

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.4.2013

CORAM

THE HONOURABLE MR . JUSTICE K.N.BASHA

AND

THE HONOURABLE MR. JUSTICE P.DEVADASS

H.C.P.No.385 of 2012

Jayavel

.. Petitioner

Versus

1. The State rep. by Secretary to Govt., Home Dept, Fort St. George, Chennai-9.
2. The Addl. Director General of Prisons, Egmore, Chennai-8
3. The Superintendent, Central Prison, Cuddalore.
4. The Inspector of Police, N-2, Kasimedu Police Station, Chennai. Respondents

Prayer:- Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a Writ of Habeas Corpus directing the respondents to produce the detinue T.Jayavel, now confined in Central Prison, Cuddalore, before this Court and declare him a Juvenile in conflict with law and set him at liberty.

For Petitioner: Mr.P.Kumaresan for Mr. K. Ilayaraja

For Respondents: Mr.A.N.Thambidurai, Additional Public Prosecutor

O R D E R

(Order of the Court was made by P.DEVADASS, J.)

Petitioner, Jayavelu, a lifer, now lodged in Central Prison, Vellore, seeks his release from jail, on the ground that on the date when the offence was committed, he was a juvenile in conflict with law.

2. In Kasimedu, Chennai, Prabhu and Raghu were illicit drug dealers. There was business rivalry between them. On **30.6.1992**, at about 11.30 a.m., in Kasikuppam, in Kasimedu, Prabhu, petitioner Jayavelu and others have stabbed Raghu to death. N-2, Kasimedu Police registered a case in Cr.No.2409 of 1992 under Section 302 and certain other sections of Indian Penal Code. A1 to A8 were prosecuted before the learned IV Additional Sessions Judge, Chennai in Sessions Case in S.C.No.213/1994. Among them, Jayavelu is A2. Ultimately, A8 was acquitted and A1 to A7 were sentenced to life under Section 302 r/w 149 I.P.C. Aggrieved, the convicted persons have appealed to this Court in CrI.A.No.244 of 1995. On 1.10.2002, a Division Bench of this Court dismissed their appeal and confirmed the conviction and sentences. In the Hon'ble Supreme Court, petitioner filed Special Leave Petition and CrI.M.P.No.5181 of 2003 to condone the delay. However, on 10.7.2003, they were dismissed.

3. Mr.P.Kumaresan, learned counsel for the petitioner submits that the petitioner was born on 3.1.1976, on the date of commission of the offence, namely, 30.6.1992, he was 16 years, 5 months and 27 days old, as per Section 2(l) r/w 2(k) of the Juvenile Justice (Care and Protection of Children) Act,2000, he is a "juvenile in conflict with law" and as such as per its Section 15, he cannot be sentenced to life and now he is 37 years old and he is in jail for more than 14 years, so, he may be set at liberty. In support of his submissions, Mr.P.Kumaresan, read to us several provisions of the said Act and also certain decisions on the point.

4. Mr.A.N.Thambidurai, learned Additional Public Prosecutor would submit that till the disposal of the Special Leave Petition by the Hon'ble Supreme Court, petitioner did not raise such a plea. Mr.Thambidurai pointed out that first of all,

the petitioner must establish that at the time of commission of the offence petitioner was a juvenile in conflict with law.

5. In **PRATAP SINGH Vs. STATE OF JHARKHAND AND ANOTHER [2005 (3) SCC 551]**, as regards the Juvenile Justice Legislation, the Honourable Supreme Court observed as under:-

"48. The purpose of the Juvenile Justice Legislation is to provide succour to the children who were being incarcerated along with adults and were subjected to various abuses. It would be in the fitness of things that appreciation of the very object and purpose of the legislation is seen with a clear understanding which sought to bring relief to juvenile delinquents."

6. In **HARIRAM Vs. STATE OF RAJASTHAN AND ANOTHER [2009 (13) SCC 211]**, as regards Juvenile Justice Legislation, the Honourable Apex Court observed as under:-

"3. The very scheme of the aforesaid Act is rehabilitatory in nature and not adversarial which the courts are generally used to. The implementation of the said law, therefore, requires a complete change in the mind-set of those who are vested with the authority of enforcing the same, without which it will be almost impossible to achieve the objects of the Juvenile Justice Act, 2000.

16. As indicated in the very beginning of this judgment, the Juvenile Justice Act, 2000, was enacted to deal with offences allegedly committed by juveniles on a different footing from adults, with the object of rehabilitating them. The need to treat children differently from adults in relation to commission of offences had been under the consideration of the Central Government ever since India achieved independence. With such object in mind, Parliament enacted the Juvenile Justice Act, 1986, in order to achieve the constitutional goals contemplated in Articles 15(3), 39(e) and (f), 45 and 47 of the Constitution imposing on the State a responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

17. Subsequently, in keeping with certain international Conventions and in particular the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, commonly known as the Beijing Rules, the Legislature enacted the Juvenile Justice (Care and Protection of Children) Act, 2000"

7. In **ABUZAR HOSSAIN @ GULAM HOSSAIN Vs. STATE OF WEST BENGAL [2012(10 SCC 489)]** a three-Judge Bench of the Hon'ble Supreme Court while referring to the object behind the New J.J. Act, 2000 observed as under:

" The 1986 Act was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short " the 2000 Act"). The 2000 Act has been enacted to carry forward the constitutional philosophy engrafted in Articles 15(3), 39(e) & (f), 45 and 47 of the Constitution and also incorporate the standards prescribed in the Convention on the Rights of the Child, United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985, the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990) and all other relevant international instruments."

