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

+ CRL.A. 1575/2011

% ***Judgment dated 21.11.2013***

UDAIBIR SINGH @ TINKU Appellant
Through: Mr.Bhupesh Narula, Advocate

versus

STATE Respondent
Through: Mr.Feroz Khan Ghazi, Adv. for State
along with S.I. Nitin, P.S. Gokulpuri.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

CRL.M.A. 17162/2013

1. By the present application, appellant prays for issuance of production warrants with respect to the appellant.
2. Dismissed as infructuous.

CRL.A. 1575/2011 & CRL.M.A. 4510/2013

3. The challenge in the present appeal is to the judgment dated 5.5.2011 and the order on sentence dated 13.5.2011 by which the appellant has been sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.7,000/- and in default of payment of fine to suffer R.I. for one year.
4. During the pendency of this appeal, the appellant made an application [Crl.M.A.No.4510/2013] under Section 7 of the Juvenile Justice (Care and Protection of Children) Act, 2000 read with section 482 Cr.P.C. along with which, the appellant has furnished a school leaving certificate evidencing his age and raised the plea of juvenility.

5. While issuing notice in this matter, the State was directed to verify the school leaving certificate. A status report has been filed by the State, according to which the certificate filed by the appellant has been verified from the Nigam Pratibha Vidyalaya (EDMC), C-1-II, Yamuna Vihar, Delhi; and the Principal of the school provided the attested photocopy of the school leaving certificate and of the admission and withdrawal register wherein the date of birth of the appellant is recorded as 4.4.1992. The Principal of the said school has also provided a certificate wherein it has been certified that the appellant had studied in the school from 20.4.1999 to 27.1.2004.
6. By an order dated 24.7.2013 the matter was placed before the Joint Registrar to conduct an enquiry.
7. Counsel for the parties agree that in the light of the verification carried out by the State as also in view of the attested copy of the certificate issued by the Principal of the School and on enquiry made by the Police, no useful purpose would be achieved in carrying out a second enquiry into the matter, when the authenticity of the certificate already stands proved, as per which the appellant was juvenile on the date of the incident.
8. It is no longer *res integra* that the plea of juvenility can be raised by a person at any stage and that too even after order on sentence has attained finality.
9. 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.

10. 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;”

11. In the present case, the appellant has produced a certificate from the school, which is not a play school.
12. In accordance with the Rule 12 (3) (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 one of the documents which is to be produced and can be favourably considered by a court is a school leaving certificate, which has been filed by the appellant in this court and stands duly verified by the State from the concerned school itself.
13. A careful examination of Rule 12 (3) (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 would show that while determining

the age, the court or the Board can decide the juvenility of a person and consider the matriculation or the equivalent certificate available, the date of birth certificate from the school, other than the play school first attended.

14. In the case of *Abuzar Hossain (Supra)* while writing a separate concurring judgment, T.S. Thakur, J. has noticed that illiteracy and crime has a close nexus. The learned Judge has highlighted that while considering an application for holding an enquiry as to whether a person was a juvenile or not on the date of incident, a liberal approach should be taken rather than a wooden approach, to avoid any miscarriage of justice and the court must weigh the relevant factors for instituting an enquiry.
15. While issuing notice in this matter the State was directed to verify the documents submitted along with the application. As noticed above a status report has been filed, as per which the certificates filed by the appellant has been verified from Nigam Pratibha Vidyalaya (EDMC), C-1-II, Yamuna Vihar, Delhi. The Principal of the school provided an attested photocopy of the school leaving certificate and also the admission and withdrawal register wherein the date of birth of the appellant is recorded as 4.4.1992. The Principal of the said school has also provided a certificate wherein it has been certified that the appellant had studied in the school from 20.4.1999 to 27.1.2004.
16. In the light of the status report, I see no useful purpose would be achieved and it would be an empty formality to carry out further enquiry into the matter or refer the matter to the Board. The appellant shall suffer further in case such an enquiry is initiated, as the appellant has already undergone more than 4 years of sentence, whereas the maximum sentence as prescribed under section 15 (3) of the Juvenile Justice Act is three years, which period the appellant has already undergone. Accordingly, the

appellant is declared to be a juvenile on the date of incident. The appeal is allowed. The appellant shall be released forthwith, unless he is wanted in any other case.

17. The appeal and the application stand disposed of.

G.S.SISTANI, J

NOVEMBER 21, 2013

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