Bombay High Court
Master Rajeev Shankarlal Parmar ... vs Officer-In-Charge, Police ... on 6 August, 2003
Equivalent citations: 2003 CriLJ 4522
Author: C Thakker
Bench: C Thakker, V Tahilramani
JUDGMENT C.K. Thakker, C.J.

1. Rule. Smt. Usha Kejariwal, Additional Public Prosecutor, appears and waives service of notice of Rule on behalf of respondents.

2. This Writ Petition is filed by Master Rajeev Shankarlal Parmar, petitioner No. 1 through petitioner No. 2, a practising Advocate of this Court, as Public Interest Litigation being Criminal Writ Petition No. 823 of 2003. In the said petition, following prayers have been made:-

"(a) this Hon'ble Court be pleased to declare the First Petitioner's incarceration in Mumbai Central Prison at Arthur Road unlawful and in violation of the Juvenile Justice (Care and Protection of Children) Act, 2000 and the Constitution of India;

(b) This Hon'ble Court be pleased to direct the second Respondent to produce the first Petitioner before the Juvenile Justice Board forthwith;

(c) That this Hon'ble Court be pleased to order and direct that the First Petitioner be shifted forthwith from the Mumbai Central Prison at Arthur Road to the Observation Home at Umerkhadi;

(d) that this Hon'ble Court be pleased to expedite the inquiry of the First Petitioner before the Juvenile Justice Board so as to complete it within 2 months of the First Petitioner's first production;

(e) that this Hon'ble Court be pleased to grant compensation of Rs. 1,00,000/- (Rupees One lakh only) to the First Petitioner for his illegal detention in the police lock up and jail for 10 months from the date of arrest on 21-5-2003 to 7-3-2003;

(f) that this Hon'ble Court be pleased to grant compensation of Rs. 30,000/- (Rupees thirty thousand only) for the First Petitioner's illegal detention in Mumbai Central Prison after his having been declared a juvenile by the Hon'ble Sessions Court in Sessions Case No. 7-3-2003 (756/02);

(g) That this Hon'ble Court be pleased to order and direct that it is mandatory for arresting police personnel

(i) to ask the arrestee his age at the time of arrest,

(ii) to forward and file the cases of those arrestees claiming to be under 18 years of age before the Juvenile Justice Board.

(iii) to include in the Arrest Panchanama that the arrestee was asked his age at the time of arrest and has stated his age as being "X" number of years;

(h) this Hon'ble Court be pleased to order and direct that the non-compliance by police personnel of the procedure laid down under prayer (g) above be treated as misconduct and a departmental inquiry be initiated against such police personnel;

(i) this Hon'ble Court be pleased to direct the Registrar, Appellate (Criminal) Side, High Court, Bombay, to issue a notification directing the Magistrates

(i) to ask each accused his age at first production stage and record the same in the roznama.

(ii) to conduct an inquiry with regard to determination of age of an accused when he claims to be under 21 years of age.

(iii) to give the accused an opportunity to produce documentary evidence with regards to age, and only in absence of such evidence medical examination to be ordered.

(iv) to forthwith transfer an accused found to be under 18 years of age to the Observation Home and his case ton the Juvenile Justice Board along with the findings of the inquiry;

(j) that pending the hearing and final disposal of this petition, this Hon'ble Court be pleased:

(i) to call for the record and proceedings in Case No. 201/J/2003 pending before the Juvenile Justice Board, Mumbai;

(ii) to order and direct the Second Respondent to forthwith produce the First Petitioner before the Juvenile Justice Board;

(iii) to order and direct the shifting of the First Petitioner from Mumbai Central Prison at Arthur Road to the Observation Home at Umerkhadi;

(iv) to expedite the inquiry of the First Petitioner before the Juvenile Justice Board so as to complete it within 2 months of the First Petitioner's first Production before the Board;

(v) to grant compensation of Rs. 1,00,000/- (Rupees One lakh only) to the First Petitioner for his illegal detention in the police lock up and fail for 10 months from the date of arrest on 21-5-2003 to 7-3-2003;

(vi) to grant compensation of Rs. 30,000/- (Rupees thirty thousand only) for the First Petitioner's illegal detention in Mumbai Central Prison after his having been declared a Juvenile by the Hon'ble Sessions Court in Sessions Case No. 7-3-2003;

(vii) to order and direct that it is mandatory for arresting police personnel;

(a) to ask the arrestee his age at the time of arrest.