8. On 7.4.2013, in New Delhi, in the conference of Chief Ministers and Chief Justices of the High Courts, Hon'ble Mr. Justice Altamas Kabir, Chief Justice of India, who authored the judgment in the celebrated HARIRAM Vs. STATE OF RAJASTHAN, (2010(1) SCC (Cr.) 987), while stressing the need to strengthen the Juvenile Justice System said that "the country could face chaos if it did not provide adequate protection and care to children, especially those in conflict with law. Juvenile Justice System was the result of great deal of thinking by nations across the world and has to be implemented in letter and spirit. The Juvenile Justice (Care and Protection of Children) Act, 2000 deals with protection and care of children who are in conflict with law and are generally not from the elite society." [See THE NEW INDIAN EXPRESS dated 8.4.2013]

9. In **OM PRAKASH Vs. STATE OF RAJASTHAN AND ANOTHER [2012 (2) CRIMES 113 (SC)]**, the Hon'ble Supreme Court observed as under:-

"18. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled for this special protection under the Juvenile Justice Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts

are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice. Hence, while the courts must be sensitive in dealing with the juvenile who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences, the accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority."

10. A three-Judge Bench of the Hon'ble Supreme Court in **PAWAN Vs. STATE OF UTTARANCHAL, [2010 (2) SCC (Cri) 522]** emphasized the need for satisfactory, adequate and prima facie material before ordering enquiry to determine the age of the claimant.

11. In ABUZAR HOSSAIN(supra), the Hon'ble Apex Court observed as under:-

"Where the materials placed before the Court by the accused, prima facie, suggested that he was a juvenile in conflict with law on the date of occurrence, then it was necessary to call for a report or order an enquiry to be made or order for determination of the age on the date of the incident. However, where plea of juvenility is found scrupulous or the materials lack credibility or do not inspire confidence even prima facie satisfaction of the court is not made out, further exercise in this regard may not be required. In the absence of adequate material, any further enquiry into juvenility would not be required."

12. In the circumstances, on 7.3.2012, this Court directed the IV Additional Sessions Judge, Chennai to conduct enquiry to determine the age of the petitioner, on the date of occurrence, namely, on 30.6.1992. Accordingly, enquiry report was submitted. On 1.7.2012, we have directed further enquiry. Thereafter, after further enquiry, on 14.8.2012, the Inquiring Judge submitted his report.

13. We have anxiously considered the submissions made by both sides, perused petitioner's affidavit and the Report of the Inquiring Judge, the several provisions of Juvenile Justice Act, 1986 (shortly, hereinafter, Old J.J.Act, 1986) and the Juvenile Justice (Care and Protection of Children) Act, 2000 (shortly, hereinafter, the New J.J. Act, 2000) as amended by Act No.33 of 2006 and several decisions on Juvenile Justice Legislation.

14. A child, juvenile, a young person, who commits a crime should not be treated on par with adult offenders. The mental frame of a juvenile, who commits a 'delinquent act' is different from the mental element of an adult accused. So, necessarily they have to be treated differently.

15. Till 1986, each State had its own enactment to deal with 'juvenile delinquency'. In 1986, Juvenile Justice Act, 1986, a uniform Central Act was passed. This is a major enactment in this field. It was replaced by the current Act, namely, the Juvenile Justice (Care and Protection of Children) Act, 2000. It came into being with effect from 1.4.2000. Certain important provisions were added to it by Amendment Act No.33/2006.

16. In Section 2(h) of the Old J.J. Act, 1986 different age limit has been prescribed for male and female juveniles. Under the Old Act, a male, who is below 16 years of age and a female, who is below 18 years of age are Juveniles. However, the New J.J. Act, 2000 has removed this age disparity. As per its Section 2(k), a uniform age, namely, below 18 years has been prescribed both for the male and female Juveniles. As per Section 2(l) of the New J.J. Act, 2000, a Juvenile when commits a crime becomes a 'Juvenile in conflict with law'. A Juvenile with a 'deviant behaviour', namely, a delinquent Juvenile, under the New J.J. Act, 2000 is a 'juvenile in conflict with law'. Whatever might be the nature of the offence committed by a Juvenile, he cannot be tried before a regular Court. He cannot be tried along with adult accused (see Section 18). The 'delinquency' of a Juvenile is to be enquired into by a specially constituted 'Juvenile Justice Board' composed of persons having expertise in child welfare and child psychology (see Sections 4, 5 and 14). Whatever might be the nature of the offence, whether bailable or non-bailable, bail is the rule and detention in an Observation Home is the exception (see Sections 12 and 8). No death sentence or life sentence could be awarded to a Juvenile in conflict with law, he cannot be kept in a prison for default in payment of fine or in default of furnishing security (see Section 16,). **No security bond for keeping good behaviour and peace shall be obtained from him**(See Section 17 of the Act and Chapter VIII, Cr.P.C.). At the most, he can be detained in a Special Home up to three years. **In no case he shall be jailed along adult accused. (see Sections 15, 9).** Instead of awarding him punishment various kinds of

rehabilitative measures also have been prescribed in the Act (see Section 15). Conviction under J.J. Act is not a disqualification.(See Section 19). Details of juvenile shall not be published in any media (See Section 21). Injuring a juvenile is punishable (See Section 23).

