

GAHC010177702022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Revision Petition No. of 442 of 2022

Raji Dev Kumar @ Raj Dev Kumar,
Aged about 18 years (as per prosecution),
Son of Tahveer Ray,
Resident of Village Chanpura,
P.O.-Raghopur, P.S.-Raghopur,
District-Vaishali, Bihar.

.....Petitioner

-Versus-

1. The State of Assam,
Represented by the Public Prosecutor, Assam.
2. The Union of India,
Represented by Sri Brij Kishor Prasad,
Intelligence Officer,
Directorate of Revenue Intelligence,
Guwahati Zonal Unit, Mainak Tower,

Christian Basti, G.S.Road,
Guwahati-781005.

.....Respondents

Advocates for the petitioner : Mr A L Mondal
Advocate for the respondents : Mr S C Keyal, SC, DRI.
Mr B Sarma, APP

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 18.01.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr A L Mondal, learned counsel for the petitioner, Mr SC Keyal, learned Standing Counsel for the Directorate of Revenue Intelligence and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. The petitioner has filed the instant Criminal Revision Petition under Sections 397/401 of the Code of Criminal Procedure, 1973, against the Orders 18.07.2022 and 05.08.2022, passed by the learned Special Judge-cum-Sessions Judge, Kamrup (M) at Guwahati in NDPS Case No. 173/2022, raising juvenility under the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter, in brevity, referred to as "the J J Act") .

3. It is stated in the petition that the petitioner was a child in conflict with law at the time of commission of the alleged offence on 18.08.2021, in connection with DRI Case No. 7/2021. In the Arrest Memo and Forwarding Report, the age and date of birth of the petitioner has been shown as 30 years and 06.07.1991 respectively, whereas the actual date of birth of the

petitioner is 01.01.2006 as per birth certificate and Aadhar card. The age of the petitioner at the time of his arrest on 19.08.2021, was 15 years 7 months 19 days. As such, he is entitled to deal with the provisions of the Juvenile Justice Board.

4. A petition vide No. 651/2022 was filed before the Special Judge cum Sessions Judge, Kamrup (M) at Guwahati, on behalf of the petitioner/accused, Raj Dev Kumar with a prayer to transfer the case to the Principal Judge, JJB, Kamrup (Metro) for consideration of bail of the petitioner, by stating that at the time of commission of alleged offence, the accused petitioner was juvenile. The learned Special Judge-cum-Sessions Judge, Kamrup (Metro), while considering the prayer of the petitioner regarding juvenility, passed an order dated 21.06.2022, with a direction to the jail authority to conduct the ossification test for the accused petitioner by observing all necessary formalities. On receipt of the direction, ossification test of the petitioner was conducted on 28.06.2022 and on receipt of the ossification test report, the learned Special Judge cum Sessions Judge, Kamrup (Metro), rejected the plea of juvenility of the petitioner as well as his bail prayer.

5. On 03.08.2022, the DRI submitted charge sheet against the petitioner before the Special Court, Kamrup (Metro), Guwahati. Subsequently, the petitioner has preferred this revision under Section 397/401 of CrPC, against the impugned order dated 08.07.2022 and 05.08.2022, as aforesaid.

6. Learned counsel for the petitioner has argued that the petitioner was a juvenile on the date of the incident. In support of his age, the petitioner has produced birth certificate and Aadhar Card to ascertain his age, which reflects that he was born on 01.01.2006 and accordingly, on the date of incident, he was around 15 years. As such, he was juvenile. But

the learned Sessions Judge did not consider the documents, which were submitted by the petitioner and erroneously held that both the documents which were submitted by the petitioner were not genuine documents and directed the jail authority to conduct the ossification test of the petitioner, which is not as per provision of law, as provided under Rule 12 of the The Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter, in brevity, referred to as "the J J Rules").