(b) to forward and file the cases of those arrestees claiming to be under 18 years of age before the Juvenile Justice Board;

(c) to include in the Arrest Panchanama that the arrestee was asked his age at the time of arrest and has stated his age as being "X" number of years;

(viii) to order and direct that the non-compliance by police personnel of the procedure laid down under Clause (vii) above be treated as misconduct and a departmental inquiry be initiated against such police personnel;

(ix) to direct the Registrar, Appellate (Criminal) Side, High Court, Bombay to issue a notification directing the Magistrates;

(a) to ask each accused his age at first production stage and record the same in the Roznama,

(b) to conduct an inquiry with regards to determination of age of an accused when he claims to be under 21 years of age,

(c) to give the accused an opportunity to produce documentary evidence with regard top age, and only in absence of such evidence medical examination to be ordered,

(d) to forthwith transfer an accused found to be under 18 years of age to the Observation Home and his case to the Juvenile Justice Board along with the findings of the inquiry;

(k) for ad-interim orders in terms of prayer (j) above;

(l) for costs of and incidental to this petition; and

(m) for such further and other orders and reliefs as the nature and circumstances of the case may require."

3. Certain fats which are not in dispute may now be stated: First Information Report was filed against petitioner No. 1 on 25th May, 2002 for offences punishable under Sections 302 and 307 of the Indian Penal Code. On 19th July, 2002, charge-sheet was submitted before the Additional Chief Metropolitan Magistrate, 24th Court at Borivali, Mumbai. In view of the fact that the allegations were in respect of the commission of offences punishable under Sections 302 and 307, the case was committed to the Sessions Court on 2nd August, 2002 and was registered as Sessions Case No. 756 of 2002. Though petitioner No. 1 accused had stated his age as to be 22 years and was accordingly arrested and kept as an under trial prisoner, according to the learned Sessions Judge he appeared to be "much more younger than 22 years." Accordingly, an order was passed below Misc. Application remanding the accused to the Juvenile Justice Board and by an order dated 7th May, 2003. The application was allowed. The learned Sessions Judge observed that petitioner No. 1 (accused) was

born on January 8, 1986. Thus, he was a juvenile under 18 years of age on the date of the incident. He was, therefore, ordered to be transferred to Juvenile Court for consideration of his case by Juvenile Justice Board constituted under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the Act").

4. On June 11, 2003, when the matter was placed before us, the learned counsel for the petitioners drew our attention to Roznama which is at Exhibit-B in which it was stated that in view of the order passed by the learned Sessions Judge, the Registrar(s) was directed to transfer the case of the petitioner to the Juvenile Court for placing before Juvenile Justice Board constituted under Section 4 of the Act for further proceedings forthwith and for placing before the Juvenile Justice Board on or before 11th March, 2003.

5. The grievance of the learned counsel for the petitioner No. 1 was that in spite of the direction of the learned Additional Sessions Judge, the petitioner No. 1 was neither shifted to an Observation Home, nor his case was placed before Juvenile Justice Board. After hearing the parties, we directed the respondents to take immediate steps to shift petitioner No. 1 to Observation Home at Umarkhadi. We also directed the authorities to produce the petitioner No. 1 before the Juvenile Justice Board on 16th June, 2003.

6. On July 2, 2003, we noted that the directions issued by us on June 11, 2003 were complied with. The petitioner No. 1 was shifted to Observation Home. He was also produced before the Juvenile Justice Board. Regarding other prayers of payment of compensation as also issuing general directions, the learned Additional Public Prosecutor prayed for time as according to her, the order passed by the learned Sessions Judge was not in accordance with law. We granted time as prayed by the Additional Public Prosecutor.

7. Today we have heard the learned advocates for the parties.

8. It is not in dispute that our earlier order had been complied with and the first petitioner who was found to be juvenile by the learned Additional Sessions Judge, Greater Mumbai, vide his order dated 7th March, 2003 was shifted to Observation Home on 13th June, 2003.