17. J.J. Act is a child oriented, child-friendly and a piece of Welfare Legislation containing various beneficial measures for the rehabilitation of young persons having deviant behaviour and it completely prohibits awarding them death sentence, life sentence and detention beyond 3 years.

18. In **HARIRAM** (supra), as regards the scheme under the New J.J. Act,2000, the Hon'ble Supreme Court observed as under:-

"57.As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals."

19. Another kindred enactment intended to rehabilitate young offenders is Borstal Schools Act. In this State, it is Tamil Nadu Borstal Schools Act, 1925. As regards eligibility to claim benefit, rehabilitation and the correctional measures under the Act different parameters have been prescribed.

20. There is distinction between Juvenile Justice Act and Borstal Schools Act. J.J. Act is intended to deal with 'Juveniles in conflict with law'. A Juvenile is one either male or female, below 18 years of age. The parallel enactment is Tamil Nadu Borstal Schools Act, 1925. Though their object is same, they differ in their schemes. Under J.J. Act, the crucial date is 'date of commission of the offence'. But, under the Borstal Schools Act, 'it is date of conviction'. Under J.J. Act, on the date when the offence was committed the 'juvenile in conflict with law' must be 'below 18 years', whereas under the Borstal Schools Act, on the date of conviction the 'adolescent offender' must be 'above 18 years but below 21 years'. Under the

J.J. Act, at the most, a Juvenile in conflict with law can be detained in a Special Observation Home up to 3 years whereas under the Borstal Schools Act, an 'adolescent offender' shall be kept in a Borstal School for not less than 2 years, but not more than 5 years but in no case beyond 23 years of his age (See S.VICTORIA Vs. INSPECTOR OF POLICE, THIRUVADANAI POLICE STATION, RAMANATHAPURAM DIST. AND ANOTHER [2012 (2) MLJ (Cr.) 520 = 2012 (2) MWN (Cr.) 1 (D.B).

21. The most important aspect is the relevant date, the cut off date, to consider the eligibility of a juvenile in conflict with law to have the benefits provided under the J.J. Act.

22. In **UMESH CHANDRA Vs. STATE OF RAJASTHAN [1982 (2) SCC 202]**, a three-Judge Bench of the Honourable Supreme Court while dealing with the case of a delinquent child under the Rajasthan Children Act, 1970 held that the eligibility to claim benefit under the Act has to be decided on the date when the offence was committed.

23. In **UMESH SINGH AND ANOTHER Vs. STATE OF BIHAR [2000 (6) SCC 89]**, while dealing with the case of a delinquent child under the Bihar Children Act, 1970 the Honourable Supreme Court followed **UMESH CHANDRA** (supra).

24. However, in **ARNIT DAS Vs. STATE OF BIHAR [2000 (5) SCC 488]**, while dealing with the case of a juvenile under the Juvenile Justice Act, 1986, a two-Judge Bench of the Honourable Supreme Court held that the relevant date to have the benefits under the said Act is the date on which the accused was brought before the Court or the Juvenile Justice Board.

25. In **UMESH CHANDRA** (supra), it was held that the age of the accused on the date of commission of the offence is relevant, while in **ARNIT DAS** (supra), it is the date of trial.

26. **This controversy necessitated the constitution of a five-Judge Constitution Bench of the Honourable Supreme Court in PRATAP SINGH Vs. STATE OF JHARKAND AND ANOTHER [2005 (3) SCC 551].**

27. The Constitution Bench resolved the controversy and held that to have the benefit under the Juvenile Justice Act, 1986, the age of the accused on the date of commission of the offence is relevant and thus **overruled ARNIT DAS** (supra). And thus, **UMESH CHANDRA (supra) was restored.**

28. By the time when PRATAP SINGH (supra) came to be decided the New Juvenile Justice (Care and Protection of Children) Act, 2000 came to be passed. As already stated it prescribed a uniform age limit of below 18 years both for male and female Juveniles. The Act was brought into force with effect from 1.4.2001.

29. In the circumstances, in PRATAP SINGH (supra), the Constitution Bench also held that the provisions of the New J.J. Act, 2000 would be applicable to cases initiated and pending for enquiry under the Old J.J. Act, 1986 provided the juvenile has not completed his 18 years of age as on 1.4.2001.

