudeen was furnished to the Municipal authorities by the petition on 2.8.2011 only to get a new Birth Certificate with the date of birth as 4.12.1979. The date of birth adduced by the petitioner before the investigating officer is not the earliest date of birth as contended by her, but it is only a very recent one issued on 24.9.2011 only to file the present Habeas Corpus Petition before this Court. (iii) The third respondent disputes the origin of the Salavudeen's Birth Certificate and states that the petitioner furnished a false date of birth to the Municipal authorities in her letter, dated 2.8.2011 and obtained the new Certificate on 24.9.2011 only for the purpose of filing this petition and prayed to dismiss this petition.

6. The petitioner has filed additional affidavit, dated 27.09.2012, inter-alia stating as follows: (a) The petitioner has two sons and one daughter and her elder son is Syed Subhan and he was born on 7.10.1977. The detenu is her younger son and

he was born on 4.12.1979 at the Corporation Maternity Centre Hospital, which is usually called as CTM Home, Coimbatore. Her husband Sydu Iqubal, the father of the detenu, died seven years ago and her younger son, the detenu's official name is Syed Hassain, but he is usually called in the house in the name of Salavudeen and Shanawaz and hence, the third respondent-Police registered a case in the name of Salavudeen @ Shanawaz, which the petitioner calls him in the house. (b) The petitioner's son, the detenu, was born on 4.12.1979, but he was admitted in the School on 13.6.1984 and at the time of admission, he has not completed five years from the original date of birth and so, the deceased father of the petitioner's son, the detenu, provided the date of birth as 23.5.1979. In those days, it was a usual practice in Tamil Nadu that for getting admission in the School, the date of birth would be changed, because, for getting 1st Standard admission, a boy or girl should have completed five years and one month from the month of June, and therefore, the petitioner's son, the detenu's original date of birth is 4.12.1979 and so, he was 17 years, 8 months and 28 days old from the date of occurrence on 2.9.1997 and hence, the petitioner's son (detenu) is entitled to the relief under the Act and prayed to accept the name of the detenu as Salavudeen @ Shanawaz @ Syed Hassain, which are one and the same and his original date of birth as 4.12.1979 as per his Birth Certificate.

7. Mr.S.Manoharan, learned counsel for the petitioner submitted that the detenu was a juvenile on the date of commission of offence, namely the date of occurrence and the detenu's date of birth is 4.12.1979 and the date of occurrence was 2.9.1997. It is his contention that in this regard, this Court, by order dated 19.1.2012, directed the trial Court to conduct an enquiry and give a report regarding the age of the detenu on the date of occurrence. Such enquiry report, dated 3.8.2012 has been submitted by the learned First Additional District and Sessions Judge, Coimbatore, by letter dated 4.8.2012, which would clearly indicate that the detenu was 17 years, 8 months and 28 days on the date of occurrence. Besides the enquiry report of the learned District Judge, the learned counsel took us to the proof of date of birth and relied on page 30 of the typed set of papers filed along with the Habeas Corpus Petition, in which, a Birth Certificate issued by the Coimbatore City Municipal Corporation, is enclosed, which proves that the detenu S.Salavudeen's date of birth is 4.12.1979. Learned counsel further

stated that the detenu has been in jail for more than 13 years and prayed that he is entitled to the benefits of the Act and hence, he requested this Court to set him at liberty forthwith. He relied on various decisions of this Court and the Supreme Court.

8. On the above submissions, we have heard Mr.S.Shunmugavelayutham, learned Public Prosecutor, assisted by Mr.A.N.Thambidurai, learned Additional Public Prosecutor appearing for the respondents and they submitted that the Act itself is a beneficial Legislation and the ratio laid down by the Supreme Court in various decisions also makes it clear that if, on the date of occurrence, a detenu was a juvenile/minor and less than 18 years of age, he is entitled to the benefits of the Act and anyone convicted thereupon, may be set at liberty forthwith.

9. We have heard the learned counsel appearing for the parties and perused the records and the enquiry report, dated 3.8.2012 sent by letter dated 4.8.2012 in D.No.6354/2012, of the learned First Additional District and Sessions Judge, Coimbatore, in respect of the enquiry conducted in C.M.P.No.70 of 2012 in S.C.No.110 of 1999 and gone through the various decisions of the Supreme Court and this Court.

