

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Misc. No. M-35177 of 2014
Date of Decision: 21.1.2015.**

Rakesh @ Chhottu

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Naveen S. Bhardwaj, Advocate
for the petitioner.

Mr. Rajiv Doon, AAG, Haryana.

SABINA, J.

Petitioner has filed this petition under Section 439 of the Code of Criminal Procedure, 1973 seeking regular bail in FIR No. 297 dated 9.8.2014 under Section 392 of the Indian Penal Code, 1860 ('IPC' for short) read with Section 25 of the Arms Act, 1959 ('Act' for short), registered at Police Station Model Town, Rewari.

Prosecution story, in brief, is that on 8.8.2014, at about 6.50 P.M., complainant along with Parv Sapra were going to a petrol pump and had crossed Pushpanjali Hospital. Three boys were standing on the road and stopped the motor cycle of the complainant. When the complainant and his friend raised objection, Anil took out a revolver type of weapon and aimed at the complainant and his friend. Complainant and his friend got down from the motor cycle. Naveen and Anil snatched their mobiles and

took their motor cycle with them. During investigation, petitioner was arrested and mobile phone belonging to complainant Mohit, was recovered from him. Stolen motor cycle was recovered from accused Anil.

Learned counsel for the petitioner has submitted that petitioner was a juvenile and was entitled to be released on bail. As per the matriculation certificate of the petitioner available on record, petitioner was a juvenile. In support of his argument, learned counsel has placed reliance on **Ashwani Kumar Saxena versus State of M.P., 2012(4) R.C.R. (Criminal) 391**', wherein it was held 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 need 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 school first attended, the court need 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 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.

Learned State counsel, on the other hand, has opposed the petition and has submitted that as per the date of birth certificate available on record, petitioner was a major at the time of occurrence.

In the present case, as per the date of birth certificate of the petitioner available on record, his date of birth is 2.10.1995. The said certificate was taken in consideration by the learned Additional Sessions Judge while dismissing the application filed by the petitioner as allegations levelled against the petitioner are serious in nature. Moreover, petitioner is an accused in FIR No. 307 dated 16.8.2014 under Section 398, 401 IPC and Section 25 of the Act, registered at Police Station Model Town, Rewari. During the course of arguments, it has further transpired that the application moved by the petitioner, that he be declared a juvenile at the time of occurrence, is pending before the Trial Court. Since so far the plea taken by the petitioner that he was a juvenile, is still under consideration before the Trial Court, it would not be just and expedient for this Court to express any opinion with regard to the fact as to whether petitioner is a juvenile or not by considering the matriculation certificate, placed on record, by the petitioner along with this petition. The Trial Court after verification of the certificates, produced on record by the prosecution as well as by the petitioner, would enquire into the matter and conclude as to whether petitioner is a juvenile or not.

Keeping in view the seriousness of allegations levelled

against the petitioner, no ground for grant of bail to the petitioner is made out.

Dismissed.

**(SABINA)
JUDGE**

January 21, 2015
Gurpreet