2025 INSC 43

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 4229 OF 2024
(Arising out of SLP (Crl.) No.(s) 2214 of 2022)

OM PRAKASH @ ISRAEL @ RAJU
@ RAJU DAS …APPELLANT(S)

VERSUS

UNION OF INDIA & ANR. … RESPONDENT(S)

J U D G M E N T

M. M. Sundresh, J.

1. Heard the Learned Senior Counsel Dr. S. Muralidhar for the Appellant, and Learned Additional Solicitor General Mr. K.M. Nataraj and Learned Counsel Ms. Vanshaja Shukla for the Respondents. We have also carefully perused the written arguments along with the documents, filed by both the sides in respect of their respective contentions.

2. We are dealing with a case where grave injustice has been perpetrated, on account of the consistent failure on part of the judicial machinery to recognise and act upon the constitutional mandate vis-

a-vis the plea of juvenility. Lord Atkin's words of wisdom in **United Australia Limited v. Barclay's Bank Ltd., [1941] A.C. 1 at p.29** become relevant in the aforementioned context**:**

> "…**When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred."**
>
> (emphasis supplied)

3. We are further reminded of the words of V.R. Krishna Iyer J., on the laudable ideals of truth and justice in **Jasraj Inder Singh v. Hemraj Multanchand**, (1977) 2 SCC 155 :-

> "**8.** ...**Truth, like song, is whole and half-truth can be noise; Justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution…."**
>
> (emphasis supplied)

TRUTH AND THE COURT

4. Justice is nothing but a manifestation of the truth. It is truth which transcends every other action. The primary duty of a Court is to make a single-minded endeavour to unearth the truth hidden beneath the facts. Thus, the Court is a search engine of truth, with procedural and substantive laws as its tools.

5. When procedural law stands in the way of the truth, the Court must find a way to circumvent it. Similarly, when substantive law, as it appears, does not facilitate the emergence of the truth, it is the paramount duty

of the Court to interpret the law in light of its teleos. Such an exercise is warranted in a higher degree, particularly while considering a social welfare legislation.

6. In its journey, the Court must discern the truth, primarily from the material available on record in the form of pleadings, and arguments duly supported by documents. It must be kept in mind that the entire judicial system is meant for the discovery of the truth, it being the soul of a decision. For doing so, a Presiding Officer is expected to play an active role, rather than a passive one.

7. We shall now place on record the views expressed and judgments rendered on the concept of truth. Justice V.R. Krishna Iyer, at the 18th Annual Conference of the American Judges Association at Seattle, Washington State., (1979) 1 SCC J-7, stated thus-

> "**Our profession is totally committed to Justice—individual, social and spiritual. Truth, holistic truth, is the basis of Justice and thus the great question of history, What is Justice, is also the perennial interrogation, What is Truth? Once we awaken to this profound core, our attitude to pathological crime and therapeutic punishment, to inner harmony and societal peace, will be transformed into a high pursuit of truth beyond "the madding crowd's ignoble strife."…**
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> xxx xxx xxx
>
> …The progressive manifestation of the divinity in man is the recognition of the dignity and worth of the human person and this curative process is the healing hope of decriminalization—not stone walls nor iron bars nor other subtle barbarities. This know-how of humanization alone can dissolve the dilemma."
>
> (emphasis supplied)

Mohan Singh v. State of M.P., (1999) 2 SCC 428

> "**11.** …**Efforts should be made to find the truth, this is the very object for which courts are created. To search it out, the courts have been removing the chaff from the grain. It has to disperse the suspicious cloud and dust out the smear of dust as all these things clog the very truth. So long as chaff, cloud and dust remain, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the courts, not to merely conclude and leave the case the moment suspicions are created. It is the onerous duty of the court, within permissible limit, to find out the truth.**…"
>
> (emphasis supplied)

Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430

> ***"Entire journey of a Judge is to discern the truth***
>
> **24**. **The entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of the justice delivery system**…."
>
> (emphasis supplied)

Maria Margarida Sequeria Fernandes v. Erasmo Jack De Sequeira, (2012) 5 SCC 370

> *"***33. The truth should be the guiding star in the entire judicial process. Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.**
>
> **xxx xxx xxx**
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> **44**. **Malimath Committee on Judicial Reforms** heavily relied on the fact that in discovering truth, the Judges of all courts need to play an active role. The Committee observed thus:
> '2.2. … **In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defence before a neutral Judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt….**

xxx xxx xxx

…The Judge in his anxiety to maintain his position of neutrality never takes any initiative to discover truth. He does not correct the aberrations in the investigation or in the matter of production of evidence before court.

xxx xxx xxx

2.15. The adversarial system lacks dynamism because it has no lofty ideal to inspire. It has not been entrusted with a positive duty to discover truth as in the inquisitorial system. **When the investigation is perfunctory or ineffective, Judges seldom take any initiative to remedy the situation. During the trial, the Judge does not bother if relevant evidence is not produced and plays a passive role as if he has no duty to search for truth….**

xxx xxx xxx

2.16.9. **Truth being the cherished ideal and ethos of India, pursuit of truth should be the guiding star of the criminal justice system. For justice to be done truth must prevail. It is truth that must protect the innocent and it is truth that must be the basis to punish the guilty. Truth is the very soul of justice. Therefore, truth should become the ideal to inspire the courts to pursue. This can be achieved by statutorily mandating the courts to become active seekers of truth. It is of seminal importance to inject vitality into our system if we have to regain the lost confidence of the people. Concern for and duty to seek truth should not become the limited concern of the courts. It should become the paramount duty of everyone to assist the court in its quest for truth**."