10. On a circumspection of facts, it is seen that the petitioner is the mother of the detenu Salavudeen @ Shanawaz. According to her, her son's (detenu's) date of birth is 4.12.1979 and the Birth Certificate of the same was registered on 7.12.1979 by the Birth and Death Registrar of the Coimbatore City Municipal Corporation. The document (Birth Certificate) to substantiate the age of her son, annexed in page 30 of the typed set of papers filed along with this Habeas Corpus Petition, proves that the detenu's age was less than 18 years on the date of commission of the offence, which was on 2.9.1997 and the said Birth Certificate shows that his date of birth is 4.12.1979.

11. It is the contention of the learned counsel for the petitioner that the continued detention of the petitioner's son in the hands of the respondents is not in accordance with the provisions of the Act and violative of Article 21 of the Constitution of India. In this regard, it is stated that the petitioner has already made a representation on 23.7.2011 to the respondents, stating that the detenu was a

juvenile on the date of occurrence on 2.9.1997 and as no action was taken on the said representation, claiming that the detenu, her son, is in the illegal custody in the hands of the respondents, the petitioner has filed this Habeas Corpus Petition. According to the petitioner, her son (detenu) was born on 4.12.1979 and he was implicated as A2 in the alleged offence under Section 302 IPC, said to have taken place on 2.9.1997 and on the date of commission of offence, the detenu was aged 17 years and 9 months and thus, the petitioner claims that her son was a juvenile as per the provisions of the Act.

12. It is the further contention of the learned counsel for the petitioner that the detenu was tried as an adult before the Trial Court in S.C.No.110 of 1999 and was convicted and sentenced to undergo life imprisonment, by a judgment dated 30.12.1999, which was confirmed by a Division Bench of this Court in Crl.A.No.238 of 2000, which was also confirmed by the Supreme Court, and thereafter, the detenu was confined in Central Prison, Coimbatore.

13. To ascertain as to whether on the date of occurrence the detenu was a juvenile or not, this Court, by an order dated 19.01.2012, directed the Trial Court to conduct an enquiry and send a report and accordingly, the enquiry report dated 03.08.2012 was submitted vide letter dated 04.08.2012 in D.No.6354/2012, to this Court by the learned First Additional District and Sessions Judge, Coimbatore, in respect of the enquiry conducted in C.M.P.No.70 of 2012 in S.C.No.1010 of 1999, and the said enquiry report reads as follows: ".1. The Hon'ble High Court by its order dated 19.01.2012 in HCP.1080/2011 has directed this Court to conduct an enquiry to ascertain whether on the date of occurrence the detenu Salavudeen, S/o.Syed Iqbal was a juvenile within the meaning of Sec.2(h) of the Juvenile Justice Act.

2. (a) The copy of the order was received by this Court on 31.01.2012. Following this, this Court issued notice to both sides, and a due enquiry was conducted to determine the age of the detenu Salavudeen on the date of occurrence. The occurrence which was the subject matter of S.C.110/1999 had happened on 02.09.1997 and consequently the reference date is 02.09.1997. (b) Since the Hon'ble High Court has directed to ascertain the age of the detenu after giving due

opportunities to both sides, witnesses were examined both on behalf of the petitioner and also for the State. The petitioner was represented by her counsel Thiru K.Manoharan, while Thiru.V.V.Nagarajan, Additional Public Prosecutor represented the State in the enquiry. (c) For the petitioner, Mahboojan (the petitioner in HCP as well) is examined as P.W.1 and she has produced Ext.P-1 to Ext.P-8. The State has examined three witnesses through whom it marked Ext.R-1 to Ext.R-8. On 26.07.2012, the detenu himself was caused to be produced before the Court and was briefed on the nature of evidence available before the Court. When enquired if he has any relevant information touching upon the matter under enquiry, he filed a memo adopting the evidence of his mother P.W.1.

3. Summary of the evidence of the petitioner: P.W.1 is the mother of the detenu and she has testified that she has two sons of whom the detenu is her younger son. Her elder son is Syed Subhan. Her husband is Syed Iqbal who had died some seven years ago. According to her, her elder son was born in 1977 and the detenu was born on 04.12.1979 at the Corporation Maternity Centre Hospital (hereinafter CTM Home). She has produced Ext.P-1, the birth certificate of her younger son without his name incorporated and Ext.P-2 with his name included. She would further testify that the detenu had studied up to 7th standard, that he had his primary level schooling at St.Xavier School, at Marakkadai street, and studied his 6th and 7th standard at Narasimma Naidu School.

