

ITEM NO.2

COURT NO.8

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(Criminal) No. 63/2013

NAND KISHORE

Petitioner(s)

VERSUS

STATE OF M.P.

Respondent(s)

(With office report)

[FOR FINAL DISPOSAL]

Date : 16/12/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE FAKKIR MOHAMED IBRAHIM KALIFULLA
HON'BLE MR. JUSTICE ABHAY MANOHAR SAPRE

For Petitioner(s) Mr. Rishi Malhotra, A.O.R.

For Respondent(s) Mr. C. D. Singh, A.O.R.

UPON hearing counsel the Court made the following
O R D E R

The writ petition is allowed for the reasons
stated in the signed reportable order.

Since the petitioner was already enlarged on
bail by this Court on 15th July, 2013, no further
orders are necessary as regards his detention any
more. Bail Bond and Sureties, if any, shall stand
discharged.

[KALYANI GUPTA]
COURT MASTER

[SHARDA KAPOOR]
COURT MASTER

[SIGNED REPORTABLE ORDER IS PLACED ON THE FILE.]

petitioner on bail, a Report was called for from the Juvenile Justice Board, Datia, Madhya Pradesh.

3. A perusal of the said Report discloses that the District Education Officer and Assistant Teacher of Pandit Nehru Primary School, Kasba-Banmore, District Morena, were examined apart from production of original mark sheets of Class 2nd, 3rd, 7th, 9th, and 11th standards. Based on the analysis of the above oral and documentary evidence, it was found that the petitioner was really born on 14th April, 1980. It is, therefore, reported that on the date of occurrence i.e. on 18th June, 1997 the petitioner was 17 years, 2 months and 4 days old.

4. In the light of the said fact now reported it is beyond doubt that the petitioner was a juvenile as on the date of occurrence. Since, it has now turned out that the petitioner was a juvenile on the date of occurrence his incarceration henceforth cannot be continued.

5. A question arose as to when conviction came to be imposed on an accused, prior to the coming into force of the Act of 2000, and a claim as to his status as a juvenile at the subsequent stages as to whether the protection or the benefits can be made available to him

as a juvenile by virtue of the coming into force of the Act of 2000. In the decision reported in Hariram v. State of Rajasthan (2009) 13 SCC 193, it was ultimately held:-

".....a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(k) had always been in existence even during the operation of the 1986 Act."

6. The said judgment was subsequently followed in the decisions reported in Ajay Kumar v. State of Madhya Pradesh (2010) 15 SCC 83, Abuzar Hussain @ Gulzar Hossain v. State of West Bengal (2012) 10 SCC 489, Jitendra Singh alias Babboo Singh and another v. State of Uttar Pradesh(2013) 11 SCC 193 and Yakub Abdul Razak Memon v. State of Maharashtra 2013(13) SCC 1. One of us, Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla, in the judgment reported in JT (2014) 9 SC 243 titled Hakkim v. State represented through Deputy Superintendent of Police had occasion to follow the above said principle while dealing with a convict in Criminal Appeal No. 1410 of 2009(one of the three appeals). Therefore, after the coming into force of the Act of 2000, a juvenile who had not completed 18 years

of age on the date of the commission of the offence was entitled to the benefits of the said Act. Following the aforesaid principle followed in *Hakkim's case (supra)*, the same benefit is granted to the petitioner herein as well.

7. It is also not in dispute that the petitioner has already undergone 11 years of imprisonment, pursuant to the conviction and sentence imposed on him. The writ petition, therefore, stands allowed and the petitioner shall be set at liberty forthwith unless his detention is warranted in any other case.

8. Since the petitioner was already enlarged on bail by this Court on 15th July, 2013, no further orders are necessary as regards his detention any more. Bail Bond and Sureties, if any, shall stand discharged.

.....J.
[FAKKIR MOHAMED IBRAHIM KALIFULLA]

.....J.
[ABHAY MANOHAR SAPRE]

NEW DELHI
DECEMBER 16, 2014.