(emphasis supplied)

Sugandhi v. P. Rajkumar, (2020) 10 SCC 706

"**9**. **It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute.** Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3)."

(emphasis supplied)

Munna Pandey v. State of Bihar, 2023 SCC OnLine SC 1103

> "**68**. The role of a judge in dispensation of justice after ascertaining the true facts no doubt is very difficult one. **In the pious process of unravelling the truth so as to achieve the ultimate goal of dispensing justice between the parties the judge cannot keep himself unconcerned and oblivious to the various happenings taking place during the progress of trial of any case. No doubt he has to remain very vigilant, cautious, fair and impartial, and not to give even a slightest of impression that he is biased or prejudiced either due to his own personal convictions or views in favour of one or the other party. This, however, would not mean that the Judge will simply shut his own eyes and be a mute spectator, acting like a robot or a recording machine to just deliver what stands feeded by the parties**.
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> **xxx xxx xxx**
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> **70**. **This Court has condemned the passive role played by the Judges and emphasized the importance and legal duty of a Judge to take an active role in the proceedings in order to find the truth to administer justice and to prevent the truth from becoming a casualty**…."
>
> (emphasis supplied)

JUVENILE JUSTICE

8. A child is a product of the present, in need of being moulded, to thrive in the future. Therefore, deviant behaviour of a child in conflict with law should be a concern of the society as a whole. One must not lose sight of the fact that the child is not responsible for an act of crime, but is rather victimized by it. Such a child is nothing but an inheritor of crime, a legacy which it does not wish to imbibe. The behaviour of a child can be attributed, possibly to two counts, namely, the environment

that the child grows in, and genetics. On the second count, there is abundant research and literature available. However, we do not wish to venture much into this, particularly in light of the innumerable permutations and combinations that could arise out of the interaction between these two counts.

9. On the first count, various factors such as socio-economic, political and cultural background, and life experience, amongst others, become relevant. Thus, remedial measures may be employed for the benefit of the child. Since the child does not choose the environment in which it grows, deviant behaviour which is a result of exposure to a given environment is evidence of rampant inequality. Therefore, a child who lives in such a discriminatory environment, requires equitable treatment on the touchstone of Article 14 of the Constitution of India, 1950 (hereinafter referred to as "**the Constitution**"). Article 15(3) read with Article 39 (e) and (f), Article 45 and Article 47 of the Constitution, in the form of the Fundamental Rights and the Directive Principles of State Policy, emphasise on the need for special care for children. The relevant provisions in the Constitution which form the foundation of juvenile justice are as under:

Article 15 of the Constitution

> **"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth**.—
>
> **xxx xxx xxx**

(3) Nothing in this article shall prevent the State from making any special provision for women and children."

(emphasis supplied)

Article 39 of the Constitution

> **"39. Certain principles of policy to be followed by the State**.—The State shall, in particular, direct its policy towards securing—
> (*a*) that the citizens, men and women equally, have the right to an adequate means to livelihood;
> (*b*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
> (*c*) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
> (*d*) that there is equal pay for equal work for both men and women;
> **(*e*) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;**
> **(*f*) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.**"

(emphasis supplied)

Article 45 of the Constitution

> **"45. Provision for early childhood care and education to children below the age of six years**.—**The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.**"

(emphasis supplied)

10. In view of the said constitutional mandate, the Court is expected to play the role of *parens patriae* by treating a child not as a delinquent, but as a victim, viewed through the lens of reformation, rehabilitation and reintegration into the society.

11. Thus, a Juvenile Court is a species of a parent. A delinquent, who appears before the Court, is to be protected and re-educated, rather than be judged and punished. It is for this purpose, that the Court will have to press into service the benevolent provisions for rehabilitation introduced by the Legislature. A Juvenile Court assumes the role of an institution rendering psychological services. It must forget that it is acting as a Court, and must don the robes of a correction home for a deviant child. In **Aruna Ramachandra Shanbaug v. Union of India, (2011) 4 SCC 454,** this Court recognised the need for Courts to assume the role of *parens patriae* and stated thus**:**

> **"86**. …As stated by Balcombe, J. in J. (*A Minor*) (*Wardship: Medical Treatment*), *In re* [(1990) 3 All ER 930 (CA)] , **the Court as representative of the Sovereign as parens patriae will adopt the same standard which a reasonable and responsible parent would do. The *parens patriae* (father of the country) jurisdiction was the jurisdiction of the Crown**, which, as stated in *Airedale* [1993 AC 789 : (1993) 2 WLR 316 : (1993) 1 All ER 821 (CA and HL)] , could be traced to the 13th century. **This principle laid down that as the Sovereign it was the duty of the King to protect the person and property of those who were unable to protect themselves. The Court, as a wing of the State, has inherited the *parens patriae* jurisdiction which formerly belonged to the King.**
>
> **xxx xxx xxx**
>
> ***Doctrine of parens patriae***
>
> **126**. The doctrine of *parens patriae* (father of the country) had originated in British law as early as in the 13th century. It implies that the King is the father of the country and is under obligation to look after the interest of those who are unable to look after themselves. **The idea behind *parens patriae* is that if a citizen is in need of someone who can act as a parent who can make decisions and take some other action, sometimes the State is best qualified to take on this role.**

127. In the Constitution Bench decision of this Court in *Charan Lal Sahu* v. *Union of India* [(1990) 1 SCC 613] the doctrine has been explained in some detail as follows: (SCC p. 648, para 35)

> "35. … In the '*Words and Phrases*' Permanent Edn., Vol. 33 at p. 99, it is stated that ***parens patriae*** **is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words *parens patriae* meaning thereby 'the father of the country', were applied originally to the King and are used *to designate the State referring to its sovereign power of guardianship over persons under disability. Parens patriae* jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on [the] sovereign, in public interest, to protect persons under disability who have no rightful protector.** The connotation of the term *parens patriae* differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability."
>
> (emphasis in original)

The duty of the King in feudal times to act as *parens patriae* (father of the country) has been taken over in modern times by the State.

