

NAND KISHORE

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v.

STATE OF M.P.

(Writ Petition (Crl.) No. 63 of 2013)

DECEMBER 16, 2014

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**[FAKKIR MOHAMED IBRAHIM KALIFULLA AND
ABHAY MANOHAR SAPRE, JJ.]**

Juvenile Justice (Care and Protection of Children) Act, 2000 – s. 7A – Applicability of – Writ petition by a convict who was convicted u/s. 302 IPC which was confirmed upto Supreme Court – Claiming that he was a juvenile under 2000 Act being below 18 years of age on the date of commission of offence and hence entitled to benefit under the Act – Held: Petitioner was a juvenile on the date of occurrence as appears from the oral and documentary evidence – Protection of the 2000 Act can be made available to the petitioner though he was convicted prior to coming into force of the Act and claim as to status as a juvenile made at a subsequent stage.

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Hariram v. State of Rajasthan 2009 (13) SCC 193; Ajay Kumar v. State of Madhya Pradesh 2010 (15) SC 83; Abuzar Hussain @ Gulzar Hossain v. State of West Bengal 2012 (10) SCC 489 : 2012 (9) SCR 244 ; Yakub Abdul Razak memon v. State of Maharashtra 2013 (13) SCC 1; Hakkim v. State represented through Deputy Superintendent of Police JT 2014 (9) SC 243 – relied on.

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Case Law Reference

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|--------------------------|------------------|---------------|
| 2009 (13) SCC 193 | relied on | Para 5 |
| 2010 (15) SC 83 | relied on | Para 6 |
| 2012 (9) SCR 244 | relied on | Para 6 |

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A **2013 (13) SCC 1** **relied on** **Para 6**

JT 2014 (9) SC 243 **relied on** **Para 6**

CRIMINAL ORIGINAL JURISDICTION: Writ Petition
(Criminal) No. 63 of 2013.

B Under Article 32 of the Constitution of India.

 Rishi Malhotra, Adv. for the Petitioner.

 C.D. Singh, Adv. for the Respondent.

 The following Order of the Court was passed :

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ORDER

 1. This writ petition was filed by the petitioner claiming the benefit of the provision under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter called, 'the Act'). The petitioner claimed that he was born on 14th April, 1980 and that the incident occurred on 18th June, 1997. He, therefore, claimed that since he was 17 years 2 months and 4 days old on the date of commission of offence, though his conviction under Section 302 by the trial Court was affirmed by the High Court as well as by this Court by order dated 7th July, 2011, by virtue of Section 7A of the Act, he was entitled for the benefit of the provisions contained in the Act.

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 2. On 22nd April, 2013, this Court issued notice in this writ petition. On 15th July, 2013, while enlarging the petitioner on bail, a Report was called for from the Juvenile Justice Board, Datia, Madhya Pradesh.

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 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. A

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. B

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:- C

“.....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.” D E

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 F G H

A 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.

B 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.

C 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.

Kalpana K. Tripathy

Petition allowed.