

Manoj Kumar Vs. the State, Nct

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Court : Delhi

Decided On : Nov-08-2006

Reported in : 2009(93)DRJ693

Judge : Badar Durrez Ahmed, J.

Acts : Juvenile Justice (Care and Protection of Children) Act, 2000 - Sections 2 and 12; Bihar Children Act, 1982; ;[Juvenile Justice Act, 1986](#); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 439 and 482

Appeal No. : Bail Appln No. 3668/2006

Appellant : Manoj Kumar

Respondent : The State, Nct

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Sunil Kumar and; Anil Kumar, Advs

Judgement :

Badar Durrez Ahmed, J.

1. This application for bail under Section 439 of the Code of Criminal Procedure, 1973 has been moved because the application filed before the learned Additional Sessions Judge was dismissed by an order dated 19.09.2006.

2. When the application for bail was argued before the learned Additional Sessions Judge, a plea was taken that the petitioner was a juvenile at the time of the alleged incident. So, the decision of the bail application rested on two different considerations. The first consideration being as to whether the petitioner was a juvenile. The second consideration being on the merits of the matter, treating the application as a regular application for bail under Section 439 Cr.P.C de hors the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000. What has happened is that an enquiry was conducted by the learned Additional Sessions Judge in respect of the certificates submitted by the petitioner which included his school certificate as well as the school certificates of his elder sister to indicate that the petitioner was a juvenile. The enquiry that was directed to be conducted was so conducted for a period of about one month by the Investing Officer and he went on to verify these school certificates from different schools and submitted his report. According to the learned Counsel for the petitioner, the school certificates of the petitioner as well as those of his elder sister stood verified as being genuine. He further submits that if those school certificates are taken to be genuine, then, according to them, the petitioner would be a juvenile on the date of the incident, i.e., on 30.07.2003. In the school certificate the date of birth of the petitioner has been shown as 10.04.1986, which would make him about a little over 17 years of age on the date of the incident, which would be covered under the definition of 'juvenile' as given in Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. The learned Counsel for the petitioner as well as the learned Counsel for the State were heard. A reading of the order passed by the learned Additional Sessions Judge would be necessary in this case because it is not, as indicated above, a simple case of consideration of grant of bail under the provisions of Section 439 Cr.P.C simpliciter. Along with the normal considerations, which a court has to keep in mind for grant of bail, in this case, the added consideration is as to whether the petitioner was a juvenile or not. It is well settled that if the petitioner is regarded as a juvenile, then his bail application would have to be considered in terms of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2000. On the other hand, if he is to be regarded as an adult and not a juvenile within the meaning of the said Act, then the consideration for bail would

be entirely on the principles of Section 439 Cr.P.C simpliciter. In the order of the learned Additional Sessions Judge, a finding has been returned, rejecting the plea of minority, raised by the petitioner. However, while going into this finding, the learned Additional Sessions Judge has observed that since this plea was raised after three years, when the case was reaching its end, the same could not be entertained. The exact words used by the learned Additional Sessions Judge while rejecting the plea of the petitioner, read as under:

.so, at this stage the claim of the applicant with regard to his minority cannot be believed in the absence of any original birth certificate produced Contemptuously with the school authorities despite undertaking to produce the same within stipulated period and keeping in view the gravity of the offence and late claim of minority, no benefit can be given to accused at this stage when case is at its final leg and only three witnesses remain to be examined. As such plea of minority is rejected.

Having rejected the plea of minority, the application of the petitioner for bail was considered on merits under Section 439 Cr.P.C and rejected.

4. The extract from the order of the learned Additional Sessions Judge clearly goes to show that this is not a correct appreciation of the law on the point. The learned Counsel for the petitioner has correctly placed reliance on the decision of the Supreme Court in *Bhola Bhagat v. State of Bihar* AIR 1998 SC 236 wherein the Supreme Court observed as under:

8. To us it appears that the approach of the High Court in dealing with the question of age of the appellants and the denial of benefit to them of the provisions of both the Acts was not proper. Technicalities were allowed to defeat the benefits of a socially oriented legislation like the Bihar Children Act, 1982 and the [Juvenile Justice Act, 1986](#). If the High Court had doubts about the correctness of their age as given by the appellants and also as estimated by the trial Court, it ought to have ordered an enquiry to determine their ages. It should not have brushed aside their plea without such an enquiry.

In the very same judgment, the Supreme Court referred to its earlier decision in the case of Gopinath Ghosh v. State of West Bengal : 1984 CriLJ168 as well as its decision in the case of Bhoop Ram v. State of U.P. : 1990 CriLJ2671 , wherein the question of age of the child/ juvenile was considered even at the appellate stage and before the Supreme Court itself. As observed in Gopinath Ghosh (supra), it would not be appropriate to allow a technical condition that this contention is being raised before a higher court or at a later stage, for the first time, to thwart the benefit of the provisions being extended, if he was otherwise entitled to the same under the Juvenile Justice (Care and Protection of Children) Act, 2000. The aforesaid decisions of the Supreme Court make it more than clear that if an accused was a juvenile, as defined in Section 2(k) of the said Act, on the date of the incident, then it does not matter at which stage the plea is raised. He would be entitled to get all the benefits provided under the said Act.

5. In this respect, I find that the learned Additional Sessions Judge, has completely misread the provisions of law by considering the technical objection that the plea was being raised at a belated stage. It is once again made clear that the plea of being a juvenile can be raised at any stage as has been repeatedly held by the Supreme Court. Once a plea is raised, an enquiry must be made and if the enquiry reveals that the person is a juvenile at the time of commission of the offence he is entitled to all the benefits under the beneficial legislation of Juvenile Justice (Care and Protection of Children) Act, 2000. In this case, what has weighed with the learned Additional Sessions Judge is the timing of the plea of juvenility. Apart from this, he has simply brushed aside the school certificates, which have also been verified by the Investigating Officer as being genuine. It is not at all necessary that the birth certificate must be produced by a person claiming to be a juvenile. There are other pieces of evidence which can be looked into and certainly the school certificate is one such piece of evidence. Apart from this, the Sessions Court could have asked for the ossification report of the petitioner to determine his approximate age, so as to corroborate the school certificate. That has also not been done in the present case.

6. Since the order of the learned Additional Sessions Judge, rejecting the bail application of the petitioner impinges upon the provisions of Juvenile Justice (Care

and Protection of Children) Act, 2000, this application for bail is also treated as a petition under Section 482 Cr.P.C and invoking the inherent powers of this Court, I direct that the order is set aside. The matter is remanded to the learned Additional Sessions Judge for considering the question of minority of the petitioner. He shall take into account the school certificates that have already been placed on record and established to be genuine by the Investigating Officer. In addition, for and by way of corroboration, he may require an ossification report from the competent authority for the purpose of corroboration. The enquiry into the age of the petitioner be conducted expeditiously and be concluded within one month. If, after that, it is found that the petitioner was a juvenile on the date of the offence, then he shall be dealt with in terms of the said Act.

This application stands disposed of.

A copy of this order be sent to the trial court.

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