30. Thus, PRATAP SINGH (supra) had excluded the application of New J.J. Act to the cases pending under the Old J.J. Act, 1986 in which the juveniles have attained 18 years of age by 1.4.2001. The New J.J. Act, 2000 will not be applicable to the cases which were pending before the enforcement of New J.J. Act, 2000, namely, 1.4.2001. So, as per PRATAP SINGH (supra), with respect to the cases under the Old J.J. Act, 1986, the New J.J. Act, 2000 has only retrospective operation.

31. In *BIJENDER SINGH Vs. STATE OF HARYANA AND ANOTHER* [2005 (3) SCC 685] and in *SATBIR SINGH AND OTHERS Vs. STATE OF HARYANA* [2005 (12) SCC 72], following the Constitution Bench decision in *PRATAP SINGH* (supra) the Honourable Supreme Court held that the provisions of New J.J. Act, 2000 raising the age of male Juvenile from 16 years to 18 years is applicable to the cases under Old J.J. Act, 1986, if the accused was below 18 years of his age as on 1.4.2001.

32. So, in order to cover the cases of juveniles, who are below 18 years of age at the time of commission of offence and have crossed 18 years of their age, by 1.4.2001, it has become necessary to make suitable amendment in the New J.J. Act, 2000.

33. Thus, the fall out of *PRATAP SINGH* (supra) is the insertion of an Explanation to Section 20 and Section 7-A to the New J. J. Act, 2000 through the Amendment Act No.33 of 2006.

34. It is apposite here to note the said Section 7A and Explanation to Section 20. They runs as under:-

"Section 7A. 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 recognized 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..

(emphasis supplied by us)

"Section 20. Special provision in respect of pending cases.- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.

Explanation:In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of section 2, even if the juvenile ceases to be so on or before the date of commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed.

(emphasis supplied by us)

35. Even after the amendments, based on the earlier Constitution Bench decision in PRATAP SINGH (supra) some Courts have held that the New J.J. Act, 2000 has only retrospective operation and did not apply the Act to those Juveniles who have attained 18 years of their age by 1.4.2001.

36. Then came the landmark Judgment of the Honourable Supreme Court in HARI RAM Vs. STAE OF RAJASTHAN AND ANOTHER [2009 (13) SCC 211]. In this case, the effect of the said amendments were specifically considered by the Honourable Supreme Court and the Court held as under:-

"28. One of the problems which has frequently arisen after the enactment of the Juvenile Justice Act, 2000, is with regard to the application of the definition of juvenile under Sections 2(k) and (l) in respect of offences alleged to have been committed prior to 1-4-2001 when the Juvenile Justice Act, 2000 came into force, since under the 1986 Act, the upper age-limit for male children to be considered as juveniles was 16 years.

29. The question which has been frequently raised is, whether a male person who was above 16 years on the date of commission of the offence prior to 1-4-2001, would be entitled to be considered as a juvenile for the said offence if he had not completed the age of 18 years on the said date. In other words, could a person who was not a juvenile within the meaning of the 1986 Act when the offence was committed, but had not completed 18 years, be governed by the provisions of the Juvenile Justice Act, 2000, and be declared as a juvenile in relation to the offence alleged to have been committed by him?"

" The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.

.....

39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent

proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.

40. At this point it may be noted that the decision of the Constitution Bench in Pratap Singh case,[2005(3) SCC 551: 2005 SCC (Cri)742] was rendered at a point of time when the amendments to Sections 2(l) and 20 and the introduction of Section 7-A had not yet been effected, nor was Rule 12 of the 2007 Rules available.

41. Several decisions on the applicability of the 2000 Act to children who were above 16 but below 18 years on the date of commission of the offence have been rendered after the Juvenile Justice Act, 2000, came into force and several others were rendered after the amendments were introduced in the said Act by Amendment Act 33 of 2006 and the introduction of the 2007 Rules.

42. The decisions rendered by this Court and the High Courts prior to 1-4-2001, when the Juvenile Justice Act, 2000, came into force and thereafter can, therefore, be divided into two groups. The decisions in Pratap Singh case,[2005(3) SCC 551: 2005 SCC (Cri)742] and Munney v. State of U.P.[2006(12)SCC 697:(2007)2 SCC(Cri)363], fall into the first category, whereas the decisions in Jameel v. State of Maharashtra,[2007(11)SCC 420:(2008)1 SCC(Cri)748,] Vimal Chadha v. Vikas Choudhary,[2008(15)SCC216:(2008) 8 Scale 608], Babloo Pasi v. State of Jharkhand,[2008(13)SCC 133: 2009(3) SCC(Cri)266:(2008) 13 scale 137], and Ranjit Singh v. State of Haryan,[2008(9) SCC 453: (2008)3 SCC (Cri)784], fall into the second category.

43. Although the Constitution Bench decisions in Pratap Singh case,[2005(3) SCC 551: 2005 SCC (Cri)742] and Munney case[2006(12)SCC 697:(2007)2 SCC(Cri)363] are not really relevant since they have been rendered prior to 22-8-2006, when Amendment Act 33 of 2006 came into force, they assume a modicum of significance since they have been referred to and relied upon even after the

amending Act and the 2007 Rules came into force on 22-8-2006 and 26-10-2007, respectively.

