

The High Court Of Madhya Pradesh

CRR-1445-2019

(BHOLA @ ASHISH SHARMA Vs THE STATE OF MADHYA PRADESH)

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Jabalpur, Dated : 01-04-2019

Shri Sharad Verma, learned counsel for the petitioner.

Shri Madhur Shukla, learned GA for the respondent/State.

The present petition has been filed by the petitioner herein against the order dated 05-03-2019 passed in Cr.A No. 69/18 by the learned Special Judge (Atrocities) District Damoh affirming the order dated 07-12-2018 passed by the learned Principal Magistrate, Juvenile Justice Board, District Damoh.

Learned counsel for the petitioner has held that the order passed by the Juvenile Justice Board on 07-12-2018 whereby there was preliminary assessment of the petitioner, whereby it was directed that he be tried as an adult by the Juvenile Justice Board as the crime perpetrated by him come in the category of heinous offences. The petitioner is charged with the murder of one Sukhnandan, a member of depressed class. Learned counsel for the petitioner has pointed out to the provision of Section 14(3) which reads as under :-

" A preliminary assessment in case of heinous offences under Section 15 shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board."

Learned counsel for the petitioner has submitted that the procedure mandatorily requires the assessment to be made within a period of three months from the date of the first production of the child before the Board.

Learned counsel for the petitioner submits that he was produced

before the Board on 08-01-2018 and the order under Section 14(3) of the Juvenile Justice Act was passed on 7-12-2018 after a passage of almost a year.

Learned counsel for the petitioner has submitted that the usage of term 'shall' in Sub-section 14(3) of Juvenile Justice Board is a mandatory provision requiring the Board to arrive at an assessment within three months.

Per contra, learned counsel for the State and objector has submitted that Sub-section 14(3) in Cr.P.C being a procedural aspect, the term shall used therein need not clothe the said provision with a mandatory effect as there is no consequence of its violation which is provided under Section 14. Learned counsel for the State further submits that the record of the case pending before the Juvenile Justice Board would reflect that the case was listed several times before and also on one occasion it was delayed on account of the absence of the petitioner before the Juvenile Justice Board. He has further stated that there has been no deliberate attempt on the part of the Juvenile Justice Board to delay the proceedings pertaining to the preliminary assessment. Lastly, the learned counsel for the respondent and the State submits that the petitioner has not been able to establish any kind of prejudice which has occurred on account of the aforementioned delay.

The petitioner is aged about 17 years at the time of the incident. The Board in exercise of its powers under Sub-Section 14(3) had declared that the petitioner be tried as an adult in this case on account of his involvement in a heinous offence where, the petitioner was old enough to understand the consequences and evil that would follow

his actions. This Court is in agreement with the submissions put forth by the learned counsel for the respondent No. 2 and the State.

As Section 14 itself relates to a procedural aspect and Sub-section (3) which provides for a preliminary assessment of the suitability of trying the Juvenile as an adult in cases of heinous offences, does not create a right in the Juvenile not be assessed after a passage of three months from the date of first production of the juvenile before the Board. Besides, as the delay has adequately been explained by the State and as no prejudice has been caused to the petitioner, the purely procedural nature of the provision to Sub-section 14(3) need not compel this court to interpret 'shall, as 'shall' under all circumstances.

The said provision is directory rather than mandatory. Under the circumstances, the petition is **dismissed**.

C.C as per rules.

(ATUL SREEDHARAN)
JUDGE