128. In Heller v. DOE [125 L Ed 2d 257 : 509 US 312 (1992)] Mr Kennedy, J. speaking for the US Supreme Court observed: (US p. 332)

> " '… **the State has a legitimate interest under its *parens patriae* powers in providing care to its citizens who are unable … to care for themselves'** [Ed.: As observed in *Addington* v. *Texas*, 441 US 418 at p. 426.] ".

129. In *State of Kerala* v. *N.M. Thomas* [(1976) 2 SCC 310 : 1976 SCC (L&S) 227 : (1976) 1 SCR 906] , SCR at p. 951 Mr Mathew, J. observed: (SCC p. 343, para 64)

> "64. … the Court also is 'State' within the meaning of Article 12 (of the Constitution)…."

130. **In our opinion, in the case of an incompetent person who is unable to take a decision whether to withdraw life support or not, it is the Court alone, as parens patriae, which ultimately must take this decision, though, no doubt, the views of the near relatives, next friend and doctors must be given due weight."**

(emphasis supplied)

JUVENILE JUSTICE LEGISLATIONS IN INDIA:

THE JUVENILE JUSTICE ACT, 1986 (Act No. 53 of 1986)

12. We now touch upon the first Central enactment introduced way back in the year 1986, in the form of the **Juvenile Justice Act, 1986 (Act No. 53 of 1986)** (hereinafter referred to as the **"1986 Act")**. This was the maiden attempt by the Central Legislature for a comprehensive and uniform set of national rules for juveniles, recognising the need to treat them separately from adults. The term 'Juvenile' has been defined under Section 2(h) of the 1986 Act as under:

Section 2(h)

> **"2. Definitions**.—In this Act, unless the context otherwise requires-
> xxx xxx xxx
> (*h*) "juvenile" means a boy who has not attained the age of sixteen years or a girl who has not attained the age of eighteen years"

13. Though the 1986 Act did not specifically take into consideration the mandate of the Constitution, the Legislature's concern for juveniles is evident from its provisions, including Section 32 of the 1986 Act, which made it obligatory on the part of the Competent Authority to make due inquiry as to the age of the person brought before it.

Section 32

> **"32. Presumption and determination of age**.—(1) Where it appears to a competent authority that a person brought before it under any of the provisions of this Act (otherwise than for the purpose of giving evidence) is a juvenile, the **competent authority shall make due inquiry as to the age of that person and for that purpose shall take such evidence as may be necessary and shall record a finding**

whether the person is a juvenile 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, **and the age recorded by the competent authority to be the age of the person so brought before it shall, for the purposes of this Act, be deemed to be the true age of that person."**

(emphasis supplied)

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000 (Act No. 56 of 2000)

14. A much more comprehensive and modern exercise undertaken by the Central Legislature, taking due note of Article 15(3), clauses (e) and (f) of Article 39, Article 45 and Article 47 of the Constitution, mandating stakeholders to ensure that all the needs of children are fulfilled by elevating them to the status of basic human rights, is the enactment of the **Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000)** (hereinafter referred to as the **"2000 Act**"). While doing so, certain ideas were borrowed from international conventions and covenants including the **United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985** (hereinafter referred to as *"***the Beijing Rules***"*), and the **United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990**, amongst other instruments. Section 2(k) and 2(l) of the 2000 Act as amended by Act No. 33 of 2006 defines a juvenile as under:

Section 2 (k) and (l)

> **"2. Definitions-** In this Act, unless the context otherwise requires-
>
> xxx xxx xxx
>
> **(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."**
>
> (emphasis supplied)

The differential age qualification for boys and girls, in order to be treated as juveniles, as was prevalent under the 1986 Act, was rightly done away with in the 2000 Act.

15. The 2000 Act consciously made itself applicable to all pending cases, both procedurally and substantively, which has in turn given it an element of retrospectivity. One clear omission in the 2000 Act is the absence of a specific duty upon the Investigating Agency *qua* a juvenile during investigation, which was highlighted under the Beijing Rules.

Rule 6 of the Beijing Rules

> "**6 – Scope of discretion**
> 6.1 In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions."

16. Section 7A, along with the Explanation to Section 20 of the 2000 Act, were introduced into the statute by an amendment vide Act No. 33 of 2006, to overcome the ratio of the judgment rendered by the Constitution Bench of this Court in **Pratap Singh vs. State of**

Jharkhand, (2005) 3 SCC 551, wherein it was declared that the benefit of juvenility cannot be extended to a person who had completed 18 years of age as on 01.04.2001 – i.e. the date of enforcement of the 2000 Act.

Section 7A

> **"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 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."
>
> (emphasis supplied)

Section 20

> **"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)

17. While Section 7A of the 2000 Act deals with the procedure to be followed when a claim of juvenility is raised before any Court, Section 20 of the 2000 Act is a special provision in respect of pending cases. Under both these provisions, it has been made abundantly clear that the 2000 Act and the relevant rules would also be applicable to a juvenile who ceased to be so on or before the commencement of the 2000 Act. Thus, a retrospective application has been facilitated under the 2000 Act.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015 (Act No. 2 of 2016)

18. The **Juvenile Justice (Care and Protection of Children) Act, 2015 (Act No. 2 of 2016)** (hereinafter referred to as the "**2015 Act**") is an improved version of the earlier legislations. **The Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption, 1993**, has also been factored into. The 2015 Act undertook the exercise of classifying offences into different categories.