7. In support of his submission, learned counsel has placed reliance on the following case-law-

AIR 2022 Supreme Court 630; (*Rishipal Singh Solanki vs. State of UP & others*)

8. Learned counsel for the petitioner has referred Paragraph-47 of the above judgment, which is reproduced as follows:-

“Section 94 of the J J Act, raises a presumption regarding juvenility of the age of the child brought before the Juvenile Justice Board or the Committee. But in case, the Board or Committee has reasonable grounds for doubt about the person, brought before it, whether he/she is a child or not, it can undertake the process for determination of age by seeking evidence. Thus, in the initial stage, a presumption that the child brought before the Committee or the Juvenile Justice Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable ground for doubt regarding the person brought before it, is a child or not. In such a case, it can undertake the process of age determination by the evidence, which can be in the form of –

- i) Date of certificate from the School or the Matriculation Certificate from the concerned Board, if available or in the absence thereof.
- ii) The Birth Certificate given by a Corporation or by a municipal authority or a Panchayat and in the absence of the above,
- iii) Age is to determined by an ossification test or any other medical test/ age determination test committed on the orders of the Committee or the Board.”

9. On the other hand, Mr S C Keyal, learned Standing Counsel, DRI, has submitted that the documents, i.e, the birth certificate and the Aadhar card produced by the petitioner are not genuine documents, as because the birth certificate as well as the Aadhar card was issued when he was in jail. The DRI officers on 18.08.2021, seized 714 kgs of ganja recovered from a Tata Truck, bearing No. WB/11-B-3667, which was totally under the control of the present petitioner, Raj Dev Kumar at the time of interception. He was the only occupant in the said truck and he was arrested and a case was registered under the NDPS Act, accordingly. At the relevant time, the petitioner has produced his driving licence, wherein his date of birth has been reflected as 06.07.1991 and he had voluntarily given his statement before the DRI Officer that he is around 30 years of age.

10. It is also the submission of the learned counsel for the DRI that as per the guidelines of Unique Identification Authority of India (UIDAI), an individual has to submit his biometric details at the time of enrolling for Aadhar. The applicant has to provide fingerprints of all ten fingers. He is then required to provide the iris scan of both eyes. It is then, verified and checked and subsequently, Aadhar card is generated against the enrolment. But, the present

petitioner has continuously been in Central Jail, Guwahati, since 19.08.2021. In his absence, how the Aadhar card was obtained in the name of the petitioner, which is a big question in the present situation.

11. On that point, learned counsel for the petitioner categorically submits that as the petitioner was juvenile, his presence is not required in obtaining Aadhar Card or birth certificate.

12. I do not agree with the submission of the learned counsel for the petitioner. It is true that birth certificate can be issued without the presence of the concerned person, but Aadhar Card cannot be issued in absence of a person concerned, because on the application of the petitioner containing his demographic details, his information is entered in to the UIDAI's database. Thereafter, photographs and fingerprints of the applicant are to be taken. He is then required to provide the iris scan of both eyes, which is mandatory to obtain Aadhar number.

13. It appears from the record that the birth certificate was issued on 27.12.2021 and on that day, the petitioner was in jail. Under such backdrop, it cannot be said that the documents submitted by the petitioner i.e., the birth certificate and the Aadhar Card are genuine documents.

14. Learned Standing Counsel for the DRI cited one case law regarding juvenility-

2022 0 Supreme Guwahati 238 (*Safiqur Rahman vs. Union of India & Anr.*)

15. Learned Standing Counsel for the DRI has cited another caselaw, vide 2022 0 Supreme SC 1168; (*State of Jammu and Kashmir vs. Shubam Sangra*), wherein it was held that –

“When accused commits a heinous and grave crime like the one on hand and thereafter, attempts to take statutory shelter under the guise of being a minor, a casual or cavellier approach while recording as to whether the accused is a juvenile or not cannot be permitted as the Courts are enjoined upon to perform their duties with object of protecting confidence of a common man in institution entrusted with administration of justice. There are discrepancies in certificates on record, disclosing date of birth of respondent. Benefit of principle of benevolent legislation attached to J J Act would be extended only to such cases where an accused is held to be a juvenile on the basis of at least, prima facie inspiring confidence, regarding his minority.”