44. Of the decisions rendered after the amendments effected in 2006 to the Juvenile Justice Act, 2000, the first decision of note is that of Jameel case,[2007(11)SCC 420:(2008)1 SCC(Cri)748,] rendered on 16-1-2007 wherein the amendments to the Act effected by Amendment Act 33 of 2006, which came into effect on 22-8-2006, were not even noticed.

45. The next decision rendered on 27-5-2008 is in Vimal Chadha case,[2008(15)SCC216: (2008) 8 Scale 608], wherein, although the amendment of the Act and the introduction of the Juvenile Justice Rules, 2007, were brought to the notice of the Court, the same were not considered and the decision was rendered in the light of the decision rendered in Pratap Singh case,[2005(3) SCC 551: 2005 SCC (Cri)742] and other cases decided prior to 1-4-2001.

46. The next decision rendered on the same point on 11-9-2008 was the decision in Ranjit Singh case,[2008(9) SCC 453: (2008)3 SCC (Cri)784], wherein also the amendments to Sections 2(l) and 20 and the introduction of Section 7-A in the Juvenile Justice Act, 2000, and the introduction of the 2007 Rules had not been considered and the decision passed sub silentio.

47. Similar was the situation in Babloo Pasi case [2009 (3) SCC (Cri.) 266] decided on 3-10-2008 which basically dealt with Section 49 of the Juvenile Justice Act, 2000 and Rule 22 of the Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003, which is pari materia with Rule 12 of the 2007 Rules. While deciding the said case, the Hon'ble Judges did not also have occasion to consider the amendments effected to the Juvenile Justice Act, 2000, by the Amendment Act 33 of 2006 which had just come into force on 22-8-2006.

48. None of the aforesaid decisions are of much assistance in deciding the question with regard to the applicability of the definition of juvenile in Sections 2(k)

and 2(l) of the Juvenile Justice Act, 2000, as amended in 2006, whereby the provisions of the said Act were extended to cover juveniles who had not completed 18 years of age on or before the coming into force of the Juvenile Justice Act, 2000 on 1-4-2001. (emphasis supplied)

49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which 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 the Act and the Rules made thereunder which includes the definition of juvenile in Sections 2(k) and 2(l) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act.

(emphasis supplied)

50. The said intention of the legislature was reinforced by the amendment effected by the said amending Act to Section 20 by introduction of the proviso and the Explanation thereto, wherein also it has been clearly indicated that in any pending case in any court the determination of juvenility of such a juvenile has to be in terms of Section 2(l) even if the juvenile ceases to be so on or before the date of commencement of this Act and it was also indicated that the provisions of the Act would apply as if the said provisions had been in force for all purposes and at all material times when the alleged offence was committed".

.....

58. Of the two main questions decided in Pratap Singh case⁶, one point is now well established that the juvenility of a person in conflict with law has to be reckoned from the date of the incident and not from the date on which cognizance was taken by the Magistrate. The effect of the other part of the decision was, however, neutralised by virtue of the amendments to the Juvenile Justice Act, 2000, by Act 33 of 2006, whereunder the provisions of the Act were also made applicable to juveniles who had not completed eighteen years of age on the date of commission of the offence.

59. The law as now crystallised on a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 read with Rules 12 and 98, places beyond all doubt that all persons who were below the age of 18 years on the date of commission of the offence even prior to 1-4-2001, would be treated as juveniles, even if the claim of juvenility was raised after they had attained the age of 18 years on or before the date of commencement of the Act and were undergoing sentence upon being convicted".

37. HARI RAM (supra) made clear the effect of the New J.J. Act, 2000 as amended by Act No.33 of 2006. HARI RAM (supra) widened the scope of New J.J. Act, 2000. In the light of Amending Act No.33 of 2006, HARI RAM (supra) viewed the applicability of New J.J. Act, 2000 to the Juveniles, who have committed the offence, when they were below 16 years but, have subsequently crossed their 18 years of age on or before 1.4.2001.

38. In HARIRAM (supra) it was held that if the Juvenile in conflict with law was below 18 years when the offence was committed and subsequently he had crossed 18 years, it may be before 1.4.2001 or even on that day, still the juvenility can be claimed. So, the New J.J. Act, 2000 as amended by Act No.33 of 2006 has retrospective operation to the offences committed before 1.4.2001.

39. So, the New J.J. Act,2000 covers cases under the Old J.J. 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 his age, even after disposal of his case, even after crossing his 18 years of age, as per Section 7A and Explanation to Section 20, can claim juvenility at any stage of the case, trial, revision, appeal or in any other criminal proceedings. So, even if the case is over in the Trial Court or in the next Appellate Court or Revisional Court or even in the Honourable Supreme Court, subsequently in an independent proceedings, for the first time, the ex-juvenile in conflict with law can claim benefit under the New J.J. Act,2000 based on his past juvenility on the date of his commission of the offence.