It defines the word 'Court' under Section 2(23), as one having original jurisdiction. This definition is only illustrative in nature, in tune with the importance of the enactment.

Section 2

> **"2. Definitions-** In this Act, unless the context otherwise requires:
> **xxx xxx xxx**
>
> (23) "court" means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts;**"**

19. Thus, any Court which is competent to decide the issue of juvenility would come within the purview of the definition clause, which includes both the appellate and the revisional forums as well as the Constitutional Courts. In other words, every Court of competence shall assume the role of a Juvenile Court. We say so as, giving effect to the provisions of the 2015 Act is imperative in view of the constitutional mandate.

Section 5

> **"5. Placement of person, who cease to be a child during process of inquiry**-Where an inquiry has been initiated in respect of any child under this Act, and during the course of such inquiry, the child completes the age of eighteen years, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the inquiry may be continued by the Board and orders may be passed in respect of such person as if such person had continued to be a child.**"**

Section 6

> **"6. Placement of persons, who committed an offence, when person was below the age of eighteen years**-

(1) Any person, who has completed eighteen years of age, and is apprehended for committing an offence when he was below the age of eighteen years, then, such person shall, subject to the provisions of this section, be treated as a child during the process of inquiry.
(2) The person referred to in sub-section (1), if not released on bail by the Board shall be placed in a place of safety during the process of inquiry.
(3) The person referred to in sub-section (1) shall be treated as per the procedure specified under the provisions of this Act.**"**

Sections 5 and 6 of the 2015 Act reiterate the principle that even a juvenile who has attained majority during the course of inquiry should be treated as a juvenile.

20. Section 9 of the 2015 Act is the very substance of the entire enactment and sub section (2) is *pari materia* to Section 7A of the 2000 Act.

Section 9

"9. Procedure to be followed by a Magistrate who has not been empowered under this Act-

(1). When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:
Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

> (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.
>
> (4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."
>
> (emphasis supplied)

Under sub-section (2), it is the fundamental duty of the Court to make an inquiry, and take such evidence as may be necessary for the purpose of determining the age of the person brought before it. The proviso to sub-section (2) is a rather interesting one. In fact, this proviso throws some light on the main provision, giving an extended leverage to the plea of juvenility. Thus, the plea of juvenility can be raised before any Court, meaning thereby that there is no question of finality in this regard until and unless an application filed, invoking this provision, is determined in accordance with the 2015 Act and the relevant rules. When such a plea is raised, it shall be recognised and cannot be brushed aside in a casual or whimsical manner. A due determination must be made by judiciously considering the material available on record. The Court is expected to travel an extra mile to satisfy its conscience as to whether the case on hand would attract the provisions of the 2015 Act and, for the aforesaid purpose, the process enumerated thereunder will have to be necessarily followed. The proviso further clarifies that the 2015 Act and the relevant rules are applicable even if a person who has

been accused of an offence, has ceased to be a child on or before the date of the commencement of the 2015 Act.

PLEA OF JUVENILITY VIS-A-VIS 'FINAL DISPOSAL'

21. We place emphasis on the words "even after the final disposal of the case" in Section 9(2) of the 2015 Act. As stated, this provision being the heart and soul of the entire Act, must be given its fullest meaning and interpretation. If the offence is committed by a child, it cannot be treated otherwise than as provided under the 2015 Act. After finding out the truth, necessary consequences must follow. In a country like ours, where society is fragmented due to various reasons including, but not limited to illiteracy and poverty, the role which is assigned to the Court assumes great significance. Sufficient opportunities must be given to the child in conflict with law to get the benefit of the 2015 Act.

22. Merely because a casual adjudication has taken place, it does not mean that a plea of juvenility cannot be raised subsequently. This is for the simple reason that the plea of juvenility has not attained finality. So long as the right of a party subsists, one can never say that finality has been attained. In a case where a plea has been raised, but not adjudicated upon, the decision rendered thereunder would not amount to attaining finality. Likewise, when such a plea is not treated as one under Section 9(2) of the 2015 Act in compliance with the procedural

mandate specified thereunder, an order rejecting such a plea would not be termed as a final one. To put it differently, even assuming a plea of juvenility was raised but not considered appropriately at the time of disposal of a Special Leave Petition/Statutory Criminal Appeal, a Review Petition, or a Curative Petition thereafter, it would not bar a competent Court from deciding the said issue by following due procedure. We make it clear that if an adjudication is based on due determination, then there may not be any room for another round of litigation. But, in a case where the plea was not treated as an application under Section 9(2) of the 2015 Act and, the procedure mandated thereunder was not followed, the principle as aforesaid would certainly apply as the right of raising the plea of juvenility has not ceased and, therefore, subsists.

23. Since the need for taking care of a juvenile in conflict with law is mandated by the Constitution, the role of the constitutional Courts is significant. Even after the dismissal of a Special Leave Petition/Statutory Criminal Appeal followed by incidental proceedings before this Court, where the plea of juvenility was not consciously considered, there would be no bar on the constitutional Courts to consciously take a deeper look. Doing so is not an exercise of the powers conferred under Articles 32, 136 or 226 of the Constitution, but an act in fulfilment of a mandated duty enjoined upon the Courts, to

give effect to the laudable objective of a social welfare legislation. We shall now place on record the views expressed and judgments rendered on the aspect of finality, and why a different view can be taken by this Court, notwithstanding its earlier decision, in exercise of the powers conferred under the Constitution:

Jethanand and Sons v. State of Uttar Pradesh, 1961 SCC OnLine SC 193 : (1961) 3 SCR 754 : AIR 1961 SC 794