4. Evidence for the State: (a) R.W.1 is present Head Mistress of St.Xavier Primary School where the detenu is said to have studied up to his primary level. R.W.2 is the Head Master of Sri S.P.Narasimma Naidu Memorial High School; and R.W.3 is an Assistant in the Health Department of the Corporation. The summary of their evidence is as below: (b) R.W.1, the present Head Mistress of St.Xavier Primary School has deposed that one Syed Hassain was seen to have been admitted in their school by his father Syed Iqbal on 13.06.1984, that the age of the boy admitted was provided as 23.05.1979, that after completing his primary school education, the student left the school. At that time a record sheet was issued to him in which the student himself had signed. She has produced Ext.R-1, a copy of the record sheet issued to the student concerned. (c) R.W.2 states that he is the head master of the High School in which the student concerned prosecuted his

high school studies. He had deposed that the student Syed Hassain was admitted in the school by his father Syed Iqbal on 06.06.1990. He has produced the copy of the student admission form along with a copy of Ext.R-1. This is marked as Ext.R-2. At the time of admission, the parent/student had produced the record sheet issued by the primary school. This copy is attached to Ext.R-2. It must be stated that Ext.R-1 is the office copy of the record sheet while Ext.R-2 contains the copy of the original. According to R.W.2, Syed Hassain was a drop out and stopped his studies abruptly in December, 1990. He would further testify that since 24.06.2008, the school has received at least three requisition for issuance of birth certificate for a prisoner through the Superintendent of Central Prison, but could not issue it for the name of detenu differed from the name of the student. He has marked the copies of these requisitions and the replies of the school and they are marked as Ext.R-3 to Ext.R-5. (d) R.W.3 is the assistant to Corporation and he has explained the procedure for including the name of the person whose birth has already been registered but without a name. He has further testified that only in 2011 that the petitioner herein has applied for registering the name of her son born in 1979 in the Register of Births maintained by the Corporation. He has produced the copy of the said application and the same is marked as Ext.R-7. He has further produced an extract of birth register maintained by the Corporation and the same is marked as Ext.R-8.

5. The submission, discussion and finding: (i) The Hon'ble High Court has directed this Court to determine the age of one Salavudeen, S/o.Syed Iqbal, life convict No.76888, detained in the Central Prison, Coimbatore. But in her testimony, P.W.1 has given the name of her son's name is Syed Hassain and adds that he is called Salavudeen in the house. However, the petitioner has not clarified that her son Syed Hassain has an alias name as Salavudeen, since the same does not find a place in the order of the Hon'ble High Court. This name difference gains relevance and significance because the school records namely Ext.R-1 and Ext.R-2 are issued in the name of Syed Hassain without an alias name, while in Ext.R-8, the Birth Register extract gives the name only as Salavudeen again without the official name Syed Hassain. Ext.P-2 is only an extract of Ext.R-8 and necessarily Ext.P-2 also gives the name of the person born to the petitioner Mahapoobjan on 04.12.1979 as Salavudeen. This would mean that the petitioner has created a

situation whereby this Court not only needs to ascertain the age of the detenu Salavudeen, but also whether Salavudeen and Syed Hassain are the same persons. (ii) As stated earlier, Exts.R-1 and Ext.R-2 give the name of the student as Syed Hassain while Ext.R-8 and Ext.P-2 give the name of the child as Salavudeen. Going by name, Ext.R-8 (=Ext.P-2) on the one hand and Ext.R-1 and Ext.R-2 on the other, there is obvious variance. In this context, the procedure adopted by the Corporation for inserting the name of a person if his birth has been registered without a name becomes relevant. This procedure is spoken to by R.W.3. According to him, when the Corporation receives an application for registering a name to the birth already registered, it would require the applicant to provide necessary documentary evidence to establish or ascertain that the name of the person is what he claims himself to be. If no documents are available, R.W.3 states that the Corporation would receive an affidavit from the applicant to this effect. In the present case, the Corporation has received one such affidavit from the petitioner Mahapoobjan and the same is marked as Ext.P-7. (iii) On going through Ext.P-7 affidavit, it is found that the petitioner has given the name of the child to her on 04.12.1979 only as Salavudeen. She has not stated that officially her son was named Syed Hassain.

