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NAGOOR PICHAI @ BADUSHA

v.

STATE TR. SUB-INSPECTOR OF POLICE

CrI. M.P. No. 853 of 2013

IN

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(Criminal Appeal No. 811 of 2011)

SEPTEMBER 19, 2013

[T.S. THAKUR AND VIKRAMAJIT SEN, JJ.]

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Tamil Nadu Borstal Schools Act, 1925 - ss. 2(1), 8 & 10 - Petitioner convicted u/s.302 IPC for murder and sentenced to life imprisonment - He was over 19 years of age on the date of incident, and 22 years 9 months old on the date of conviction - Plea for detention of Petitioner in a Borstal School

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- Held: Definition of 'adolescent offender' in s.2(1) of the Borstal Schools Act stipulates requirement of being not less than 16 years but not more than 21 years of age on the date of conviction - Petitioner being over 21 years on the date of his conviction, it would not be advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons - The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as then he would have been required to be placed in a Borstal School - Since Petitioner was over 19 years on the date of the occurrence or the conviction, even in postulation of the Juvenile Justice Act, no relief available even retrospectively to the Petitioner - No impediment or legal impropriety in his having to undergo his sentence in an ordinary jail - Petitioner not entitled to bail - Juvenile Justice (Care and Protection of Children) Act, 2000 - Penal Code, 1860 - s.302.

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Tamil Nadu Borstal Schools Act, 1925 - ss.2(1) & 8 - Definition of 'adolescent offender' - Distinction between 'adolescent' and 'juvenile' - Discussed.

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Tamil Nadu Borstal Schools Act, 1925 - Borstal School - Held: Is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail. A

Tamil Nadu Borstal Schools Act, 1925 - Provisions of - Difference from provisions of the Juvenile Justice Act - Held: The Borstal Schools Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed - Juvenile Justice (Care and Protection of Children) Act, 2000. B

The Petitioner was convicted under Section 302 IPC for the murder of his paternal uncle and sentenced to life imprisonment. He was 19 years 8 months of age on the date of incident, and 22 years 9 months old on the date of conviction. C

The only question agitated for the Petitioner before this Court was that the provisions of Tamil Nadu Borstal Schools Act, 1925 were ignored by the Courts below. It was contended that the Courts below erred in not directing the detention of the Petitioner in a Borstal School. D

Dismissing the bail application of the Petitioner, the Court E

HELD: 1.1. The Tamil Nadu Borstal Schools Act, 1925 does not contemplate the term 'juvenile' at all. However, the definition of 'adolescent offender' is contained in Section 2(1) of the Act. By virtue of the statutory definition of 'adolescent offender', on the date of the conviction he should have been not less than 16 years but not more than 21 years of age. 'Adolescent' is seldom considered in any legal dictionary, whereas juvenile/minor/child is ubiquitously dealt with. The Borstal School is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail. Section 8 of the F
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A Borstal Schools Act stipulates that a convict cannot remain in a Borstal School beyond a period of five years or his attaining the age of 23 years. There is a distinction, as the relevant statutes ordain, between an 'adolescent' and a 'juvenile'. 'Juvenile' and its statutory synonym B 'child' (and now even 'minor') has been defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 simply as a person who has not completed eighteen years of age. The repealed Juvenile Justice Act treated any person below the age of sixteen years as a juvenile C and it is this age which is contemplated in the Borstal Schools Act. By virtue, therefore, of Section 8 of the Juvenile Justice Act, Special Homes have to be established for the 'reception and rehabilitation of a juvenile in conflict with law'. Again, it is this Act in terms D of Section 16, that places an embargo on the imposition of any sentence of death or imprisonment for life. [Paras 2, 3] [360-G; 361-C-G; 362-A]

1.2. Since the Petitioner was over 19 years on the date of occurrence of the unfortunate event or the E conviction, even in the postulation of the Juvenile Justice Act, no relief is available even retrospectively to the Petitioner. Under Section 8 of the Borstal Schools Act, the Court is empowered to pass a sentence of detention in the Borstal School when it appears to it expedient to F pass such a sentence for a term which shall not be less than two years but shall not exceed five years. The rationale behind these provisions is obviously to insulate a young person or adolescent in contradistinction to a juvenile, during his waning impressionable years, from G the pernicious influence of hardened criminals; and, on the other hand, to similarly insulate other persons sentenced to detention in Borstal Schools from the influence of convicts who have attained the age of 23 years or who have been detained in a Borstal School for H five years. [Para 3] [362-B-E]

1.3. Since on the date of his conviction the Petitioner was over 21 years old, and therefore, was not a juvenile under the erstwhile or current statutory dispensation as per the wisdom of the Legislature, there was no impediment or legal impropriety in his having to undergo his sentence in an ordinary jail; on the contrary being an adult it would not have been advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons. The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as he would then have required to be placed in a Borstal School. Even if this infraction had occurred, the Petitioner would not be entitled to bail today solely on that score. In any event, the entire argument is totally academic since on the present date the Petitioner is over 30 years of age and on the date of his conviction for the commission of the offence, the Petitioner was over 21 years of age. The Borstal Schools Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed. [Paras 5] [364-E-H; 365-A]

Yaduraj Singh v. State of U.P. (1976) 4 SCC 310 and C. Elumalai v. State of Tamil Nadu (1984) 4 SCC 539 - distinguished.