> **"7.** In our view, the order remanding the cases under Section 151 of the Civil Procedure Code is not a judgment, decree or *final order* within the meaning of Article 133 of the Constitution. By its order, the High Court did not decide any question relating to the rights of the parties to the dispute. The High Court merely remanded the cases for retrial holding that there was no proper trial of the petitions filed by the appellants for setting aside the awards. Such an order remanding the cases for retrial is not a final order within the meaning of Article 133(1)(*c*). **An order is final if it amounts to a final decision relating to the rights of the parties in dispute in the civil proceeding. If after the order, the civil proceeding still remains to be tried and the rights in dispute between the parties have to be determined, the order is not a final order within the meaning of Article 133…."**
>
> (emphasis supplied)

Mohan Lal Magan Lal Thacker v. State of Gujarat, 1967 SCC OnLine SC 137 : (1968) 2 SCR 685 : AIR 1968 SC 733

> "**4. The question as to whether a judgment or an order is final or not has been the subject-matter of a number of decisions; yet no single general test for finality has so far been laid down.** The reason probably is that a judgment or order may be final for one purpose and interlocutory for another or final as to part and interlocutory as to part. The meaning of the two words "final" and "interlocutory" has, therefore, to be considered separately in relation to the particular purpose for which it is required. **However, generally speaking, a judgment or order which determines the principal matter in question is termed final. It may be final although it directs enquiries or is made on an interlocutory application or reserves liberty to apply** [*Halsbury's Laws of England* (3rd Edn.) Vol. 22, 742-43]. **In some of the English decisions where this**

question arose, one or the other of the following four tests was applied.
***1*. Was the order made upon an application such that a decision in favour of either party would determine the main dispute?**
***2*. Was it made upon an application upon which the main dispute could have been decided?**
***3*. Does the order as made determine the dispute?**
***4*. If the order in question is reversed, would the action have to go on?"**

(emphasis supplied)

Lily Thomas v. Union of India, (2000) 6 SCC 224

"56. It follows, therefore, that the power of review can be exercised for correction of a mistake but not to substitute a view. Such powers can be exercised within the limits of the statute dealing with the exercise of power. The review cannot be treated like an appeal in disguise. The mere possibility of two views on the subject is not a ground for review. Once a review petition is dismissed no further petition of review can be entertained. The rule of law of following the practice of the binding nature of the larger Benches and not taking different views by the Benches of coordinated jurisdiction of equal strength has to be followed and practised. **However, this Court in exercise of its powers under Article 136 or Article 32 of the Constitution and upon satisfaction that the earlier judgments have resulted in deprivation of fundamental rights of a citizen or rights created under any other statute, can take a different view notwithstanding the earlier judgment."**

(emphasis supplied)

HIERARCHY OF DOCUMENTS

24. Rule 12 of the **Juvenile Justice (Care and Protection of Children) Rules, 2007** (hereinafter referred to as the "**2007 Rules**") must be understood and appreciated in tune with the principal Act.

Rule 12 of the 2007 Rules

"12. Procedure to be followed in determination of age.

xxx xxx xxx

(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."

While there is no difficulty in the application of the principal Act inclusive of the procedural part, even for a juvenile in conflict with law who has attained majority on or after 01.04.2001, Rule 12 of the 2007 Rules must be applied retrospectively even to those cases, especially where no exercise was undertaken under any of the State Rules or the erstwhile Acts, on earlier occasions.

25. Sub-rule (3) of Rule 12 is nothing but a rule of evidence. It merely provides a hierarchy of documents in the order of priority, to be taken note of and considered while determining the age of a juvenile in conflict with law, in an ongoing inquiry. Sub-rule (3), apart from making a reference to specified documents, debars resorting to the

subsequently mentioned document, except in a case where the earlier document(s) is/are not available. Therefore, where a matriculation certificate is very much available, a date of birth certificate from the school or a birth certificate given by a local authority shall never be looked into. Only if none of the aforementioned three documents is available, can one go for a medical opinion. While interpreting this Rule, we make it clear that it should not be misunderstood that even in those cases where due inquiry was undertaken under the erstwhile enactments and the relevant rules, one can seek a fresh inquiry under Rule 12 of the 2007 Rules.

26. Section 94(2) of the 2015 Act is a reiteration of Rule 12 of the 2007 Rules, and both should be read in consonance with each other.

Section 94 of the 2015 Act

> **"94. Presumption and Determination of age**
>
> **xxx xxx xxx**
>
> (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —
>
> (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
>
> (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
>
> (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:
>
> Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order."

JUVENILITY AS AN ADMITTED FACT

27. Admission is a rule of evidence. It is a relevant fact. It becomes relevant *qua* a fact in issue. When an admission is clear, unambiguous, continuous and unequivocal, it becomes the best form of evidence, and transforms itself into a fact in issue. When a party makes an admission, either by way of an oral statement or by acknowledging a document authored by them, the Court must proceed on that basis. The resultant relief, which is axiomatic, cannot be denied on the anvil of procedural law. Any contra view would result in grave injustice. On an issue where there is no dispute, denying a rightful relief would be an affront to fair play and justice. Here, we may add a word of caution. The Court cannot construe a statement as an admission and proceed on that basis. There is a subtle difference between an unequivocal admission as against a statement which could be construed to be so. It must be seen contextually. While the former can be the basis for a relief, the latter is one meant for adjudication *vis-a-vis* the facts of the case.

ACTUS CURIAE NEMINEM GRAVABIT

28. No one shall be prejudiced by an act of the Court. A mistake committed by the Court cannot stand in the way of one's rightful benefit. It is not the party which commits a mistake, but rather the Court itself. Hence,

such a mistake cannot act as a barrier for the party to get its due relief. However, we make it clear that the mistake must be so apparent that it does not brook any adjudication on the foundational facts.