16. In the case in hand, it appears that as per statement of the petitioner, when he was arrested by the Police, being a major person, he was sent to custody. Subsequently, his plea of juvenility was raised before the learned Sessions Judge, Kamrup(Metro). As the learned Sessions Judge found the documents not reliable, the jail authority was directed to conduct ossification test of the petitioner. Accordingly, ossification test of the petitioner was conducted at Gauhati Medical College and Hospital, at Guwahati (GMCH) on 28.06.2022 and it is reported that the age of the petitioner is above 18 years and below 20 years on the date of examination i.e., 28.06.2022. The incident occurred on 18.08.2021. It transpires that the petitioner was around 18 years of age on the date of incident. It transpires that the petitioner was not juvenile on the date of incident.

17. The only question which now arises for consideration of this case is whether the petitioner was a juvenile within the meaning of the term-‘juvenile’ a defined under the J J Act and the rules made thereunder and when the offence was committed and whether the plea of

juvenility can be raised by him at this stage.

18. Section 7-A states the procedure to be followed when claim of juvenility is raised before any Court. Proviso to Section 7-A states that a claim of juvenility may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case and such claim can be determined in terms of the provisions contained in the J J Act 2000, and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of the J J Act, 2000.

19. It is by now well settled as was held in the case of *Hari Ram vs. State of Rajasthan*; (2009) 13 SCC 211, that in the light of Section 2(k), 2 (l), 7A read with Section 20 of the 2000 Act, a juvenile who had not completed 18 years on the date of commission of the offence is entitled to the benefit of the 2000 Act [as it was held in the case of *Mohan Mali vs. State of Madhya Pradesh*; (2010) 6 SCC 669; *Daya Nand vs. State of Haryana*; (2011) 2 SCC 224; *Jitendra Singh @ Babboo Singh vs. State of Uttar Pradesh*; (2013) 11 SCC 193]. It is equally well settled that a claim of juvenility can be raised at any stage before any Court by an accused even after final disposal of a case, in terms of Section 7A of the 2000 Act. [In *Abuzar Hussain vs. State of West Bengal*; (2012) 10 SCC 489; *Abdul Razzaq vs. State of Uttar Pradesh*; (2015) 15 SCC 637]

20. It is also a settled position of law that on a fair consideration of Section 2(k), 2(l) 7A, 20 and 49 of the JJ Act, 2000 read with Rules 12 and 98 of J J Rules, 2007, that all persons who are below the age of 18 years on the date of commission of the offence even prior to 01.04.2001, which is the date of commencement of J J Act, 2000, could be treated as juveniles, even if the claim of juvenility is raised after they have attained the age of 18 year

on or before the date of commencement of the JJ Act, 2000, which is 01.04.2001.

21. In the case of *Abuzar Hussain (supra)*, the Hon'ble Supreme Court considered the question as to when should a claim of juvenility be recognized and sent for determination when it is raised for the first time in appeal or before this Court or raised in trial and appeal, but not pressed and then pressed for the first time before the Court or even raised for the first time after final disposal of the case. After considering the relevant judgments on the point, Supreme Court summarized the position as follows:-

“39.1. A claim of juvenility can be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial Court and can be raised for the first time before this Court though not pressed before the trial Court and in the Court of appeal.

39.2. 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 enquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the Court and/or a sufficient for discharging the initial burden cannot be catalogued nor can it be let down as to what weight should be given to a specific piece of evidence, which may be sufficient to raise presumption of juvenility, but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be

sufficient for prima facie satisfaction of the Court about the age of the delinquent, necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code, is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility/or acceptability of the documents, like the school leaving certificate or the voters' list obtained after conviction would depend upon the facts and circumstances of each case and no hard and fast rules can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh vs. State of West Bengal; (2009) 7 SCC 415 and Pawan Vs. State of Uttaranchal; (2009) 15 SCC 259, the documents were not found prima facie credible while in Jitendra Singh (supra), the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the Court, the Court may act upon such documents for the purposes of Section 7A order an inquiry for determination of the age of the delinquent.

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 the determination of the age of the delinquent.

39.5. The Court where the plea of juvenility is raised for the first time should always be guided by the 2000 Act and be alive to the position that beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons

who are entitled to get benefits of the 2000 Act, get such benefits. The Courts should not be unnecessarily influenced by any general impression that in schools, the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the Court at the threshold whenever raised."