9. It may be stated at this stage that the State authorities have challenged the order of the learned Additional Sessions Judge, Greater Mumbai, by filing Criminal Application No. 2634 of 2003. Drawing our attention to various provisions of the Act, it was contended by the Additional Public Prosecutor that no such order could have been passed by the Additional Sessions Judge. It was submitted that, in the light of Section 49 of the Act, it was not open to the learned Additional Sessions Judge to record a finding as to the age of petitioner No. 1-accused and to pass an order on that basis.

10. We have been taken by the learned advocate to the relevant provisions of the Act as also to decision of the Supreme Court in Gopinath Ghosh v. State of West Bengal, 1984 SCC (Cri) 478, Sheela Barse and Anr. v. Union of India and Ors., and Bhola Bhagat v. State of Bihar, .

11. Our attention was invited by the learned counsel for the petitioners to Sub-section (2) of Section 6, Sections 7, 10 and 49 of the Act read with Section 2 of the Act. Keeping in view the provisions of the Act and the ratio laid down in the above cases, in our opinion, it cannot be said that the learned Additional Sessions Judge could not have exercised the power. On the contrary, the Supreme Court has observed that in such cases, the court must hold an inquiry and record a finding as to the age of the accused. In our opinion, therefore, the order passed by the learned Additional Sessions Judge does not deserve interference. Criminal Application No. 2634 of 2003 is liable to be dismissed and is accordingly dismissed.

12. Regarding compensation to petitioner No. 1, it is an admitted fact that the order was passed by the learned Additional Sessions Judge on 7th March, 2003. It is also an admitted fact in the affidavit of the respondents, that the order was received by the Thane Jail Authorities on the same day i.e. on 7th March, 2003. It was, however, stated that because of non-availability of police escort, that the order could not be implemented and first petitioner could not be shifted to the Observation Home nor he could be produced before the Juvenile Justice Board. It is thus clear that without there being any fault on the part of the accused (petitioner No. 1), he was kept in prison, firstly at Thane and then in Mumbai. In our opinion, therefore, his prayer for payment of compensation must be upheld.

13. It is on record that the first petitioner was shifted to Mumbai Central Prison from Thane Prison on April 20, 2003, and only after an order passed by this Court on 11th June, 2003 his case was referred to the Juvenile Justice Board and he was taken to Observation Home on 13th June, 2003. Thus, there was a gap of more than three months in carrying out the order passed by the learned Additional Sessions Judge. The order dated 7th March, 2003 was implemented and effected only on 13th June, 2003.

14. In the facts and circumstances, in our opinion, it would be appropriate, if the respondents are ordered to pay compensation to petitioner No. 1.

15. The learned counsel for the petitioner sin this connection referred to two decisions of the Hon'ble Supreme Court in Rudal Sah v. State of Bihar, and Bhim Singh v. State of J. & K., . She also relied upon a decision of the Division bench of this Court (Aurangabad Bench) in Baban Khandu Rajput v. State of Maharashtra and Ors., 2002 ALL MR (Cri) 1373. In Baban Khandu Rajput, though the person was kept in illegal custody only for a period of two and half days, the Court awarded an amount of Rs. 10,000/- to the petitioner therein which was ordered to be paid by the State of Maharashtra. It was, therefore, submitted that in the facts and circumstances, an amount of Rs. 10,000/- per month may be awarded by way of compensation.

16. Considering the facts and circumstances, however, that an offence had been registered against the first petitioner and as stated by the complainant, the accused was of 22 years age, who alleged to have committed offences punishable under Section 302 and 307 of the Indian Penal Code, and according to the Police Officer, the accused himself had stated his age to be 20 years at the time of arrest (which was disputed by the accused) coupled with the fact that the order dated 7th March, 2003 could not be implemented in view of non-availability of police escort, in our considered opinion, the action cannot be termed mala fide or malicious.

17. In the facts and circumstances, therefore, ends of justice would be met, if the respondent-State is ordered to pay to petitioner No. 1 an amount of compensation of Rs. 15,000/- (Rupees Fifteen thousand only). Let such amount be paid within a period of three months from today. Order accordingly.