6. In this setting, the learned counsel appearing for the petitioner submitted that the petitioner Mahapoobjan has given birth to only one child on 04.12.1979 and it has not been established by the State that she has delivered a baby on 23.05.1979. If that is so, the date of birth of detenu shall be reckoned as 04.12.1979 in which case he would be only 17 years 8 months and 28 days old on the date of occurrence on 02.09.1997.

7. The learned Prosecutor submitted that it is not established that Salavudeen and Syed Hassain are refers to same individual. Secondly as per the record sheet (Ext.R-1 and the one attached to R-2) which could have been prepared only at the instance of the father of the detenu himself, the latter had given the date of birth of his younger son as 23.05.1979. Father is a competent witness to speak about the date of birth of his son and hence the same should be accepted. He relied on the authority in Umesh Chandra Vs. State of Rajasthan (AIR 1982 SC1057. Thirdly, even in Ext.R-3 to 5, when birth certificate was applied by the detenu himself from

the prison, he has not referred to his official name Syed Hassain and it is specifically for this reason R.W.2 conveyed his inability to provide one.

8. To this the learned counsel for the petitioner submitted that it is not uncommon for the parents whose child is born after the commencement of the school year to advance his date of birth just to admit their child in school. The case on hand is an instance of this kind. He relied on the authorities in Mukesh Kumar Singh and another Vs. State of UP and another (2012 (1) Crime 439), Deepak Kumar Singh Vs. State of Jharkhand (2012 (1) Crimes 485), Om Prakash Vs. State of Rajasthan & another (2012 (2) Crimes 113).

9. Is Syed Hassain and Salavudeen are the same person?. And, here there is yet another alias name available for the detenu: When this Court verified the records of the S.C.No.110/1999, the name of the A-2 is given as Salavudeen alias Shanawaz. Therefore is the detenu's name Syed Hassain alias Salavudeen alias Shanawaz?. What then is his date of birth?.

10. It is not controverted that P.W.1 Mehaboobjan is the mother of the detenu. It has also emerged as an unscathed fact that she has given birth to only two sons. That her first son is Syed Suban is also not disputed. Therefore it only logically follows that the detenu is the second son of P.W.1. And Ext.R-8, the birth register extract produced from Corporation reconciles on two aspects: First as to the parents names of the child; and (b) its date of birth as on 04.12.1979. And Ext.R-8 (barring the name therein) was registered almost immediately on the information received from Corporation Maternity Home. This has to be preferred to the information that the father of Syed Hassain has given to the school some five years hence.

11. If P.W.1 has given birth to a child on 04.12.1979, it is inconceivable that she could have given birth to a male child some seven months earlier. And, it has not been established that she had delivered a son on 23.05.1979 too. Therefore, the younger son of P.W.1 was born only on 04.12.1979.

12. Next as to his name. As stated earlier there are at least three names available. One provided by the School (Syed Hassain), another provided by the petitioner

namely Salavudeen and yet another available on the records of the case, namely Shanawaz. If it is not disputed that the petitioner (P.W.1) is the mother of the detenu, and in the face of the evidence that she has only two sons of whom the detenu is the younger, and that if her younger son was born on 04.12.1979, then it is the detenu who was born on 04.12.1979. True, the names are at variance. But unless it is established by the State that P.W.1 had given birth to a third son also the only probable conclusion that could be arrived at is that Syed Hassain and Salavudeen are the same person.

13. In conclusion, this Court holds that Syed Hassain and Salavudeen refer to the same person and his date of birth is 04.12.1979. Accordingly as on the date of occurrence on 02.09.1997, he was 17 years 8 months and 28 days."

14. Learned counsel for the parties relied on a decision of the Supreme Court reported in 2011 (13) SCC751(Shah Nawaz Vs. State of Uttar Pradesh), relevant portion of which, reads as follows: ".23. The documents furnished above clearly show that the date of birth of the appellant had been noted as 18-6-1989. Rule 12 of the Rules categorically envisages that the medical opinion from the Medical Board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by any panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.

