

**Cr.A.524/2017**

Shahrukh Khan  
V.  
State of M.P. & Anr.

**02/05/2017**

Shri D.K.Pathak, counsel for the appellant.

Shri Prakhar Dhengula, Panel Lawyer for the respondent no.1/State.

None for the respondent no.2.

This is third appeal under Section 14(A)(2) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The first appeal was dismissed as withdrawn on 03/01/2017 and the repeat appeal was dismissed as withdrawn on 03/03/2017.

It is submitted by the counsel for the appellant that during the pendency of the trial, the appellant had moved an application that he is juvenile as he is below 18 years of age and, therefore, his case may be tried by Juvenile Court. Taking cognizance of the said application, the Trial Court had directed for an enquiry with regard to the juvenility of the appellant. It is further submitted that as the appellant is an illiterate boy and had never gone to the school and he do not have any birth certificate issued by any competent authority, therefore, the Trial Court directed for holding of Ossification Test by Medical Board. It is fairly conceded by the counsel for the appellant that the medical board has submitted its report and according to the ossification report, the age of the appellant is in between 18 to 20 years. However, it is submitted that since the case is fixed for examination of the doctors and the age of the appellant has not been finally determined by the Trial Court and the enquiry with

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regard to the age of the appellant is still pending, therefore, he is entitled for bail.

To buttress his contention, the counsel for the appellant relied upon the orders passed by the Co-ordinate Bench of this Court in the case of **Rakesh v. State of M.P.** reported in **1993 2 MPWN 161**, **Matadin v. State of M.P.** reported in **1994 JLJ 454** and **Nagendra @ Pradeep Singh v. State of M.P.** reported in **(2002) 2 MPWN 244**.

*Per contra*, it is submitted by the counsel for the State that as submitted by the counsel for the appellant himself, the medical board already has opined that the age of the appellant is in between 18 to 20 years and, therefore, merely because the enquiry has not come to an end, would not ipso facto make the appellant entitle for release on bail.

Heard the learned counsel for the parties.

So far as the judgments relied upon by the counsel for the appellant for grant of bail during the pendency of the enquiry is concerned, suffice it to say that in the year 2015, lot of changes have taken place in the statute and Section 18 has been incorporated in the Juvenile Justice (Care and Protection of Children) Act, 2015.

Section 18 Sub-Section 3 of The Juvenile Justice (Care and Protection of Children) Act, 2016 reads as under:-

"18.(3) Where the Board after preliminary assessment under section 15 pass an order that there is a need for trial of the said child as an adult, then the Board may order transfer of the trial

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of the case to the Children's Court having jurisdiction to try such offences."

Thus, it is clear that if the board is of the view that the child in-conflict is to be tried as an adult, then the case may be transferred to the Children's Court having jurisdiction to try. Whereas there was no such provision in the earlier act. In the earlier act, if the child in-conflict was minor, then he was to be tried as per the provisions of Juvenile Justice Act.

According to the present situation, if the child in-conflict is more than 16 years of age and if the board is of the view that he should be tried as an adult, then the trial of the child in-conflict can be transferred to the Children's Court having jurisdiction to try such offence. Thus, in view of the newly added Section 18 Sub Section 3 of the Juvenile Justice Act, 2016, it is clear that the judgments relied upon by the learned counsel for the appellant are distinguishable.

So far as the facts of the case are concerned, undisputedly on the application made by the appellant, the Trial Court had directed for an enquiry and because of absence of all documentary evidence as required under Rule 12 of the Juvenile Justice (Care and Protection of Children) rules, 2007, the Trial Court directed for the ossification test of the appellant by a medical board.

According to the counsel for the appellant himself, the medical board has submitted its report after conducting the ossification test of the appellant and has given a finding that the age of the appellant is in

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between 18 to 20 years. Now prima facie, there is a documentary evidence to show the age of the appellant. Merely because the case is fixed for recording the evidence of the doctor who had conducted the ossification test and merely because the enquiry with regard to the ascertainment of the age of the appellant has not come to an end and is pending, it cannot be said that the appellant is entitled to be released on bail.

Accordingly, this appeal fails and is hereby **dismissed**.

**(G.S.Ahluwalia)**  
**Judge**

AKS