18. Regarding general guidelines, our attention was invited by the learned counsel to three decisions referred to above i.e. Sheela Barse, Gopinath Ghosh and Bhola Bhagat.

19. In Sheela Barse, the Apex Court stated:

"If a child is a national asset, it is the duty of the State to look after the child with a view to ensuring full development of its personality. That is why all the statutes dealing with children provide that a child shall not be kept in jail. Even apart from this statutory prescription, it is elementary that a jail is hardly a place where a child should be kept. There can be no doubt that incarceration in jail would have the effect of dwarfing the development of the child, exposing him to baneful influences, coarsening his conscience and alienating him from the society. It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still large number of children in different jails in the country as is now evident from the reports of the survey made by the District Judges pursuant to our order dated 15th April, 1986. Even where children are accused of offences they must not be kept in jails. It is no answer on the part of the State to say that it has not got enough number of remand homes or observation homes or other places where children can be kept and that is why they are lodged in jails. It is also no answer on the part of the State to urge that the ward in the jail where the children are kept is separate from the ward in which the other prisoners are detained. It is the atmosphere of the jail which has a highly injurious effect on the mind of the child, estranging him from the society and breeding in him aversion bordering on hatred against a system which keeps him in jail. We would therefore like once again to impress upon the State Governments that they must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes or observation homes, the children should be released on bail instead of being subjected to incarceration in jail.

The problem of detention of children accused of an offence would become much more easy of solution if the investigation by the police and the trial by the Magistrate could be expedited. The report of survey made by District Judges show that in some places children have been in jail for quite long periods. We fail to see why investigation into offences alleged to have been committed by children cannot be completed quickly and equally why can the trial not take place within a reasonable time after the filing of the charge-sheet. Really speaking, the trial of children must take place in the Juvenile Courts and not in the regular criminal Courts. There are special provisions enacted in various statutes relating to children providing for trial by Juvenile Courts in accordance with a special procedure intended to safeguard the interest and welfare of children, but, we find that in many of the States there are no Juvenile Courts functioning at all and even where there are Juvenile Courts, they are nothing but a replica of the ordinary criminal Courts, only the label being changed. The same Magistrate who sits in the Juvenile Court and mechanically tries cases against

children. It is absolutely essential, and this is something which we wish to impress upon the State Government with all the earnestness at our command, that they must set up Juvenile Courts, one in each district, and there must be a special cadre of Magistrates who must be suitably trained for dealing with cases against children. They may also do other criminal work, if the work of the Juvenile Court is not sufficient to engage them fully, but they must have proper and adequate training for dealing with cases against juveniles, because these cases require a different type of procedure and qualitatively a different kind of approach.

We would also direct that where a complaint is filed or first information report is lodged against a child below the age of 16 years for an offence punishable with imprisonment of not more than 7 years, the investigation shall be completed within a period of three months from the date of filing of the complaint or lodging of the First Information Report and if the investigation is not completed within this time, the case against the child must be treated as closed. If within three months, the charge-sheet is filed against the child in case of an offence punishable with imprisonment of not more than 7 years, the case must be tried and disposed of within a further period of 6 months at the outside and this period should be inclusive of the time taken up in committal proceedings, if any. We have already held in Hussainara Khatoon v. Home Secretary, State of Bihar, that the right to speedy trial is a fundamental right implicit in Article 21 of the Constitution. If an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental right to speedy trial would be violated unless, of course, the trial is held upon account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. One of the primary reasons why trial of criminal cases is delayed in the courts of Magistrates and Additional Sessions Judges is the total inadequacy of judge-strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges. There are courts of Magistrates and Additional Sessions Judges where the workload is so heavy that it is just not possible to cope with the workload, unless there is increase in the strength of Magistrates and Additional Sessions Judges. There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the courts have to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions Judges are often not provided adequate staff and other facilities which would help improve their disposal of cases. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the courts of Magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious. But, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other cases where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the Court would regard the right to speedy trial as violated. So far as a child-accused of an offence punishable with imprisonment of not more

than 7 years is concerned, we would regard a period of 3 months from the date of filing of the complaint or lodging of the First Information Report as the maximum time permissible for investigation and a period of 6 months from the filing of the charge-sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be quashed. We would direct every State Government to give effect to this principle or norm laid down by us in so far as any future cases are concerned, but so far as concerns pending cases relating to offences punishable with imprisonment of not more than 7 years, we would direct every State Government to complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of charge-sheet and if a charge-sheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