24. We are satisfied that the entry relating to date of birth entered in the mark sheet is one of the valid proofs of evidence for determination of age of an accused person. The school leaving certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the school leaving certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-o-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded

as 18-6-1989 in the school leaving certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-o-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said School at Sl.No.1382 which have been proved by the statement of the Principal of that School recorded before the Board.

25. Apart from the clerk and the Principal of the School, the mother of the appellant has categorically stated on oath that the appellant was born on 18-6-1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18-6-1989, hence her statement corroborated his academic records which clearly depose his date of birth as 18-6-1989. Accordingly, the appellant was a juvenile on the date of occurrence, that is, 4-6-2007 as alleged in the FIR dated 4-6-2007.

26. We are also satisfied that Rule 12 of the Rules which was brought in pursuance of the Act describes four categories of evidence which have been provided in which preference has been given to school certificate over the medical report.

27. In the light of the above discussion, we hold that from the acceptable records, the date of birth of the appellant is 18-6-1989, the Additional Sessions Judge and the High Court committed an error in taking a contrary view. While upholding the decision of the Board, we set aside the orders of the Additional Sessions Judge dated 13-1-2009 and the High Court dated 10-12-2010. Accordingly, the appellant is declared to be a juvenile on the date of commission of the offence and may be proceeded in accordance with law. The appeal is allowed."

15. Learned counsel for the parties also relied on a decision of a Division Bench of this Court reported in 2013 (2) MWN (Cr.) 48 (DB) in the case of Jayavelu Vs. State and two others (in H.C.P.No.385 of 2012, order dated 15.4.2013), relating to the same facts and circumstances of the case pertaining to a juvenile, wherein, the Division Bench, after relying upon various decisions of the Supreme Court, observed as follows: ".83. In granting relief to the petitioner, now we come to his case. Now he is more than 37 of years old. He is in jail for more than 14 years. As per Section 16 of New J.J.

Act, 2000, as he is a Juvenile in conflict with law at the time of commission of the offence, he cannot be sentenced to life. As per Section 15 of the said Act, at the most he can be detained in a Special Home for 3 years. Now, he is in jail for more than 14 years. Following the mandate of the law and the decisions of the Hon'ble Apex Court, the petitioner has to be released from jail.

84. In the result, this Habeas Corpus Petition is allowed. The Superintendent, Central Prison, Vellore is directed to release the petitioner from jail forthwith, if his further custody is no longer required in connection with any other case. In view of Section 19 of the Juvenile Justice (care and protection of children) Act, 2000, petitioner shall not incur any disqualification because of his conviction and the period of sentence undergone by him."

16. In order to consider the claim of juvenility of the detenu, it is significant to quote the relevant provisions of the Act/Rules, which reads as follows: Juvenile Justice (Care and Protection of Children) Act, 2000 (as amended): Section 2: Definitions.-- In this Act, unless the context otherwise requires,-- (k) ".juvenile". or ".child". means a person who has not completed eighteenth year of age; (l) ".juvenile in conflict with law". means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence; Section 7-A: 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 recognised 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 order, and the sentence, if any, passed by a Court shall be deemed to

have no effect. Section 19: Removal of disqualification attaching to conviction:--(1) Notwithstanding anything contained in any other law, a juvenile who has committed an offence and has been dealt with under the provisions of this Act shall not suffer disqualification, if any, attaching to a conviction of an offence under such law. (2) The Board shall make an order directing that the relevant records of such conviction shall be removed after the expiry of the period of appeal or a reasonable period as prescribed under the rules, as the case may be. Section 49: Presumption and determination of age:- (1) Where it appears to a competent authority that person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be. (2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of this Act, be deemed to be the true age of that person. The Juvenile Justice (Care and Protection of Children) Rules, 2007: Rule 12: Procedure to be followed in determination of age:--(1) In every case concerning a child or a juvenile in conflict with law, the Court or the Board, as the case may be, the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose. (2) The Court or the Board or, as the case may be, the Committee shall decide the juvenility or otherwise of the juvenile or the child or, as the case may be, the juvenile in conflict with law, prima facie on the basis of physical appearances or documents, if available, and send him to the observation home or in jail. (3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board or, as the case may be, the Committee by seeking evidence by obtaining--- (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof; (ii) the date of birth certificate from the school (other than a play school) first attended; and in the

absence whereof; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat; (b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii),(iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law. (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the Court or the Board or, as the case may be, the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned. (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7-A, section 64 of the Act and these rules, no further inquiry shall be conducted by the Court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule. (6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