Case Law Reference:

(1976) 4 SCC 310 distinguished Para 4

(1984) 4 SCC 539 distinguished Para 4

CRIMINAL APPELLATE JURISDICTION : Criminal M.P. No. 853 of 2013.

IN

Criminal Appeal No. 811 of 2011.

A From the Judgment and Order dated 02.12.2009 of the Madurai Bench of Madaras High Court in Crl. Appeal No. 1355/2002.

V. Kanagaraj, Vipin Kumar Jai, Vipul Jai for the Appellant.

B Subramonium Prasad, AAG, Rajiv Dalal, A. Santha Kumaran, K. Sasikala, M. Yogesh Kanna for the Respondent.

The Judgment of the Court was delivered by

C **VIKRAMAJIT SEN, J.** 1. The only question agitated before us by learned Senior Counsel for the Petitioner is that the provisions of Tamil Nadu Borstal Schools Act, 1925 (hereinafter 'Borstal Schools Act') have been ignored by the Courts below. It is evident from a perusal of the impugned judgment that the applicability of the said statute has not been raised in either of the Courts below. Briefly stated, the Petitioner has been sentenced to life imprisonment under Section 302 of the Indian Penal Code for the murder of his paternal uncle on 12.8.1999. It is not disputed before us that the Petitioner's date of birth is 29.11.1979 thereby making him 19 years 8 months of age on the date of the commission of the murder. The Petitioner having been found guilty has been sentenced to life imprisonment vide judgment of the Trial Court pronounced on 6.9.2002, on which date the Petitioner was 22 years 9 months old. It is contended before us by learned Senior Counsel that the Courts below erred in not directing the detention of the Petitioner in a Borstal School.

G 2. The Borstal Schools Act does not contemplate the term 'juvenile' at all. However, the definition of 'adolescent offender' is contained in Section 2(1) of the said Act and reads thus :

" 'Adolescent offender' means any person who has been convicted of any offence punishable with imprisonment or who having been ordered to give security under section 118 of the Code of Criminal Procedure has failed to do

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so and who at the time of such conviction or failure to give security is not less than 16 in the case of a boy and not less than 18 in the case of a girl, but not more than 21 years of age in either case."

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We should clarify that Section 118 corresponds to Section 110 of the current 1973 Cr.P.C. The age of a juvenile prior to the present Act was 16 years and a legal anachronism palpably exists requiring an amendment to the Borstal Schools Act substituting the age of 16 years by 18 years for a boy. 'Adolescent' is seldom considered in any legal dictionary, whereas juvenile/minor/child is ubiquitously dealt with. Adolescence is the penumbral period (presently between 18 years and 23 years) when, for good reason, a person is not perceived and treated as an adult for the purposes of incarceration. The Borstal School is a halfway house intended to prepare a person for imprisonment in a regular/ordinary jail. Section 8 of the Borstal Schools Act stipulates that a convict cannot remain in a Borstal School beyond a period of five years or his attaining the age of 23 years. We should immediately note the distinction, as the relevant statutes ordain, between an 'adolescent' and a 'juvenile'. 'Juvenile' and its statutory synonym 'child' (and now even 'minor') has been defined in the Juvenile Justice (Care and Protection of Children) Act, 2000 [for short, 'Juvenile Justice Act'] simply as a person who has not completed eighteen years of age. The repealed Juvenile Justice Act treated any person below the age of sixteen years as a juvenile and it is this age which is contemplated in the Borstal Schools Act. By virtue, therefore, of Section 8 of the Juvenile Justice Act, Special Homes have to be established for the 'reception and rehabilitation of a juvenile in conflict with law'. Again, it is this Act in terms of Section 16, that places an embargo on the imposition of any sentence of death or imprisonment for life.

