

ITEM NO.28

COURT NO.2

SECTION II

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

Petition(s) for Special Leave to Appeal (Crl.) No(s). 5865/2012

(Arising out of impugned final judgment and order dated 18/05/2012 in CMSBA No. 344425/2009, CRLA No. 1377/2007 passed by the High Court Of Judicature at Allahabad)

SANJAY KUMAR GUPTA

Petitioner(s)

VERSUS

SHERU @ SHAILENDRA KUMAR SHARMA & ANR.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 03/11/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR

HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s) Mr. R. D. Upadhyay, Adv.
Mr. Ashok Kumar Pandey, Adv.
Mr. Girish G. Upadhyay, Adv.
Mr. Awadesh Kumar Singh, Adv.
Ms. Asha Upadhyay, Adv.For Respondent(s) Mr. R. Dash, Sr. adv.
Mr. Ardhendumauli Kumar Prasad, Adv.UPON hearing the counsel the Court made the following
O R D E R

High Court of Allahabad has allowed Crl. Misc. Second Bail Application No. 344425 of 2009 filed in Criminal Appeal No. 1377 of 2007 and while suspending the sentence awarded to respondent-accused No. 1 (Shailendra Kumar Sharma) enlarged him on bail on a

prima facie conclusion that he was a juvenile as on the date of the commission of the offence in view of his statement made under Section 313, Cr.P.C. The present SLP filed by the complainant questions the correctness of the said order.

When the matter came up before us on 27.07.2012 we had while issuing notice to the respondents directed the Trial Court to hold an inquiry in terms of Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 to determine whether the respondent was a juvenile within the meaning of the said Act as on the date of the commission of offence. An inquiry has accordingly been conducted by the Trial Court and a report based on the same submitted to this court. From a perusal of the report it appears that the Trial Court has come to the conclusion that the respondent-convict was born on 01.07.1982 by which reckoning he was a juvenile being hardly of 16 years as on the date of the commission of offence on 03.11.1998. Prima facie therefore the conclusion drawn by the High Court that respondent No. 1 was a juvenile hence entitled to an order of suspension of sentence awarded to him cannot be said to be wholly misplaced or erroneous. Learned counsel for the petitioner however contended that given an opportunity he would file objections to the report

received from the Trial Court and question the correctness of the findings recorded therein. We do not consider it necessary to finally pronounce upon the question of juvenility of the respondent convict in these proceedings. In our opinion the proper course would be to leave that issue open to be finally determined by the High Court in the light of the report submitted by the Trial Court. The complainant shall in that event be free to file his objections before the High Court to the inquiry report submitted by the Trial Court and make his submissions on the question whether the convict was indeed a juvenile as on the date of the occurrence.

In the result we see no reason to interfere with the SLP which is hereby dismissed. The inquiry report submitted by the Trial Court shall be sent to the High Court to be taken up along with Cr1. A. No.1377 of 2007. We make it clear that we have expressed no opinion as to the merits of the case.

(Shashi Sareen)
Court Master

(Veena Khera)
Court Master