17. It is also significant to refer to a catena of decisions of the Honourable Supreme Court, on the claim of juvenility. (i) In **PRADEEP KUMAR Vs. STATE OF UTTAR PRADESH** [1995 SCC (Cri) 395].., a three-Judge Bench of the Hon'ble Apex Court finding that the accused was below 16 years of age on the date of commission of offence, held that as per the then provisions of Uttar Pradesh Children Act, he cannot be sentenced to life and as the accused had crossed 30

years, directed his release from Jail. (ii) In UPENDRA KUMAR Vs. STATE OF BIHAR, [2005 (3) SCC592, in a Criminal Appeal, under similar circumstances, the Honourable Supreme Court after coming to the view that now referring the Juvenile in conflict of law to the Juvenile Justice Board does not arise, sustained the conviction under Section 302 IPC, however, quashed his life sentence and ordered his release from jail. (iii) In VANEET KUMAR GUPTA @ DHARMINDER Vs. STATE OF PUNJAB, [2009 (17) SCC587, the accused who was sentenced to life under Section 302 r/w 149 of IPC was found to be a juvenile at the time of commission of the offence; hence, the Honourable Supreme Court noticing the fact that he is in jail for several years, directed his release from jail. (iv) Similar view was taken by the Honourable Supreme Court in SATISH @ DHANNA Vs. STATE OF MADHYA PRADESH AND OTHERS, [2009 (14) SCC187 and in VIKRAM SINGH Vs. STATE OF HARYANA [2009 (13) SCC645. (v) In DHARAMBIR Vs. STATE (NCT OF DELHI), [2010 (2) SCC344, the appellant was sentenced to life, in the course of his Criminal Appeal before the Honourable Supreme Court; in the enquiry conducted, it was found that at the time of commission of the offence, he was below 18 years of age and was a juvenile in conflict with law and by the time his appeal reached the Honourable Supreme Court, he had reached 35 years of his age and had spent 2 years, 4 months and 4 days in jail. So, even as per Section 15 of the New J.J.

Act, 2000, he has to be sent to the Special Home for the balance 8 months. However, the Honourable Apex Court, noticing that sending him to Special Home will not be in the interest of other juveniles in the Home, directed his release from jail. (vi) In BHIM @ UTTAM GHOSH Vs. STATE OF WEST BENGAL, [2010 (14) SCC571, the appellant was sentenced to 5 years rigorous imprisonment. It was established before the Honourable Supreme Court that on the date of offence, he was a juvenile in conflict with law and he is entitled to the benefit of New J.J.

Act, 2000 and by that time, he has become 42 years old. But, he was in jail for less than 3 years. In the circumstances, the Apex Court did not detain him in jail for the remaining period but directed his release from jail. (vii) In MOHANA MALI Vs. STATE OF MADHYA PRADESH [2010 (6) SCC669, the petitioner was sentenced to life under Section 302 I.P.C by the trial Court and it was confirmed by the High

Court. During his plea for appeal bail before the Apex Court, plea of juvenility was raised by him and it was accepted by the Hon'ble Apex Court and he was granted bail and expeditious disposal of his appeal was ordered. (viii) In LAKHAN LAL Vs. STATE OF BIHAR [2011 (2) SCC251, the accused who was sentenced to life under Section 302 r/w 34 of IPC was found to be a juvenile in conflict with law at the time of his commission of the offence. By the time, when his appeal reached the Honourable Supreme Court, he had crossed 40 years of his age and he was in jail for more than 7 years. Under such circumstances, referring to DHARAMBIR's case (supra), the Honourable Supreme Court set aside his life sentence and directed his release. (ix) In AMIT SINGH Vs. STATE OF MAHARASHTRA & ANOTHER [2011(13)SCC744, the accused was found guilty under Sections 396, 506, 341, 379 r/w 120-B of IPC and Section 25(1-B) , 5 r/w 27 of the Arms Act. Apart from other sentences of imprisonment, he was also sentenced to life and his sentences were confirmed by the Bombay High Court in the Criminal Appeal filed by him and the Honourable Supreme Court also dismissed his Special Leave Petition (Criminal). Subsequently, he filed a Writ Petition (Criminal) before the Honourable Supreme Court under Article 32 of the Constitution of India and claimed juvenility and his claim was considered and he was found to be eligible for benefit under the New J.J.

