

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 137 OF 2022

SAGAR BEHERA @ BANAMALI
@ DAYANIDHI APPELLANT

VERSUS

STATE OF WEST BENGAL RESPONDENT

ORDER

The appellant Sagar Behera has been convicted for offences punishable under Sections 302, 394, 323, read with Section 34, and Section 411 of the Indian Penal Code, 1860. For the offence under Section 302, he has been sentenced to imprisonment for life with fine and default stipulation; and for the offence under Section 394, he has been sentenced to undergo rigorous imprisonment for ten years with fine and default stipulation. Separate sentences with fine and default stipulation have been imposed for the other offences. The sentences were directed to run concurrently.

2. The Trial Court had convicted the appellant *vide* judgment dated 31st March 2004. The appellant had thereupon preferred appeal before the High Court, after considerable delay, in the year 2015.

As the appellant was confined to jail and was sentenced to life imprisonment, delay in filing the appeal was condoned. The appeal stands dismissed, and hence the present appeal.

3. The incident in question and subject matter of conviction had occurred on 17th April 2001. The appellant before this Court has raised the plea of juvenility on the date of the offence by placing reliance upon the certificate dated 19th February 2021 issued by the Head Master of Gopinathjew Nodal U.P. School, P.O. Gopinathpur, District Bhadrak. This plea was not raised before the Trial Court or the High Court.
4. This Court *vide* order dated 6th August 2021 had directed the Sessions Judge, Bhadrak, Odisha to examine the original school records and to record statement of the Head Master of the school who had issued the certificate. This order mentions that in the certificate relied upon by the appellant, there is a difference in the date of birth recorded in figures and words. The date of birth as mentioned in figures is “20.05.1984”, while the date of birth in words is “20th July Nineteen Hundred Eighty Four”.
5. Thereupon, the District and Sessions Judge, Bhadrak submitted his report stating that the date of birth of the appellant as recorded in the school records is 20th May 1984, and that inadvertently the date of birth mentioned in the certificate in words was written as “20th

July Nineteen Hundred Eighty Four". The report enclosed photocopy of the Admission Register as well as affidavit dated 10th September 2013 of Hemanta Behera stating that Sagar Behera, son of Abhiram Behera, is his brother and had studied in the said school wherein his name was recorded/mentioned as Dayanidhi Behera.

6. On receipt of the said report, *vide* order dated 20th September 2021, this Court had issued notice in the Special Leave Petition.
7. Thereafter, *vide* order dated 22nd October 2021, this Court had directed the District and Sessions Judge, Bhadrak to conduct further inquiry as to the date of birth of the appellant and submit a report after recording evidence. The respondent, i.e. the State of West Bengal, was directed to ensure necessary cooperation by deputing a competent representative on behalf of the State so that the records can be duly scrutinised and verified.
8. Consequent to the said directions, the District and Sessions Judge, Bhadrak has submitted his report dated 6th December 2021 which refers to the statement made by Hemanta Behera, brother of the appellant, and the statement of Shantanu Koar, Assistant Commissioner of Police, North Zone, Bidhan Nagar, West Bengal. On the basis of evidence adduced and relying upon the Transfer Certificate and school records, the report states that the date of

birth of the appellant is 20th May 1984. The State of West Bengal has filed a reply raising objections to the report.

9. During the course of hearing, it is pointed out that the appellant has already suffered incarceration of more than twenty years. The jail authorities, after considering the conduct of the appellant, have recommended premature release/remission of sentence. The issue is now pending before the competent authorities.
10. Given the aforesaid factual background, we direct release of the appellant from jail on suspension of sentence on appropriate terms and conditions as may be fixed by the trial court.
11. In the meanwhile, we direct that the State of West Bengal shall consider and decide the request for premature release/remission within a period of two months from today.
12. List the appeal on 25th April 2022.

.....J.
(DR. D.Y. CHANDRACHUD)

.....J.
(SANJIV KHANNA)

**NEW DELHI;
FEBRUARY 04, 2022.**