We have by our order dated 5th August 1986 called upon the State Governments to bring into force and to implement vigorously the provisions of the Childrens Acts enacted in the various States. But we would suggest that instead of each State having its own Children Act different in procedure and content from the Children Act in other States, it would be desirable if the Central Government initiates Parliamentary Legislation on the subject, so that there is complete uniformity in regard to the various provisions relating to children in the entire territory of the country. The Childrens Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. Moreover, it is not enough merely to have legislation on the subject, but it is equally, if not more, important to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation."

20. In Gopinath Ghosh, the Court said;

"Before we part with this judgment, we must take notice of a developing situation in recent months in this Court that the contention about age of a convict and claiming the benefit of the relevant provisions of the Act dealing with juvenile delinquents prevalent in various States is raised for the first time in this Court and this Court is required to start the inquiry afresh. Ordinarily this Court would be reluctant to entertain a contention based on factual averments raised for the first time before it. However, the Court is equally reluctant to ignore, overlook or nullity the beneficial provisions of very socially progressive statute by taking shield behind the technicality of the contention being raised for the first time in this Court. A way has, therefor, to be found from this situation not conducive to speedy disposal of cases and yet giving effect to the letter and the spirit of such socially beneficial legislation. We are of the opinion that whenever a case is brought before the Magistrate and the accused appears to be aged 21 years or below, before proceeding with the trial or undertaking an inquiry, an inquiry must be made about the age of the accused on the date of the occurrence. This ought to be more so where special Acts dealing with Juvenile delinquent are in force. If necessary, the Magistrate may refer the accused to the Medical Board or the Civil Surgeon,

as the case may be, for obtaining credit-worthy evidence about age. The Magistrate may as well call upon accused also to lead evidence about his age. Thereafter, the learned Magistrate may proceed in accordance with law. This procedure, if properly followed, would avoid a journey upto the Apex Court and the return journey to the grass-root court. If necessary and found expedient, the High Court may on its administrative side issue necessary instructions to cope with the situation herein indicated."

21. In Bhola Bhagat, referring to Gopinath Ghosh and reiterating the principle laid down therein, the court issued the following directions:

"Before parting with this judgment, we would like to re-emphasise that when a plea is raised on behalf of an accused that he was a "child" within the meaning of the definition of the expression under the Act, it becomes obligatory for the court, in case it entertains any doubt about the age as claimed by the accused, to hold an inquiry itself for determination of the question of age of the accused or cause an enquiry to be held and seek a report regarding the same, if necessary, by asking the parties to lead evidence in that regard. Keeping in view the beneficial nature of the socially-oriented legislation, it is an obligation of the court where such a plea is raised to examine that plea with care and it cannot fold its hands and without returning a positive finding regarding that plea, deny the benefit of the provisions to an accused. The court must hold an enquiry and return a finding regarding the age, one way or the other. We expect the High Courts and subordinate courts to deal with such cases with more sensitivity, as otherwise the object of the Acts would be frustrated and the effort of the legislature to reform the delinquent child and reclaim him as a useful member of the society would be frustrated. The High Court may issue administrative directions to the subordinate courts that whenever such a plea is raised before them and they entertain any reasonable doubt about the correctness of the plan, they must as a rule, conduct an inquiry by giving opportunity to the parties to establish their respective claims and return a finding regarding the age of the accused concerned and then deal with the case in the manner provided by law."

Let the administrative side of the High Court take appropriate action in accordance with law in the light of the observations made and directions issued by the Hon'ble Supreme Court.

22. The petition is accordingly allowed. Rule is made absolute to the extent indicated above.

16. Before parting with the matter, we must place on record our appreciation for the social service rendered by petitioner No. 2, a practising Advocate of this Court in the larger interest of erring youths. But for her initiation, petitioner No. 1 might have been kept in illegal custody for a longer period.

Certified copy expedited.