Act, 2000 and by the time he has been in jail for 12 years. In the circumstances, the Honourable Supreme Court held that since he was in jail for more than the maximum period for which a juvenile may be confined in a Special Home, directed his release from jail. (x) In VICTORIA (supra) and in PATTAMMAL Vs. INSPECTOR OF POLICE, THEPPAKULAM POLICE STATION, MADURAI DISTRICT AND ANOTHER [2012 (2) MLJ (CrI.) 624]., in the Habeas Corpus Petitions filed by the life convicts after dismissal of their Criminal Appeals by this Court when they have established that they were juveniles in conflict with law at the time when the offences were committed by them and have spent more than 3 years in jail and have also crossed 18 years of their age long back, the Court directed their release from jail. (xi) In SURESH @ SURESH KUMAR Vs. INSPECTOR OF POLICE AND OTHERS [2012 (4) MLJ (CrI) 194]., since on the date of the commission of offence, the petitioner, who was ultimately, awarded life sentence by the Hon'ble Apex Court was a Juvenile in conflict with law within the

meaning of New J.J.

Act, 2000 and he was 43 years old and had spent 13 years in jail, this Court directed his release from jail. (xii) In *S.MADHESWARAN Vs. STATE OF TAMIL NADU* [2012 (Cri) L.J.

4398]., this Court referring to *HARI RAM* (supra) and *AMIT SINGH* (supra), and a three-Judge bench decision of the Hon'ble Apex Court in *BABBAN RAI AND ANOTHER Vs. STATE OF BIHAR* [AIR 2008 SC (Supp) 356]., the appellant having been entitled to the benefit under Juvenile Justice (Care and Protection of Children) Act, 2000 and already he had attained majority directed his release from jail. (xiii) In *KALU @ AMIT Vs. STATE OF HARYANA* [2012 (3) SCC (Cri) 761]., the Hon'ble Apex Court while confirming the conviction of the appellant by the Trial Court under Section 302 r/w 34 I.P.C, since the appellant was a Juvenile in conflict with law within the meaning of New Juvenile Justice (Care and Protection of Children) Act, 2000 on the date when the offence was committed, he was already in Jail for 9 years and attained his majority long back directed his release from jail and also noticing Section 19 of the J.J Act 2000 held that he shall not incur any disqualification because of its order. (xiv) In *VIJAY SINGH Vs. STATE OF DELHI* [2012(3) SCC (Cri) 1044]., the appellant who was convicted to 5 years rigorous imprisonment under Section 307 IPC, claimed that he was a Juvenile in conflict with law on the date of commission of offence and the Hon'ble Apex Court on the basis of the date of birth mentioned in his School Leaving Register and his Original Admission Register accepted his plea of juvenility and noticing that the appellant is in jail for more than 3 years directed his release from jail. (xv) In *BABLA @ DINESH Vs. STATE OF UTTARAKHAND* [2012 (3) SCC (Cri) 1067]., the appellant was sentenced to life under Section 302 r/w 149 I.P.C and on the basis of the report of the Sessions Judge, the Court accepted that the appellant was Juvenile in conflict with law on the date of commission of offence and since he was in jail for more than 3 years out of the maximum period prescribed under Section 15 of New J.J.

Act, 2000, set aside his life sentence and directed his immediate release from jail.

18. In view of the above decisions of the Supreme Court and this Court and bearing in mind the above provisions of the Act/Rules and taking into account the facts and circumstances of the case, while considering the relief sought for by the petitioner for setting the detenu at liberty, as he is now aged 34 years and is in jail for more than 13 years, as per Section 2(l) of the Act, as he was a ".juvenile in conflict with law". at the time of commission of offence, he cannot be sentenced to life and as per Section 15 of the Act, at the most, he could be the kept in Special Home for three years and as already he has been in jail for more than 13 years and following the mandate of law and the decisions rendered by the Apex Court, we consider it appropriate that the detenu has to be set at liberty forthwith, as he was ".a juvenile in conflict with law". as per Section 2(l) of the Act, the date of commission of offence being 2.9.1997 and his date of birth being 4.12.1979 and his age was 17 years, 8 months and 28 days on the date of commission of offence, which has been confirmed by a roving enquiry conducted by the learned District Judge, who submitted the enquiry report, as quoted above.