A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602

> **"82.** Lord Cairns in *Rodger* v. *Comptoir D'escompte De Paris* [(1869-71) LR 3 PC 465, 475 : 17 ER 120] observed thus:
>
> > **"Now, Their Lordships are of opinion, that one of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case. It is the duty of the aggregate of those Tribunals, if I may use the expression, to take care that no act of the court in the course of the whole of the proceedings does an injury to the suitors in the court."**
>
> 83. This passage was quoted in the Gujarat High Court by D.A. Desai, J., speaking for the Gujarat High Court in *Soni Vrajlal* v. *Soni Jadavji* [AIR 1972 Guj 148 : (1972) 13 Guj LR 555] as mentioned before. It appears that in giving directions on February 16, 1984, this Court acted *per incuriam* inasmuch it did not bear in mind consciously the consequences and the provisions of Sections 6 and 7 of the 1952 Act and the binding nature of the larger Bench decision in *Anwar Ali Sarkar case* [1952 SCR 284 : AIR 1952 SC 75 : 1952 Cri LJ 510] which was not adverted to by this Court. **The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the handmaids of justice and not the mistress of the justice. *Ex debito justitiac*, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied. This is a peculiar fact of this case which requires emphasis."**
>
> (emphasis supplied)

JUDICIAL REVIEW OF THE PRESIDENTIAL ORDER

29. The power of pardon, as conferred under Article 72 and 161 of the Constitution, is sovereign. It is a power of compassion and empathy. It is meant to remove or reduce all pains, penalties and punishment suffered by a convict. The exercise of the aforementioned sovereign power by the highest constitutional authority, either of the State or the Centre, is a final grace given under the Constitution for the convict to reintegrate into the society.

30. Power under Article 72 and 161 of the Constitution is not appellate or revisional in nature. It is an executive power travelling on a different channel, which cannot be termed as a power of appeal or review.

31. A challenge to the exercise of power under Article 72 and 161 of the Constitution would involve limited judicial review on grounds such as inadequate application of mind, amongst others.

Kehar Singh v. Union of India, (1989) 1 SCC 204

> **"10.** We are of the view that it is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinise the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused. In doing so, the **President does not amend or modify or supersede the judicial record. The judicial record remains intact, and undisturbed. The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it…."**
>
> (emphasis supplied)

State of Haryana v. Jagdish, (2010) 4 SCC 216

> **"28**. Nevertheless, we may point out that the power of the sovereign to grant remission is within its exclusive domain and it is for this reason that our Constitution makers went on to incorporate the provisions of Article 72 and Article 161 of the Constitution of India. This responsibility was cast upon the executive through a constitutional mandate to ensure that some public purpose may require fulfilment by grant of remission in appropriate cases. This power was never intended to be used or utilised by the executive as an unbridled power of reprieve. **Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not overruled but the convict gets benefit of a liberalised policy of State pardon…."**
>
> (emphasis supplied)

Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1

> **"242.** In the aforesaid batch of cases, we are called upon to decide on an evolving jurisprudence, which India has to its credit for being at the forefront of the global legal arena. **Mercy jurisprudence is a part of evolving standard of decency, which is the hallmark of the society.**
>
> **xxx xxx xxx**
>
> **244.** It is well established that exercising of power under Articles 72/161 by the President or the Governor is a constitutional obligation and not a mere prerogative. Considering the high status of office, the Constitution Framers did not stipulate any outer time-limit for disposing of the mercy petitions under the said Articles, which means it should be decided within reasonable time. **However, when the delay caused in disposing of the mercy petitions is seen to be unreasonable, unexplained and exorbitant, it is the duty of this Court to step in and consider this aspect. Right to seek for mercy under Articles 72/161 of the Constitution is a constitutional right and not at the discretion or whims of the executive. Every constitutional duty must be fulfilled with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values.**
>
> **245. Remember, retribution has no constitutional value in our largest democratic country. In India, even an accused has a de facto protection under the Constitution and it is the Court's duty to shield and protect the same. Therefore, we make it clear that**

> **when the judiciary interferes in such matters, it does not really interfere with the power exercised under Articles 72/161 but only to uphold the de facto protection provided by the Constitution to every convict including death convicts."**

(emphasis supplied)

32. Suffice it is to state that Courts will have to exercise adequate caution and circumspection while dealing with an executive order passed in exercise of the power conferred under Article 72 or 161 of the Constitution. We make it clear that when a challenge is made to an executive order, with an independent prayer for exercising the power under Section 9(2) of the 2015 Act, they being distinct and independent, refusal of judicial review of the former will not obliterate the mandatory duty pertaining to the latter.

FACTUAL MATRIX

33. The Appellant stood charged for the offence of culpable homicide amounting to murder. The incident occurred way back on 15.11.1994. A statement under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "**CrPC, 1973**") was recorded by the trial Court. Under the format of the statement, the Appellant gave his name, his father's name, his age and other particulars. He had given his age as 20 years, as on 07.03.2001. In reply to Question No. 26, he stated that it was correct that he had opened a bank account and that a cheque book had been issued. This statement is irrelevant in the context of juvenility.

34. After his conviction, he raised the plea of juvenility during the hearing on sentence by stating that he was about 17 years of age at the time of occurrence. It is not in dispute that he was illiterate. The trial Court, while relying upon his statement regarding the bank account, presumed that he was a major and sentenced him to death, overwhelmed by the nature of the crime. On an appeal to the High Court, the Appellant was represented by an Amicus Curiae. An attempt was again made to raise the plea of juvenility, by stating that the Appellant was required to be tried by a Juvenile Court and be given the benefit of being a juvenile. Once again, the bank account and the cheque book were relied upon. In tune with the thinking of the trial Court, the High Court was also persuaded by the offence committed.

