



2025 INSC 1211

**IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION****WRIT PETITION (CRL.) NO. 340 OF 2025****HANSRAJ****...PETITIONER****VERSUS****STATE OF U.P.****...RESPONDENT****J U D G M E N T****DIPANKAR DATTA, J.**

1. This Court's extraordinary writ jurisdiction under Article 32 of the Constitution has been invoked by the petitioner, who is a murder convict. As per the custody certificate issued on 14th August, 2025, the petitioner is in custody for a period of 3 years 10 months 28 days. Relief that is claimed in this writ petition reads as follows:

"A. issue a Writ of Mandamus of any similar writ, order or direction thereby directing the respondent – State to immediate release the petitioner from Central Jail, Agra against the conviction order dated 16.08.1984 passed by the Ld. Additional Sessions Judge, Sultanpur in S.T. No. 08 of 1983, in view of the order dated 08.05.2009 passed by this Hon'ble Court in Criminal Appeal No. 276 of 2002 (Annexure P-3) wherein in paragraph – 13, the petitioner was held to a child/juvenile, aged about 16 years".

2. Incidents having a bearing on our decision are summarised hereunder:

a. The date of birth of the petitioner is 10th June, 1969.

- b. It was alleged in a First Information Report¹ registered under Sections 302/149, 147 and 148 of the Indian Penal Code, 1860², that the petitioner along with 5 others had assaulted the father³ of the first informant with knife and lathis, on 2nd November, 1981. The victim succumbed to his injuries on the following day.
- c. In course of investigation of the FIR, the petitioner came to be arrested on 6th November, 1981. He was, however, released on bail on 8th December, 1981. As an undertrial, the petitioner was behind bars for 1 month 3 days.
- d. Petitioner and the co-accused were tried by the Special Additional Sessions Judge, Sultanpur, in Sessions Trial No. 8 of 1983. A finding was returned in the judgment of conviction dated 14th August, 1984, that the petitioner, along with the co-accused, were guilty of murder of the victim.
- e. The order of sentence was passed on 16th August, 1984. The co-accused were sentenced to life in prison. The Sessions Court having noted that the petitioner was aged about 16 years, held that he was entitled to the benefit of the Childrens Act, 1960⁴. Accordingly, instead of sending the petitioner to jail, he was directed to be kept in a children's home in accordance with the provisions of the 1960 Act to give him a chance to reform himself.

¹ FIR

² IPC

³ victim

⁴ the 1960 Act

- f. All the convicts, including the petitioner, challenged the conviction and sentence before the High Court of Judicature at Allahabad, Lucknow Bench, in an appeal⁵ under Section 374(2), Code of Criminal Procedure, 1973. *Vide* a judgment and order dated 7th April, 2000, the High Court acquitted the appellants and allowed the appeal.
- g. State of Uttar Pradesh, aggrieved by the acquittal, appealed to this Court⁶. By a judgment and order dated 8th May, 2009, a coordinate bench of this Court reversed the order of acquittal and restored the conviction and sentence imposed by the Sessions Court. The concluding paragraph of the order also restored the order of the Sessions Court *qua* the petitioner.
- h. The petitioner absconded. He could be arrested only on 19th May, 2022, and is still in custody, as noted above.

3. The question that we are tasked to decide is whether the petitioner is entitled to the benefit of the Juvenile Justice (Care and Protection of Children) Act, 2000⁷, as amended by Act 33 of 2006 whereby Section 7-A was inserted with effect from 22nd August, 2006. Section 7-A reads as follows:

"7-A. Procedure to be followed when claim of juvenility is raised before any court. – (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

⁵ Criminal Appeal No. 631 of 1984

⁶ Criminal Appeal No. 276 of 2002

⁷ the JJ Act, 2000

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect.”

4. Mr. Parinav Gupta, learned counsel for the petitioner, contends that the petitioner has been behind bars for more than 3 years and 8 months despite being a juvenile who is entitled to the benefit of the JJ Act, 2000. According to him, the maximum period of detention of a juvenile is 3 years as per Section 15(1)(g) and detention in excess of such period of 3 years would amount to an illegal detention. This, being in clear breach of the petitioner’s right to life protected by Article 21 of the Constitution of India, he ought to be immediately released from illegal detention. Reliance has been placed by Mr. Gupta on the decisions of this Court in **Pratap Singh v. State of Jharkhand**⁸, **Satya Deo @ Bhoorey v. State of Uttar Pradesh**⁹ and **Vinod Katara v. State of Uttar Pradesh**¹⁰.

5. Opposing the writ petition, Mr. Neeraj Shekar, learned counsel representing the respondent contends that the date of occurrence of crime is 2nd November, 1981; and, therefore, the provisions of the 1960 Act would be applicable and not the JJ Act, 2000, as contended on behalf of the petitioner. It is next contended that the petitioner was found guilty of a heinous offence and, therefore, he is not entitled to any mercy. Referring

⁸ (2005) 3 SCC 551

⁹ (2020) 10 SCC 555

¹⁰ (2023) 15 SCC 210

to the decision of this Court in ***Shilpa Mittal v. State (NCT of Delhi)***¹¹, the contention advanced is that the offence of murder providing for a minimum sentence of life imprisonment has to be regarded as a heinous offence. He also invites our attention to the fact that despite this Court by its order dated 8th May, 2009 having reversed the acquittal recorded by the High Court, the petitioner did not surrender and evaded arrest by absconding. He could only be arrested on 19th May, 2022. Culpability being writ large, it is finally contended that this Court may refuse to exercise discretion in favour of the petitioner.