19. The Constitution of India, has in several provisions including clause (3) of Article 15, clause (e) and (f) of Article 39, Articles 45 and 47 imposed on the State the primary responsibility of ensuring that all the needs of children are met and their prescribed human rights are fully protected. Further, rights of children have been protected in the national conventions and treaties. The United Nations adopted a convention on the rights of child and prescribed a set of standards to be adhered to by all the State authorities in securing the interest of the child. Further, it emphasized the social re-integration of child victims to the extent possible without resorting to judicial proceedings. On the above stated principles, the Juvenile Justice (Care and Protection of Children) Act, 2000 has been enacted and accordingly, it has brought certain rights from the earlier Act, namely, Juvenile Justice Act, 1986.

20. The Juvenile Justice (Care and Protection of Children) Act,2000, was brought into force on 01.04.2001. The Act was aimed at providing a juvenile justice system for juveniles in conflict with law and children in need of care and protection by adopting a child friendly approach in the adjudication and disposition of matters in the best interests of children and for their rehabilitation keeping in view the

developmental needs of the children.

21. As per Section 2 (h) of the old Juvenile Justice Act, 1986, the detenu herein, who had not completed 18 years of age as on the date of commission of offence, is not a juvenile. But, as per Section 2(k) of the new Juvenile Justice Act, 2000, he is a juvenile. On the date of offence, namely, 02.09.1997, he was below 18 years of age but, subsequently he had crossed 18 years of age and before 01.04.2001, he was above 18 years of age. As per Section 2 (l) of the new Act, he is a juvenile in conflict with law.

22. In *Hari Ram v. State of Rajasthan and another*, 2009 (13) SCC 211 the Supreme Court has widened the scope of new Act, 2000. In the light of the Amendment Act 33 of 2006, the Apex Court viewed the applicability of the new Act to the juveniles, who have committed the offence, when they were aged below 16 years, but have subsequently crossed 18 years of age on or before 01.04.2001. It was also held therein that if the juvenile in conflict with law was below 18 years when the offence was committed and subsequently he had crossed 18 years on or before 01.04.2001, still the juvenility can be claimed. So, as per the said case, even now, the detenu can raise his juvenility at the time when he committed the offence and seek the benefits under the new Act. Therefore, the new Act as amended by Act 33 of 2006, has retrospective operation to the offences committed before 01.04.2001.

23. The new Act 2000 covers the cases under the old Act 1986 even subsequent to the date of the offence when the juvenile in conflict with law had crossed 18 years of his age. If a juvenile, who has committed an offence, when he was below 18 years of age, even after disposal of his case and even after crossing his 18 years of age, as per Section 7-A and explanation to Section 20, can claim juvenility at any stage of the case, trial, revision, appeal or in any other criminal proceedings. Hence, even if the case is over in the trial Court or in the next Appellate Court or Revisional Court or even in the Supreme Court, subsequently, in an independent proceeding, for the first time, the ex-juvenile in conflict with law can claim benefit under the new Act, 2000, based on his juvenility on the date of his commission of the offence.

24. In the light of the above stated legal position and the Act being a beneficial Legislation and having considered the fact that on the date of occurrence, the detenu--Salavudeen/Shanawaz/Syed Hassain, was a 'juvenile in conflict with law' as per Section 2(l) of the Act, the detenu-- Salavudeen/Shanawaz/Syed Hassain, is directed to be set at liberty forthwith. The second respondent-Superintendent of Prison, Central Prison, Coimbatore is directed to release the detenu-- Salavudeen/Shanawaz/Syed Hassain, forthwith from jail, unless his custody is required in connection with any other case. In view of Section 19 of the Act, the detenu shall not incur any disqualification because of his conviction and the period of sentence undergone by him. Habeas Corpus Petition is allowed. cs/abe To :

1. The Secretary to Department of Home, Secretariat, St.George Fort, Chennai-9.
2. The Superintendent, Central Prison, Coimbatore-18.
3. The Inspector of Police, B.1 Bazaar Police Station, Coimbatore.
4. The Public Prosecutor High Court of Madras Chennai 600 104

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