35. The matter reached this Court. This time, the Appellant placed reliance upon the birth certificate issued by the Dariya Para Bodinath Board School dated 28.04.2001. This Court, having found that the reasoning of the High Court cannot be faulted with, dismissed the appeal. Thus, the views expressed by the trial Court and confirmed by the High Court were duly concurred with. Undeterred and undaunted, the Appellant filed a Review Petition, reiterating the fact that he was a minor at the time of the offence. It was also pointed out that it was his deceased employer who filled the details to open the bank account. The Review

Petition was dismissed. After the said dismissal, a Mercy Petition filed before the Governor of the State of Uttarakhand, was also rejected.

36. Thereafter, a Writ Petition was filed before this Court, by the Appellant's parents along with a social worker, enclosing a copy of the school certificate dated 19.06.2003 from the headmaster and a transfer certificate dated 28.04.2001. This Writ Petition filed invoking Article 32 of the Constitution, was dismissed on 16.02.2005 with liberty to invoke the curative jurisdiction of this Court. Accordingly, a Curative Petition was filed. It is interesting to note that by way of a counter affidavit to the Curative Petition, Respondent No. 2 herein, after verifying the school certificate, produced another certificate dated 07.01.2006 issued by the Dariya Para Bodinath Board School, which reiterated the fact that the Appellant was 14 years of age on the date of the occurrence. Unfortunately, this Curative Petition was also dismissed by an order of this Court dated 06.02.2006.

37. After the amendment incorporating Section 7A into the 2000 Act, the Appellant's mother filed a Mercy Petition before Hon'ble the President of India. During the pendency of the said Mercy Petition, the 2007 Rules, came into effect. Incidentally, an ossification test was also done by a Medical Board constituted by the Meerut Jail, on a request made by the Appellant by way of an application. The Medical Age Certificate

issued therein also indicated that the Appellant was aged around 14 years at the time of the occurrence.

38. By the Presidential Order dated 08.05.2012, the death sentence of the Appellant was commuted to life imprisonment, with a caveat that he shall not be released until the attainment of 60 years of age. An application under the Right to Information Act, 2005 was filed thereafter by the Appellant, through which information was obtained from the bank that any minor above 10 years of age can have an independent bank account, provided he knew how to read and write, and also that no cheque book was issued for the bank account opened in the name of the Appellant.

39. A subsequent Curative Petition filed by him was rejected by the Registry as not maintainable. In the year 2019, the Appellant filed a Writ Petition before the High Court invoking Article 226 of the Constitution, laying a challenge to the Presidential Order while seeking yet another relief on the basis of Section 9(2) of the 2015 Act. By a comprehensive judgment, the Writ Petition was dismissed by the High Court *inter alia* holding that the power of judicial review over an executive order passed in exercise of Article 72 of the Constitution is limited, and the proceedings against the Appellant had attained finality. Suffice it is to state that merits were not gone into in view of the clear

stand of the State on the age of the Appellant. Aggrieved, the Appellant is before us.

SUBMISSIONS

40. Dr. S. Muralidhar, learned Senior Counsel appearing for the Appellant submitted that the High Court committed an error in not considering the independent prayer sought for by the Appellant. It is not in dispute that the age of the Appellant was 14 years at the time of commission of the offence. There is no judicial finality attained and the phrase "any stage" used in Section 9(2) of the 2015 Act must be given an extended meaning. There is no contrary finding given against the Appellant vis-à-vis the plea of juvenility, which he has raised at every stage. It is a case where grave injustice has been meted out, as can be demonstrated by the lack of adjudication and, therefore, the Appellant is entitled for immediate release. As the Appellant has been unfairly kept under incarceration including the earlier solitary confinement, which is obviously untenable and illegal, while granting the relief of releasing the Appellant forthwith, he should be adequately compensated for the loss of formative years suffered by him in the prison.

41. To buttress his submissions, the Learned Senior Counsel has placed reliance upon the following decisions:

(i) **Section 9(2) of the Juvenile Justice Act, 2015 can be invoked even after the final disposal of the case**

- Ram Narain v. State of Uttar Pradesh, (2015) 17 SCC 699.
- Hari Dutt Sharma v. The State of Uttar Pradesh, Order of the Supreme Court dated 07.02.2022 in Writ Petition (Crl.) 367 of 2021.

(ii) **Beneficial and retrospective applicability of change in law post the dismissal of the Curative Petition on 06.02.2006**

- Hari Ram v. State of Rajasthan, (2009) 13 SCC 211.
- Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637.
- T Barai v. Henry Ah Hoe and another, (1983) 1 SCC 177.

(iii) **Claim of juvenility can be raised and considered even after the President has exercised powers under Article 72, Constitution of India**

- Kehar Singh v. Union of India, (1989) 1 SCC 204.
- Ram Deo Chauhan v. Bani Kanta Das, (2010) 14 SCC 209.

42. Per contra, Mr. K.M. Nataraj, learned Additional Solicitor General, and learned Counsel Ms. Vanshaja Shukla appearing for the Respondents submitted that this is an attempt to reopen and re-hear an issue which has attained finality. There was indeed an adjudication by this Court on the earlier occasion. The Mercy Petition was considered under the

constitutional mandate and, therefore, it does not require any interference. The Special Leave Petition, as filed, is not maintainable. The bone ossification test cannot be the sole basis for declaring the appellant as the minor. While summing up, the Learned Additional Solicitor General submitted that without prejudice to the other contentions, if this Court comes to the aid of the Appellant, it should be clarified that it shall not stand as a precedent. In any case, there is due compliance of Rule 12(3) of the 2007 Rules, which is not in dispute, as can be seen even from the present affidavit filed by the Respondent No.2.