40. In ANIL AGARWALA AND ANOTHER Vs. STATE OF WEST BENGAL [2012 CrI. L.J. 1185 (SC)] when the Calcutta High Court rejected the juvenility claimed by the accused as belated the Honourable Supreme Court referring to Section 7A of the New J.J. Act, 2000 set aside the Judgment of the High Court, since it is incompatible with the provisions of New J.J. Act, 2000 and held that the juvenility can be raised at any time even after the final disposal of the case.

41. In AMIT SINGH Vs. STATE OF MAHARASHTRA [2011(13) SCC 744], the conviction and sentence recorded as against the appellant were confirmed by the Bombay High Court and their Special Leave Petition (Criminal) was dismissed by the Honourable Supreme Court and thereafter, the accused filed Habeas Corpus Petition under Article 32 of the Constitution of India before the Honourable Supreme Court, in Writ Petition (Criminal) No.16 of 2010 and for the first time, claimed juvenility, the Honourable Supreme Court referring to HARI RAM (supra), accepted his claim and directed his release from custody.

42. In the case before us, the IV Additional Sessions Court, Chennai sentenced the petitioner to life. In the Criminal Appeal filed by him, his life sentence was confirmed by this Court. The Special Leave Petition filed by him was dismissed by the Honourable Supreme Court. Thus, till the Honourable Supreme Court the petitioner did not claim juvenility. Now, he filed this Habeas Corpus Petition under Article 226 of the Constitution of India claiming juvenility for the first time in this Court. In the prior proceedings till the Honourable Supreme Court there was no occasion for any of the Court to consider his juvenility. After the disposal of his S.L.P. by the Honourable Supreme Court he claims juvenility for the first time in this Court in this Writ proceedings. Merely because he has raised it at a belated stage, it cannot be rejected (see ANIL AGARWALA (supra)).

43. In pursuance of the proviso to Section 7A and Explanation to Section 20 and as per the dictum of the Honourable Supreme Court in HARI RAM (supra) and in AMIT SINGH (supra), he can claim juvenility in any proceedings, before any court and at any stage of the case. It includes, a Habeas Corpus Petition under Article 226 of the Constitution of India. By its nature, it is also a criminal

proceeding. Article 21, Constitution of India guarantees that no one shall be jailed except as per law. It also guarantees that no one shall be punished, detained in jail except in accordance with law. So, no one shall be jailed as against the provisions of J.J. Act, more particularly, in violation of S.15,16 of New J.J.Act,2000 (also see S.7A and S.20, New J.J.Act,2000). Thus, even after the final disposal of his case by the Honourable Supreme Court, in this independent proceedings under Article 226 of the Constitution of India, petitioner can claim juvenility.

44. We have already seen that to claim the benefit under the New J.J. Act, 2000, on the date of commission of the offence, the accused must be below 18 years. So, the determination of his age on the date of the commission of the offence, namely, 30.6.1992, is most important.

45. To determine the age, the New J.J. Act, 2000 and the 2007 Rules framed thereunder laid down elaborate guidelines.

46. Section 49 of New J.J. Act runs as under:-

"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."

47. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 runs as under:-

"12. Procedure to be followed in determination of Age:-

..... 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

48. Thus, procedure for "Age determination inquiry" has been clearly laid down under the provisions of New J.J. Act,2000 and detailed procedure has been prescribed in Rule 12 of Juvenile Justice (Care and Protection of Children)Rules, 2007. Yet, the subordinate courts are not following them and are adopting different procedure. Recently, in ASHWANI KUMAR SAXENA Vs.STATE OF MADHYA PRADESH [2012(9) SCC 750], this has also been voiced by the Hon'ble Supreme Court.

49. In ASHWANI KUMAR SAXENA (supra), the Hon'ble Apex Court observed as under:

"25. Section 7-A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board, Committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an inquiry and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7-A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7-A has used the expressions court shall make an inquiry, take such evidence as may be necessary and but not an affidavit. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7-A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression prima facie and on the basis of physical appearance or documents, if available. Rule 12(3) uses the expression by seeking evidence by obtaining. These expressions in our view re-emphasize the fact that what is contemplated in Section 7-A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word inquiry has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. Let us now examine the meaning of the words "inquiry", "enquiry", "investigation" and "trial" as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. Inquiry as defined in Section 2(g) CrPC reads as follows:

2. (g) 'Inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;"

The word enquiry is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

Investigation as defined in section 2(h), Cr.P.C. reads as follows:

2. (h) 'Investigation' includes all the proceedings under this code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf."

The expression trial has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions inquiry or investigation as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. The expression trial has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the Court /the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid under Rule 12 and not following the procedure laid down under the Code.

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Penal Code or under other penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7-A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold the inquiry.

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007

Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the specific procedure has been laid down in Section 7-A read with Rule 12.

31. We also remind all Courts/Juvenile Justice Boards and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate, etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. Age determination inquiry contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub-rule (5) of Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-

rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, Juvenile Justice Board or a Committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the JJ Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

.....

39. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial courts and the appellate courts, when the question regarding the claim of juvenility is raised.

