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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P.438/2011& Crl.M.A.No.11622/2011(Stay)**

% *Judgment delivered on: 02nd February, 2012*

JITENDER CHOWDHARY @ JATAN KUMAR Petitioner
Through :Mr.Abhishek Verma, Mr.Rajender
Sahu, Mr.Rishabh Sahu, & Ms.Hema Sahu,
Advs.

versus

STATE Respondent
Through : Mr.Navin Sharma, APP for State
with SI Youdh Bir Singh, Special Cell, Lodhi
Colony, New Delhi in person.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

1. Vide instant petition, petitioner has assailed the order dated 30.01.2009 whereby the application of the petitioner for declaring him a 'juvenile' under provision of the Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred as the 'JJ Act, 2000') has been dismissed by learned Additional Sessions Judge, Delhi.

2. Mr.Abhishek Verma, learned counsel for petitioner has submitted that the Trial Judge has not relied upon the annual report cards of different academic sessions upto 09th standard of Blue Bird Higher Secondary School, Aligrah, UP, certificate issued by the

Registrar of Birth and Death and other material documents including the ossification report, however, has rejected the application of petitioner vide impugned order dated 30.01.2009.

3. The petitioner has claimed to be born on 22.12.1990 which was recorded in the annual report cards. Besides there was a family register, giving details of the family of Shri Satveer Singh, father of the petitioner which also depicts his date of his birth as 02.12.1990. The Block Development Officer, has also issued the certificate that Jitender Choudhary @ Jatan Kumar was born on 21.12.1990. Lastly, birth certificate issued on 05.06.2008 by Aligrah Municipality, UP has also been placed on record, wherein it is recorded that petitioner was born on 21.12.1990. It is further submitted that on the date of alleged occurrence i.e. 12.06.2006, petitioner was below 18 years of age on the basis of his date of birth.

4. Apart from the documents being filed before learned Trial Court, the petitioner has also filed some other documents, therefore, vide order dated 03.10.2011, this Court directed the respondent/State to verify the authenticity and correctness of the documents relied upon by petitioner. As per verification report, same were found to be genuine.

5. I note that learned Trial Judge has concluded that the Driving Licence Form-6, Mark X1, discovered during the investigation, which reflects photographs of the petitioner; to which there was never a protest in the previous application filed by petitioner. Further, the motion of applications had been on the sponsor of his parents, had

there been date of birth in their knowledge, it was their duty to move at the appropriate time but the application was moved at the stage when the case was pending for recording of evidence. The proceedings before learned Trial Court were adjourned on account of pendency of application, whereas previous application (purporting another date of birth as 05.07.1998) was withdrawn followed by the statement of petitioner.

6. Learned Trial Judge has also recorded that the provisions of law are meant to exercise for achieving the rights bonafidely and not to abuse the process of the law. In this case, the petitioner has abused process of law & the case remain adjourned for evidence, prior to recording of evidence on 28.01.2009. In order to deprecate such process *vis-à-vis* adjournments of the case on pendency of such applications, costs of ₹ 10,000/- had also been imposed on the petitioner.

7. In support of his contention, learned counsel for petitioner relied upon following decisions:-

- a) ***Santosh Singh v. State of NCT of Delhi, Crl.M.C. No.1110/2010 decided by this Court on 10.09.2010;***
- b) ***Lalu Ansari v. Unknown, Crl.Rev.P.No.590/2009 decided on 13.01.2010 by Jharkhand High Court;***
- c) ***Mukesh Jagdishbhai Vasava v. State of Gujarat, 2008 GHC (3) 452; and***
- d) ***Shah Nawaz v. State of UP & Anr, AIR 2011 SC 3107;***

8. Mr.Navin Sharma, learned APP on the other hand, submitted that on 10.01.2008, an application under Section 7A of the JJ Act, 2000 was filed by petitioner through his counsel. It was claimed that petitioner is a juvenile and the application was supported by a high school certificate (in the name of Jatan Kumar) of the year 2004 which mentions the date of birth of the petitioner as 05.07.1988. However, the said application was withdrawn and it was dismissed accordingly. Petitioner was further accorded an opportunity to establish that he was less than of 18 years of age, but he had given a statement on 17.07.2008 that he had studied upto 12th class, but he did not want to produce any evidence in support of his claim that he was less than 18 years of age on the date of alleged offence.

9. In the controversy, learned APP has fairly conceded that learned Trial Court had gone wrong while arriving at the conclusion to dismiss the application of petitioner without proper inquiry as required under Section 7A and 54 of the JJ Act, 2000. Learned Trial Court has considered the ossification report apart from other contrary documents, therefore, in the circumstances, learned Trial Judge ought to conduct proper inquiry and only thereafter, he would have given the findings.

10. Further learned APP has fairly conceded that petitioner has a right to raise the issue of juvenility at any stage either at once or at many times as he desire on receiving any material. Even the alleged claim of petitioner is a statutory right and the costs imposed by learned Trial Court is also not proper.

11. I note that in majority of decisions, referred above by learned counsel for petitioner, the Trial Court has first conducted an inquiry on the issue and only thereafter order had been passed.

12. In the instant case, learned Trial Court has failed to conduct any such inquiry, therefore, I set aside the impugned order dated 30.01.2009 with direction to conduct a proper inquiry as envisaged under Section 7A and 54 of the JJ Act, 2000, within 03 months from the date of receipt of this order.

13. I further direct learned Trial Court not to proceed with the matter on merit qua the petitioner, till the controversy is settled by conducting a proper inquiry, which shall be followed by a fresh order on the basis of such inquiry.

14. At this stage, learned counsel for petitioner urged that the petitioner was arrested on 03.09.2006 and as on date, more than 06 years have passed, since the petitioner is continuously in custody; and his bail application on merit has been dismissed by this Court on 12.10.2011, hence pending the said inquiry, the Trial Court may consider his bail application, if moved by the petitioner.

15. Learned counsel further submitted that 19 witnesses have already been examined out 39 cited witnesses, however all the public witnesses have been examined and only the police/official witnesses remain to be examined – as such, there is no apprehension of tampering of the evidence or to influence the witnesses.

16. Accordingly, it is enjoined upon learned Trial Court to consider the application of petitioner, if any, for the release of the petitioner on bail, if so deemed fit in the facts and circumstances of the case.

17. Consequently, Criminal Revision Petition No.438/2011 is allowed and stands disposed of.

18. In view of above order, CrI.M.A.No.11622/2011 does not require further adjudication and accordingly stands disposed of.

19. *Dasti.*

SURESH KAIT, J

FEBRUARY 02, 2012

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