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

+ W.P.(CRL) 1529/2013

% *Judgment dated 12.12.2013*

SOHAN LAL @ SONU Petitioner
Through: Mr.S.B. Dandapani, Advocate

versus

STATE OF NCT OF DELHI Respondent
Through: Mr.Saleem Ahmed, ASC for State along
with S.I. Uma Dutt, P.S. Mehrauli.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

1. The petitioner herein was convicted by the Additional Sessions Judge vide judgment dated 21.4.2011 and sentenced to undergo RI for 7 years and to pay fine of Rs.3000/- in default thereof two months SI for the offence u/s.394/397 IPC.
2. The unexpired portion of sentence of the petitioner as on 27.11.2013 is 6 months and 24 days. The petitioner claims that he was a juvenile on the date of incident and thus he could not have been awarded sentence for more than three years as per section 15 (g) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
3. In response to the notice issued in this petition, the State has filed a Status report. As per the Status report, the plea of juvenility was not raised by the petitioner during the trial or during the hearing of the appeal. It is also submitted that on receipt of the writ petition enquiries was made from the school authorities; and as per the school record the petitioner was

admitted in the school on 16.7.2002 in the 5th standard and at that time his parents had verbally recorded his date of birth as 10.2.1993. No affidavit in respect of the date of birth was given; and his mother was also unable to give his precise date of birth.

4. It is no longer *res integra* that a plea of juvenility can be raised at any stage, even after all the remedies have been exhausted.
5. In a recent decision rendered by the Supreme Court of India in the case of **Abuzar Hossain Alias Gulam Hossain v. State of West Bengal**, reported at (2012) 10 SCC 489, it has been held that the claim of juvenility can be raised at any stage irrespective of the delay in raising the same. The Supreme Court has further held that this plea can be raised even in appeal if such a claim was not pressed before the trial court and in fact can be raised even after disposal of the case. Framing guidelines in the case of **Abuzar Hossain (supra)** it has been held that for making a claim with regard to juvenility, after conviction, the claimant must produce some material which may, *prima facie*, satisfy the Court that an inquiry is necessary and for which the initial burden has to be discharged by the person, who has made such a claim. While no exhaustive list can be prepared as to the nature of material, which would be sufficient to raise such a plea, but the documents, which find mentioned in Rules 12(3)(a)(i) to (iii), would be sufficient to call for an enquiry by the Court.
6. Rule 12 (3) (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:

“(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board, as the case may be, the Committee by seeking evidence by obtaining –

(a) (i) the matriculation or equivalent certificates, if

- available; and in absence whereof;
 - (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
 - (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;”
7. Section 2 (k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended upto date defines a juvenile as “juvenile or child means a person, who has not completed 18 years of age”.
8. In the case of *Abuzar Hossain (Supra)* a separate concurring judgment, and more particularly with regard to the propositions stated in paragraph 39.4 of the judgment, was delivered by Justice T.S. Thakur. Paragraph 39.4 of the judgment reads as under:

“39.4 An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.”

9. In the concurring judgment the learned Judge has observed that illiteracy and crime have a close nexus; and further juvenility, delinquency in this country and in other parts of the world springs from poverty and unemployment more than the other reasons. In this backdrop it has been considered that a person, who sets up a plea of juvenility may not be able to produce any of the documents as referred in rules 12 (3) (a) (i), (ii) & (iii) under the Act intentionally, but for the reasons that he may not have been admitted to any school. Such a situation has been highlighted in paragraph 43.2 of the judgment, which is also relevant and is thus being

reproduced below:

“43.2. The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence showing his date of birth by reference to any public document like the Register of Births and Deaths maintained by the municipal authorities, panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the court. Again, there may be cases in which the accused may not be in a position to provide a birth certificate from the corporation, the municipality or the panchayat, for we know that the registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful.”

10. Paragraphs 44 to 49 of the judgment are also material and the same are being reproduced below:

“44. Rule 12(3) of the Rules makes only three certificates relevant. These are enumerated in sub-rules 3(a)(i) to (iii) of the Rule which reads as under:

“(3)(a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

Non-production of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for sub-rule (3)(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the “absence” of the certificates.