22. In *Ashwani Kumar Saxena vs. State of Madhya Pradesh*; (2012) 9 SCC 750, the Hon'ble Supreme Court dealt with the provisions of the JJ Act and the said Rules. The appellant therein and two others were chargesheeted *inter alia* for offences punishable under Section 302 of the IPC. The case was pending before the Sessions Court. The appellant filed an application before the Chief Judicial Magistrate under Section 6 and 7 of the JJ Act, 2000, claiming that he was juvenile on the date of incident and hence, the criminal Court has no jurisdiction to entertain the case and that it be transferred to J J Board. In support of his claim, the appellant produced the attested marksheets of the High School of the Board of Secondary Education as well as Eighth Standard Board Examination. The widow of the victim raised an objection. The appellant's father was examined, who placed reliance on various documents, like the appellant's horoscope, transfer certificate issued by his school etc. The Chief Judicial Magistrate conducted the appellant's ossification test and the medical evidence revealed that the appellant was a major when the offence was committed. The Chief Judicial Magistrate placed reliance on the ossification test and took the view that the appellant was a

major on the date of incident. An appeal was carried to the Sessions Court. The Sessions Court severely commented *inter alia* on the evidence of the father of the appellant, on the non-examination of the Pandit, who had prepared the horoscope and dismissed the appeal. The High Court confirmed the Sessions Court's order. The Hon'ble Supreme Court considered the scheme of the JJ Act, 2000 and the rules therein and observed as under:-

“Age determination inquiry contemplated under Section 7A of the Act, read with Rule 12 of the 2007 Rules, enables the court to seek evidence and in that process, the Court can obtain the Matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the Court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the first school attended, the Court needs to obtain the birth certificate given by a Corporation or a Municipal authority or a Panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted medical board, arises only if the above-mentioned documents are unavailable. In case, exact assessment of the age cannot be done, then the Court, for the reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.”

23. Though in the aforesaid paragraph, the Hon'ble Supreme Court observed that the question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable, but it is to be further observed that only in those cases, where documents mentioned in Section 12 (a) (i) to (iii) of the JJ Act, 2000, are found to be fabricated or manipulated, the Court, the JJ Board or the Committee need to go

for a Medical Report for age determination. Thus, in cases where documents mentioned in Section 12 (a) (i) to (iii) of the JJ Act, 2000 are unavailable or where they are found to be fabricated or manipulated, it is necessary to obtain medical report for age determination of the accused. In this case, the documents are available, but according to the respondent/DRI, they are fabricated or manipulated and, therefore, as per the said submission of the DRI, if the fabrication is confirmed it is necessary to go for medical report for age determination of the petitioner.

24. In the case in hand, the petitioner has not produced matriculation or equivalent certificate or date of birth certificate from the school first attended by him as per Rule 12 of the JJ Rules, 2007. The petitioner only has produced a birth certificate issued by the Government of Bihar in the Department of Planning and Development, Primary Health Centre, Raghopur. It is evident that the birth of the petitioner was not entered in the birth register soon after his birth but it was entered very recently on 27.12.2021, when he was in jail. Therefore, the certificate issued by the Department does not inspire confidence.

25. I have already stated regarding Aadhar Card, as to how it was issued by the concerned authority without taking his fingerprints and iris scan of both the eyes. Apparently, the documents, i.e., birth certificate and Aadhar Card regarding proof of age of the petitioner appear to be not genuine. As such, the learned Sessions Judge has rightly directed to conduct ossification test of the petitioner and the ossification report confirms that petitioner was major at the relevant time of incident.

26. In view of the above, I do not find any infirmity in the Orders dated 18.07.2022 and 05.08.2022, passed by the learned Special Judge-cum-Sessions Judge, Kamrup (M) at

Guwahati in NDPS Case No. 173/2022 and accordingly, the Criminal Revision Petition stands dismissed.

27. In the result, the Criminal Revision Petition is disposed of, at the admission stage.

JUDGE

Comparing Assistant