40. The legislature and the rule-making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

41. This Court in Babloo Parsi v. State of Jharkhand and Another [(2008) 13 SCC 133] held, in a case where the accused had failed to produce evidence/certificate in support of his claim, medical evidence can be called for. The court held that: (SCC p.142, para22)

"22. The medical evidence as to the age of a person, though a useful guiding factor, is not conclusive and has to be considered along with other cogent evidence."

This court set aside the order of the High Court and remitted the matter to the Chief Judicial Magistrate heading the Board to re-determine the age of the accused.

42. In Shah Nawaz v. State of Uttar Pradesh and Another [(2011) 13 SCC 751], the Court while examining the scope of Rule 12, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a Corporation or a municipal authority or a panchayat or municipal is not available. The court had held entry related to date of birth entered in the mark sheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant."

50. Subsequently, a three-Judge Bench of Hon'ble Supreme Court in ABUZAR HUSSAIN @ GULAM HOSSAIN Vs. STATE OF WEST BENGAL (2012(10)SCC 489) as regards 'age determination enquiry' also took similar view.

51. In this connection, it is relevant to note the following observations of the Hon'ble Apex Court made in GOPINATH GHOSH Vs. STATE OF WEST BENGAL [1984 SCC (Cri) 478] which has also been reiterated in ABUZAR HOSSAIN (supra):

" 13. Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the Court is equally reluctant to ignore, overlook or nullify the beneficial provisions of a very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court. A way has therefore, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where Special Acts dealing with juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon, as the case may be, for obtaining credit worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey upto the Apex Court and the return journey to the grass-root court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

52. In the light of the provisions of Rule 12 of the Juvenile Justice (care and protection of children) Rules 2007 and the various decisions of the Hon'ble Apex Court, now let us see the report submitted by the learned IV Additional Sessions Judge, Chennai.

53. As already stated, the offence of murder was committed on 30.6.1992. In order to claim the benefit of the benevolent provisions of the New JJ Act 2000, the petitioner has to establish that on 30.6.1992, he was below 18 years.

54. Petitioner, Jayavelu claimed that he was born on 3.1.1976. If that is so, on the date of commission of the offence, namely, on 30.6.1992, he was 16 years, 5 months and 27 days old. After conducting the enquiry, the trial Court on 12.6.2012 submitted its report that the petitioner was 16 years, 5 months and 27 days old, namely, few days less of 16 = years. The Inquiring Judge concluded that since he is above 16 years as per Section 2(h) of Juvenile Justice Act 1986, he is not a Juvenile in conflict with law.

55. It is to be noted that the Old J.J. Act 1986 has gone, repealed, in its place, New J.J. Act, namely, Juvenile Justice (Care and Protection of Children) Act, 2000 came in with effect from 1.4.2001. Thus, the IV Additional Sessions Judge having not aware of the current Act referring to the repealed Act, namely, Juvenile Justice Act 1986 came to a wrong conclusion.

56. Further, as there was no reference about the parents of the petitioner and also no further details as to the genuineness of the birth certificate issued by the Corporation of Chennai, we have directed the said Judge to conduct further enquiry and submit his fresh report. Accordingly, the learned Judge conducted fresh enquiry and submitted his fresh report dated 14.8.2012.

57. Before the Trial Judge, C.Ws.1 to 5, namely, Jayavel, Dr.Vedanayagam, Parimala, Sankar and Alfred Wilson were examined and Exs. C.1 to C.5 and M.O.1/X-rays have been filed.

58. The claim of the petitioner is that he was born on 3.1.1976 to Thangaiah and Vatsala. From the evidence of C.Ws.3 and 4 Parimala and Sankar, the other daughter and son of Thangaiah, it is seen that in 1996, Vatsala died and

when their hut was gutted by fire, her death certificate was also lost. Thangaiah died on 4.6.2011(Ex.C.4- death certificate).

59. The evidence of C.Ws.3 and 4 is that their brother Jayavelu was born on 3.1.1976 to their parents in Rainy Hospital, G.A.Road, Madras-21 and his birth was registered by the Corporation of Chennai. Petitioner produced his VIII Standard Pass certificate issued by the Director, Government Examinations, Chennai wherein his date of birth has been mentioned as 3.1.1976. He wrote the examination from jail declaring that he was born on 3.1.1976. This certificate came into being subsequent to his conviction. So, we cannot solely rely on this.

60. Ex.C.1 is a xerox copy of birth certificate issued by the Corporation of Chennai on 18.12.1991. It is stated therein that on 3.1.1976 to Thangaiah and Vatsala, a male child was born in Rainy Hospital, G.A. Road, Madras-21. On the basis of this, petitioner claims that he was born on 3.1.1976. As already stated, C.Ws.3 and 4 his sister and brother have also stated so. C.W.5, Alfred Wilson, Inspector of Police verified the genuineness of Ex.C1 with the Corporation Officials. The Chennai Corporation issued a computerised birth certificate to the petitioner. It contains his birth details as found in Ex.C.1. The Health Officer, Corporation of Chennai, the authority for registering the births also certified that the said birth certificate is genuine. As to the date of birth, claimed by the petitioner and the age determination report of the Inquiring Judge, there is no dispute from the respondents.