45. Rule 12(3)(b) runs as under:

“12.(3)(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age

of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,”

The expression “absence” appearing in the above provision is not defined under the Act or the Rules. The word shall, therefore, be given its literal dictionary meaning which is provided by *Concise Oxford Dictionary* as under:

“*Absence*.—Being away from a place or person; time of being away; non-existence or lack of; inattention due to thought of other things.”

Black's Law Dictionary also explains the meaning of “absence” as under:

“*Absence*.—(1) The state of being away from one's usual place of residence. (2) A failure to appear, or to be available and reachable, when expected. (3) *Louisiana law*. The state of being an absent person.— Also termed (in sense 3) *absentia*.”

46. It is axiomatic that the use of the expression and the context in which the same has been used strongly suggests that “absence” of the documents mentioned in Rule 12(3)(a)(i) to (iii) may be either because the same do not exist or the same cannot be produced by the person relying upon them. Mere non-production may not, therefore, disentitle the accused of the benefit of the Act nor can it tantamount to deliberate non-production, giving rise to an adverse inference unless the court is in the peculiar facts and circumstances of a case of the opinion that the non-production is deliberate or intended to either mislead the court or suppress the truth. It is in this class of cases that the court may have to exercise its powers and discretion with a certain amount of insight into the realities of life.

47. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school.

Studies conducted by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his book *Juvenile Delinquency and Justice System*, in which the author states as follows:

“One of the prominent features of a delinquent is poor educational attainment. *More than 63 per cent of delinquents are illiterate.* Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity. Although free education is provided to Scheduled Castes and Scheduled Tribes, even then, the delinquents had a very low level of expectations and aspirations regarding their future which in turn is due to lack of encouragement and unawareness of their parents that they play truant.”

(emphasis supplied)

What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative.

48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at

the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7-A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry.

49.With these additions, I respectfully concur with the judgment proposed by my esteemed Brother Lodha, J.”

11. In this backdrop of the matter, it may be noticed that when the present petition was filed the petitioner annexed a school certificate evidencing his date of birth. The court deemed it appropriate to issue notice in the matter and directed the State to file a status report. As per the status report enquiries were made from the school authorities, who reported that as per their record, the petitioner was admitted in the school on 16.7.2002 in standard 5 and at that time his parents had verbally got recorded his date of birth as 10.2.1993. In the concluding portion of the status report it is stated that as per the school record the date of birth of the applicant is 10.2.1993 and date of offence is 16.3.2008. So the applicant was about 14 years and 11 months old at the time of commission of offence, but the date of birth mentioned in the school certificate of the petitioner is not authentic.
12. Admittedly, the petitioner was admitted to school prior to the date of incident. The school certificate stands verified by the State. Thus it

cannot be said that this document has been manufactured or created after the commission of the offence, hence, it cannot be treated as a self-serving document.

13. It may also be noticed that out of 7 years sentence awarded to the petitioner, he has already undergone approximately 6 and a half years of the sentence; and in case the petitioner was to manipulate and create a document in his favour he would not have done so at the fag end of his sentence. Any further enquiry if directed would be a useless formality, as the mother has already made a statement that she does not remember the exact date of birth of the petitioner. Original birth certificate of the petitioner is not in possession of the petitioner or his parents. On account of poverty, illiteracy and lack of resources the parents of the petitioner did not obtain his birth certificate, and to await further supporting documents at this stage would only lead to miscarriage of justice and the petitioner would be deprived of the advantage of the beneficial legislation. Accordingly, in my view, since the State has already conducted an enquiry according to which the school certificate is found to be a genuine document, it is not necessary to conduct any further enquiry
14. In the peculiar facts of this case and more particularly having regard to the fact that petitioner has served almost his entire sentence barring six months I am inclined to accept the certificate issued by the school and uphold the plea of juvenility of the petitioner at this stage. The petitioner shall be released from jail forthwith, unless he is wanted in any other case.
15. Petition stands disposed of, accordingly. Copy of this order be sent to jail superintendent forthwith.

G.S.SISTANI, J

DECEMBER 12, 2013 ssn