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3. In the context of the arguments addressed before us it is important to emphasise that it is the date of conviction that

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A assumes singular significance. By virtue of the statutory definition of 'adolescent offender', on the date of the conviction he should have been not less than 16 years but not more than 21 years of age. Although this question does not arise directly before us, the date of juvenility was less than 16 years of age
 B and, therefore, a plea on this ground had not been raised since the Petitioner was over 19 years on the date of occurrence of the unfortunate event or the conviction. Even in the postulation of the Juvenile Justice Act, no relief is available even retrospectively to the Petitioner. Under Section 8 of the Borstal
 C Schools Act, the Court is empowered to pass a sentence of detention in the Borstal School when it appears to it expedient to pass such a sentence for a term which shall not be less than two years but shall not exceed five years. The rationale behind these provisions is obviously to insulate a young person or
 D adolescent in contradistinction to a juvenile, during his waning impressionable years, from the pernicious influence of hardened criminals; and, on the other hand, to similarly insulate other persons sentenced to detention in Borstal Schools from the influence of convicts who have attained the age of 23 years or who have been detained in a Borstal School for five years.
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4. Learned Senior Counsel has drawn our attention to *Yaduraj Singh v. State of U.P.* (1976) 4 SCC 310 and *C. Elumalai v. State of Tamil Nadu* (1984) 4 SCC 539 both of which have no relevance to the issue raised before us, that too
 F for the first time. In *Yaduraj Singh* this Court had emphasised that the plea under the Probation of Offenders Act had not been raised in any of the Courts below and whilst it could nevertheless be pressed, such a course invariably presents difficulties in comprehensively considering the plea because of
 G the absence of any credible evidence to determine the juvenility of the person concerned. We hasten to clarify that we have not declined to entertain the plea on the ground that it has not been raised in any of the Courts below, therefore rendering *Yaduraj Singh* of no assistance to the Petitioner. The ratio of *Elumalai*
 H follows upon a bare reading of Sections 8 and 10 of the Borstal

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Schools Act which we shall reproduce so as to make our judgment holistic and self contained : A

"8. Power of Court to pass sentence of detention in Borstal School. (1) Where it appears to a Court having jurisdiction under this Act that an adolescent offender should, by reason of his criminal habits or tendencies, or association with the persons of bad character, be subject to detention for such term and under such instruction and discipline as appears most conducive to his reformation and the repression of crime, it shall be lawful for the Court, in lieu of passing a sentence of imprisonment, to pass a sentence of detention in a Borstal school for a term which shall not be less than two years and shall not exceed five years but in no case extending beyond the date on which the adolescent offender will, in the opinion of the Court, attain the age of twenty-three years. B
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(2) Before passing a sentence of detention in a Borstal School under sub-section (1), the Court

(a) shall call for a report from the Probation Officer of the area in which the offender permanently resided at the time when he committed the offence and shall consider such report, E

(b) shall consider any other report or representation which may be made to it, and F

(c) may make such further inquiry as it may think fit, as to suitability of the case for treatment in a Borstal school and shall be satisfied that the character, state of health and mental condition of the offender and the other circumstances of the case are such that the offender is likely to profit by such instruction and discipline as aforesaid. G

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A (3) The report of a Probation Officer referred to in sub-section (2) shall be treated as confidential.

B Provided that the Court may, if it so thinks fit, communicate the substance thereof to the offender and may give him an opportunity of producing such evidence as may be relevant to the matter stated in the report.

C **10. Power of Inspector-General to transfer prisoners to Borstal Schools.**-The Inspector General may, subject to rules made by the State Government, if satisfied that any adolescent offender undergoing imprisonment in consequence of a sentence passed either before or after the passing of this Act might with advantage be detained in a Borstal school, there to serve the whole or any part of the unexpired residue of his sentence. The provisions of this Act shall thereupon apply to such person as if he had been originally sentenced to detention in a Borstal school."

D 5. So far as the facts in the present Appeal are concerned, since on the date of his conviction the Petitioner was over 21 years old, and therefore, was not a juvenile under the erstwhile or current statutory dispensation as per the wisdom of the Legislature, there was no impediment or legal impropriety in his having to undergo his sentence in an ordinary jail; on the contrary being an adult it would not have been advisable for him to be detained in a Borstal School as he may detrimentally influence younger persons. The position would have been totally different had he, on the date of his conviction, been between ages of 16 and 21 years as he would then have required to be placed in a Borstal School. Even if this infraction had occurred, the Petitioner would not be entitled to bail today solely on that score. In any event, the entire argument is totally academic since on the present date the Petitioner is over 30 years of age and on the date of his conviction for the commission of the offence, the Petitioner was over 21 years of age. The Borstal Schools

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Act merely concerns detention of a convict, whereas the Juvenile Justice Act deals with detention as also the punishment or sentence that can be imposed. **A**

6. Accordingly the Application for bail, on the grounds pressed before us, is devoid of merit and is dismissed. **B**

B.B.B.

Bail Application dismissed.