61. Now considering the entire materials placed before us, it is beyond doubt that Jayavelu was born on 3.1.1976 to Thangaiah and Vatsala.

62. The Inquiring Judge summoned Dr.Vedanayagam, Professor of Forensic Medicine, Govt. Rajaji Medical College, Chennai and examined him as C.W.2. The Doctor conducted some tests and also examined Ex.C.W.5 series- X-rays and issued Ex.C.3 determining the age of the petitioner as on 9.4.2012 as above 35 years and below 40 years.

63. Petitioner claimed his date of birth on the basis of birth certificate issued by Corporation of Chennai. Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 contemplates three type of evidence, namely, matriculation or equivalent certificate, if that is not available, birth certificate from school (other than play school) first attended, if that is also not available, then birth certificate issued by Corporation or Municipality or Panchayat. If the said three certificates are also not available then only medical evidence has to be sought for to determine the age of the person.

64. Now in the case before us, petitioner has claimed his date of birth on the basis of certificate issued by the Corporation of Chennai. It will come under Rule 12(3). In such circumstances, consideration of medical evidence will not arise.

65. However, as against the provisions of J.J. Act and the Rules , the learned IV Additional Sessions Judge besides conducting enquiry as to the genuineness of the birth certificate issued by the Corporation of Chennai also examined medical evidence. This is not correct. This is against 2007 Rules. As already stated this has been deprecated by the Hon'ble Apex Court in ASHWANI KUMAR SAXENA (supra).

66. In the case before us, the offence was committed on 30.6.1992. Then the petitioner was 16 years, 5 months and 27 days old. Then, he has not completed 18 years of his age. As per Section 2(h) of the Old J.J. Act, 1986, he will not be a Juvenile. But, as per Section 2(k) of the New J.J. Act, 2000, he is a Juvenile. On the date of offence, namely, on 30.6.1992, he was below 18 years of age but, subsequently, he had crossed 18 years of age and before 1.4.2001 he was above 18 years of age. As per Section 2(l) of the New J.J. Act, 2000, he is a juvenile in conflict with law. As per the dictum of the Hon'ble Supreme Court in HARI RAM (supra), even now he can raise his juvenility at the time when he was committed the offence and seek the benefits under the New J.J. Act, 2000.

67. As per Section 16 of the New J.J.Act, 2000, petitioner cannot be sentenced to life. As per its Section 15, at the most, he can be detained in a Special Home for three years. The Trial Court sentenced the petitioner to life. Subsequently, on 1.10.2002, this was confirmed by this Court. On 10.07.2003, his Special Leave Petition was also dismissed by the Honourable Supreme Court. Now, he is 37 years old. Already, he is in jail for more than 14 years. These aspects were not disputed by the prosecution. So, as per Section 15 of the New J.J.Act, at this distant of time, stage and age it would be unrealistic and impracticable to send him to a Special Home.

68. 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 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.

69. In UPENDRA KUMAR Vs. STATE OF BIHAR, [2005 (3) SCC 592], 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.

70. In VANEET KUMAR GUPTA @ DHARMINDER Vs. STATE OF PUNJAB, [2009 (17) SCC 587], 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, the Honourable Supreme Court noticing the fact that he is in jail for several years, directed his release from jail.

71. Similar view also has been taken by the Honourable Supreme Court in SATISH @ DHANNA Vs. STATE OF MADHYA PRADESH AND OTHERS, [2009 (14) SCC 187] and in VIKRAM SINGH Vs. STATE OF HARYANA [2009 (13) SCC 645].

72. In *DHARAMBIR Vs. STATE (NCT OF DELHI)*, [2010 (2) SCC 344], 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.

73. In *BHIM @ UTTAM GHOSH Vs. STATE OF WEST BENGAL*, [2010 (14) SCC 571], 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.

74. In *MOHANA MALI Vs. STATE OF MADHYA PRADESH* [2010(6) SCC 669], the petitioner was sentenced to life under Section 302 I.P.C by the trial Court. 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.

75. In *LAKHAN LAL Vs. STATE OF BIHAR* [2011 (2) SCC 251], 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 has crossed 40 years of his age and he was in jail for more than 7 years. Under these

circumstances, referring to DHARAMBIR (supra), the Honourable Supreme Court set aside his life sentence and directed his release.

76. In AMIT SINGH Vs. STATE OF MAHARASHTRA & ANOTHER [2011(13)SCC 744], 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 the other sentence 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.

77. 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.

78. 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.

79. 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.

80. 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.

81. 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.

82. 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.

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.

kua/rrg

To

1. The Secretary to Government,
Home Department,
Secretariat,

Fort St. George,
Chennai-9.

2. The Director General of Police,
Mylapore, Chennai-5.

3. The Additional Director General of Prisons,
Thalamuthu Natrajan Building,
Egmore, Chennai-8.

4. The Principal Sessions Judge,
Chennai.

5. IV Additional Sessions Judge,
Chennai

6. The Superintendent of Prisons,
Central Prison,
Vellore.

7. The Inspector of Police,
N-2, Kasimedu Police Station,
Chennai.

8. The Additional Public Prosecutor
High Court
Madras