

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

Cr. Rev. No. 02/2014

Date of Decision:01.10.2014

Gagan Deep Singh & anr. v. Spl. Public Prosecutor Jammu

Coram:

Hon'ble Mr. Justice Janak Raj Kotwal-Judge.

Appearing counsel:

For petitioner (s): Mr. Anmol Sharma, Advocate.

For respondent(s): Mr. Gagan Basotra, Sr. AAG.

(i)	Whether to be reported in Press, Journal/Media:	Yes/No
(ii)	Whether to be reported in Journal/Digest:	Yes/No

1. Short question raised in this revision petition is; whether petitioners, who are facing trial for offence under section 302/34 RPC, are entitled to benefit under the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 (for short, the Act of 2013) and to be released on bail ?

2. I have heard learned counsel for the parties and have gone through the impugned order dated 21.12.2013, whereby learned trial court has dismissed petitioners' bail application taking the view that the Act of 2013 is not attracted.

3. Alleged offence has been committed on 11.06.2010. Petitioners are alleged to have committed murder. After holding inquiry on an application moved by the petitioners, learned trial court has found that the age of petitioner No.1, Gagan Deep Singh, at the time of

the commission of offence was 16 years and 4 and the age of petitioner No.2, Ravinderpal Singh, was 17 years 2 months & 29 days.

4. Under the Jammu and Kashmir Juvenile Justice Act, 1997 (for short, the Act of 1997), a 'juvenile' has been defined as a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years (Section 2(h)) and a 'delinquent juvenile' has been defined as a juvenile who has been found to have committed an offence. As both the petitioners, even though they were young boys in their teens, had crossed the age of 16 years as at the time of the commission of offence so benefit under the Act of 1997 was not available to them, they were not released on bail and are facing trial as ordinary under trials.
5. The Act of 1997, however, came to be repealed by the Act of 2013. One of the major developments in the Act of 2013 is the increase in age of juvenility and parity between male and female juvenile. In the Act of 2013, the 'Juvenile' is defined as a person who has not completed eighteenth year of age (section 2(m)) and the term 'Delinquent Juvenile' has been substituted by the term 'Juvenile in conflict with law', which has been defined as 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 offence' (sec. 2 (n)).

6. Petitioners, as said above, were not juveniles as at the time of the commission of the offence as per the Act of 1997 so they were not entitled to benefit of juvenility. They, however, are juveniles as at the time of commission of offence under the Act of 2013 and would undoubtedly have been entitled to benefit of juvenility had this Act been in force as at the time of commission of the offence.
7. It was in this backdrop that the petitioners moved application before the trial court and raise the question whether the benefit juvenility under the Act of 2013 can be made available to the petitioners. If reply to this question is yes, petitioners would be treated as a juvenility in conflict with law' and shall be entitled to be released on bail because section 13 Of the Act of 2013, like section 18 of the Act 1997, makes bail mandatory for any juvenile involved in commission of bailable or non-bailable offence, notwithstanding anything contained in the Code of Criminal Procedure (for short, the Code). Even though a person involved in commission of offence under section 302 RPC normally is not entitled to bail under section 497 or 498 of the Code but bail shall have to be granted if the accused is a juvenile.
8. Question arising in this revision petition is covered under and is to be decided within the ambit of section 21 of the Act of 2013. Section 21 that provides for a provision in relation to pending cases and reads:-

“21. Special provision in respect of pending cases:- Notwithstanding anything contained in the Act, all proceedings in respect of a juvenile pending in any Court in any area on the date on which the Act comes into force in that area, shall be continued in that Court as if the 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 Aboard which shall pass orders in respect of that juvenile in accordance with the provisions of the Act as if it had been satisfied on inquiry under the 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 (n) of Section 2, even if the juvenile ceases to be so on or before the date of commencement of the Act and the provisions of the 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.”

In needs to be noticed that section 21 of the Act of 2013 is *pare materia* section 20 of the Central Act.

9. Learned trial court, relying mainly on Partap Singh v. State of Jharkhand and anr., (2005) 3 SCC 511, referred to in Jameel v State of Maharashtra, AIR 2007 SC 971, took the view that the Act of 2013 came into force on 22. 3. 2013 and at that time the age of both the accused was more than 18 years so they were not juvenile at that time and therefore, the provision of the Act of 2013 are not applicable as both the accused had ceased to be

juvenile at that time. This means, as per the view taken by the learned trial court, if in a given case accused (male) was not a juvenile under the Act of 1997 being more than 16 years as at the time of commission of the offence, he would be entitled to benefit under the Act of 2013 only if he has not crossed the age of 18 years as at the time of coming into force of the Act of 2013.

10. On a plain reading of section 21 of the Act of 2013 along with its Explanation, learned trial court cannot be said to have taken correct view and has fallen into error in holding that in pending cases benefit of Juvenility under the Act of 2013 would be available only to an accused who has not crossed the age of 18 years as at the time of coming into force of the said Act even if he was a juvenile under the said Act as at the time of commission of the offence. Correct legal position rather is that under section 21 of the Act of 2013, benefit of juvenility under this Act is available to all those accused who were juvenile as at the time of the commission of the offence as per the definition of 'Juvenile' and 'Juvenile in conflict with law' given in the said Act. To say bit simply, benefit of juvenility and all the provisions of the Act of 2013 including section 13 that makes bail mandatory to a juvenile in conflict with law shall be available to all those accused who had not completed the age of 18 years as at the time of the commission of offence. This is made amply clear by the legislature in Explanation to section 21 by use of expression; "even if the juvenile ceases to

be so on or before the date of commencement of the Act and the provisions of the 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.” This question rather is no more *res integra* as far as this court is concerned.

11. It needs to be pointed out that the Constitution Bench Judgment in Partap Singh’s case (supra) had come at a time when Explanation to section 20 of the Central Act did not exist. Explanation to section 20 of the Central Act came to be inserted by Amendment Act No. 33 of 2006. This explanation is *pare materia* Explanation to section 21 of Act of 2013 and provides that the benefit of juvenility shall be extended even to a juvenile who had completed age of 18 years as at the time of coming into force of section 21 of the Central Act. Under the now existing section 20 of the Central Act and section 21 of the Act of 2013, the benefit of juvenility would be available to all those accused who were juveniles as at the time of commission of the offence as per the said Acts even if they have crossed the age of 18 years as at the time of coming into force of these Acts. This is clearly laid down by the Supreme Court in ***Hari Ram v. State of Rajasthan (2009) 13 SCC 211*** where it has been held that

“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.”

12. Law laid down in Hari Ram’s case has been referred to and relied upon by the Supreme Court more recently in Jatindera Singh alias Babboo Singh and anr. v. State of U.P., Appeal No. 763 of 2003. A similar view has already been taken by a co-ordinate Bench of this Court in judgment dated 01.01.2014 in B.A. No. 123/2013.
13. I would, thus, hold that the petitioners are entitled to benefit under the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 and are entitled to be released on bail under section 13 of the Act of 2013, provided, however, there is no other reason for not releasing them as provided under the same section.
14. Viewed thus, the impugned order to the extent of refusing bail to the petitioners and dismissing the bail application is set aside and learned trial court is directed to forthwith pay fresh order in the said application in terms of section 13 of the Act of 2013.
15. A copy of this order be sent to the trial court.

(Janak Raj Kotwal)
Judge

Jammu
01.10.2014
Pawan Chopra