6. We have heard learned counsel for the parties and perused the decisions cited at the bar.

7. From the factual narrative, the undisputed fact is that the petitioner was 12 years 5 months old on the date of the incident. Even this Court has acknowledged such fact in its order dated 8th May, 2009. Having read the judgment of conviction rendered by the Sessions Court, which was ultimately upheld by this Court, it is clear that apart from one assailant who was armed with a knife, the other assailants had lathis in their hands which were used by them to beat the victim. The victim died as a result of multiple injuries caused by user of knife as well as lathis. In the absence of any specific role played by the petitioner, the Sessions Court recorded conviction against the petitioner by taking aid of Section 149 of the IPC, i.e., he was member of an unlawful assembly which perpetrated an act in furtherance of a common object and, therefore, would be liable thereunder.

¹¹ (2020) 2 SCC 787

8. Be that as it may, the petitioner has suffered incarceration for more than the period permissible in law. Moreover, the purpose for which the Sessions Court directed the petitioner to be kept in a children's home is no longer feasible now. We have also not been shown by Mr. Shekar why provisions contained in Section 24 of the 1960 Act - prohibiting joint trial of a child with a person who is not a child - was observed in the breach.

9. In **Pratap Singh** (supra), a Constitution Bench of this Court after analysing the reasoning behind Sections 3 and 20 of the JJ Act, 2000 held that the JJ Act, 2000 would be applicable to any proceeding which is pending before any Court/Authority initiated under the 1986 Act and pending when the JJ Act, 2000 came into force.

10. After placing reliance on the Constitution Bench decision in **Pratap Singh** (supra), this Court in **Lakhan Lal v. State of Bihar**¹², held as follows:

18. In the present case, when the inquiry has been initiated against the appellants herein, they were admittedly "juvenile" even under the provisions of the 1986 Act but this issue has been ignored by the trial court and as well as the appellate court. There is no dispute whatsoever that both the appellants have crossed the age of 18 years, yet both the appellants, for the purposes of hearing of this appeal continued as if they were to be "juvenile".

11. In **Dharambir v. State (NCT of Delhi)**¹³, this Court in no uncertain terms held that from a conjoint reading of Sections 2(k), 2(l), 7-A, 20 and 49 of the Act of 2000 read with Rules 12 and 98 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, all persons who were below

¹² (2011) 2 SCC 251

¹³ (2010) 5 SCC 344

the age of eighteen years on the date of commission of the offence even prior to 1st April, 2001 would be treated as juveniles even if the claim of juvenility is raised after they have attained the age of eighteen years on or before the date of commencement of the JJ Act, 2000 and were undergoing sentences upon being convicted. A profitable reference may also be made to the decision in ***Hari Ram v. State of Rajasthan***¹⁴.

12. No provision in the 1960 Act has been brought to our notice that creates a legal impediment and, thus, limits our authority to grant relief to the petitioner. Incidentally, the developments in legislation in relation to juvenile justice introduced by the Parliament from time to time can hardly be overlooked. The proviso to sub-section (2) of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is the new avatar of Section 7-A of the JJ Act, 2000. Section 7-A of the JJ Act, 2000, relevant for the present case, permits raising of a plea of juvenility in any court at any stage and even after final disposal of a special leave petition under Article 136 of the Constitution. On the plain terms of Section 7-A, the courts are under an obligation to consider the plea of juvenility and to grant appropriate relief if, at all, in an enquiry it is found that the convict was a juvenile on the date of offence. The object and purpose of the JJ Act, 2000 has been noticed in great detail by the coordinate Bench in ***Vinod Katara*** (supra). We share the view expressed therein. Incidentally, in ***Vinod Katara*** (supra), the coordinate Bench, having regard to the facts and circumstances, had to direct the Sessions Court, Agra, to examine the claim

¹⁴ (2009) 13 SCC 211

of the writ applicant that he was a juvenile on the date of the offence. In the present case, no such determination is at all required since the petitioner stands on firmer footing. Petitioner's date of birth and his age as on date of the offence are not disputed by the respondent and, thus, no enquiry is needed to ascertain his age.

13. Since there is no quarrel with the fact that the petitioner was a child at the time of commission of the offence and the petitioner having been behind bars for more than 3 years, his liberty has been curtailed not in accordance with procedure established by law. Breach of the right guaranteed by Article 21 is writ large and, hence, the benefit of release from detention ought to be extended to the petitioner.

14. Accordingly, there shall be an order in terms of prayer (a) of the writ petition. The petitioner shall be immediately released, if not wanted in any other case.

15. The writ petition is, accordingly, allowed. No costs.

16. The Senior Superintendent, Central Jail, Varanasi, shall act on the basis of a downloaded copy of this judgment and order as and when produced, without insisting for a certified copy thereof.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;
OCTOBER 09, 2025.**