43. To buttress her submissions, the Learned Counsel for Respondent No. 2 has placed reliance upon the following decisions:

- Vinay Sharma v. Union of India, (2020) 4 SCC 391.
- Pawan Kumar Gupta v. State (NCT of Delhi), (2021) 13 SCC 249.

DISCUSSION

44. During the course of the hearing, we directed Respondent No.2 to obtain fresh instructions on the admission made in the counter affidavit filed by it in the Curative Petition filed earlier by the Appellant. This was pertaining to the certificate produced by the Appellant and the validity of the ossification test. An affidavit has been filed by

Respondent No. 2 reiterating its earlier stand as regards the certificate. Therefore, on facts, there is no dispute that the Appellant was only 14 years old at the time of the commission of the offence.

45. The facts as narrated above, speak for themselves. At every stage, injustice has been inflicted by the Courts, either by ignoring the documents or by casting a furtive glance. The Appellant despite being illiterate, raised this plea one way or another, right from the trial Court up to the conclusion of the Curative Petition before this Court.

46. The approach of the Courts in the earlier round of litigation cannot be sustained in the eye of law. There can be no reliance on the statement recorded under Section 313 of CrPC, 1973 particularly when the Appellant was asked to give his particulars for the purpose of recording his statement. Even the said statement shows that he was 20 years of age at the time of making his deposition, which could only mean that he was 14 years of age at the time of the commission of the offence. The bank account has no relevance under the Acts and the relevant rules, and in any case, it is to be proved, though not contemplated under Rule 12 of the 2007 Rules. The statement given by the Appellant at the time of the hearing on his sentence, would also pale into insignificance, as even then he would have been a minor at the time of commission of the offence, under both the 2000 and the 2015 Acts.

47. Though the 2000 Act was already enacted before the Appellant's conviction, even assuming that only the 1986 Act was in vogue, the procedural mandate contemplated thereunder was also not followed by the trial Court and the High Court. Before this Court, the Appellant had relied upon the school certificate in the Criminal Appeal. It was once again relied upon in the Review Petition. Thereafter, additional documents were relied upon by the Appellant in the Writ Petition and also in the Curative Petition which was subsequently filed. In the Curative Petition, a counter affidavit was filed by the State certifying the documents furnished by the Appellant to be true. Nonetheless, the said petition was dismissed without according any reason.

48. We are taking note of these facts only for the purpose of dealing with the case as these discussions are not even relevant in view of the clear statement in writing made on two occasions by the Respondent No. 2. We may further add that even the then existing State Rules were not duly followed, and if followed, the same would have enured to the benefit of the Appellant.

49. We would only say that when the plea of juvenility was raised, it should have been dealt with under the existing laws at the relevant point of time, especially when there exists a tacit and clear admission as to the age of the Appellant. In fact, there is no need for such an inquiry in view of the aforesaid position. In our considered view, this Court could

have dealt with the Writ Petition filed under Article 32 of the Constitution, as it raised an independent prayer for the enforcement of a right conferred under a social welfare legislation.

50. In the subsequent Writ Petition filed before the High Court, two different prayers had been made, namely, the determination of the Appellant's plea of juvenility and consequent release, or alternatively, judicial review of the decision of the President or the Governor and consequent release. As the Executive cannot be construed to have undertaken an adjudication on the determination of the age of the accused, and with the first prayer being a distinct one invoking Section 9(2) of the 2015 Act, we feel that the High Court has committed an error in its reasoning. We would only state that this is a case where the Appellant has been suffering due to the error committed by the Courts. We have been informed that his conduct in the prison is normal, with no adverse report. He lost an opportunity to reintegrate into the society. The time which he has lost, for no fault of his, can never be restored.

51. As we find that the Appeal deserves to be allowed in view of the conclusion arrived at, we are inclined to set aside the sentence imposed in excess of the upper limit prescribed under the relevant Act, while maintaining the conviction rendered. It cannot be construed that the Presidential Order is interfered with, as the issue that we are concerned with, is the failure of the Court in not applying the mandatory

provisions of the 2015 Act with specific reference to the plea of juvenility. Therefore, it is not a review of the Presidential Order, but a case of giving the benefit of the provisions of the 2015 Act to a deserving person.

52. From the custody certificate filed on record, it appears that the Appellant has undergone imprisonment for almost 25 years, during which time, the society has undergone significant transformation which the Appellant might be unaware of and find difficult to adjust with.

53. In view of the same, we direct the Uttarakhand State Legal Services Authority (for short "**the State Authority**") to play a proactive role in identifying any welfare scheme of the State/Central Government, facilitating the Appellant's rehabilitation and smooth reintegration into the society upon his release, with particular emphasis on his right to livelihood, shelter and sustenance guaranteed under Article 21 of the Constitution. We further direct the State Authority to assist him in availing any such scheme under which he is found eligible and wishes to avail, and such assistance may be effected through the concerned District Legal Services Authority, if the State Authority finds the same expedient and necessary. The Registry is directed to forthwith communicate this order to the State Authority.

54. The Appeal is allowed. The impugned judgment stands set aside. The sentence imposed against the Appellant in excess of the upper limit

prescribed under the relevant Act, shall stand set aside, while making it clear that the conviction shall continue. The Appellant shall be released forthwith, if not required in any other case.

55. Pending application(s), if any, shall stand disposed of.

.....J.
(M. M. SUNDRESH)

.....J.
(ARAVIND KUMAR)

NEW DELHI;
JANUARY 08, 2025