

**IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH.**

**Crl. Misc. No. M-42682 of 2014  
Date of Decision: 04.9.2015.**

Sajjan Kumar

.....Petitioner

Vs.

State of Haryana

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE SABINA**

Present: Mr. Ashok Arora, Advocate  
for the petitioners.

Ms. Gaganpreet Kaur, AAG, Haryana.

.....

**SABINA, J.**

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 challenging the orders dated 3.10.2013 (Annexure P-3) and 17.11.2015 (Annexure P-5)

Learned counsel for the petitioner has submitted that the Trial Court has erred in ordering the ossification test of the petitioner for determination of his age. As per Annexure P-2, the date of birth of the petitioner was 26.1.1985. Hence, the petitioner was a juvenile at the time of the alleged offence committed on 9.2.2001. In support of his arguments, learned counsel has placed reliance on '**Shah Nawaz versus State of U.P. and another 2011(3) R.C.R. (Criminal) 884**', wherein it was held as under:-

*“We are satisfied that the entry relating to date of birth entered in the mark sheet is one of the valid proof of*

*evidence for determination of age of an accused person. The School Leaving Certificate is also a valid proof in determining the age of the accused person. Further, the date of birth mentioned in the High School mark sheet produced by the appellant has duly been corroborated by the School Leaving Certificate of the appellant of Class X and has also been proved by the statement of the clerk of Nehru High School, Dadheru, Khurd-O-Kalan and recorded by the Board. The date of birth of the appellant has also been recorded as 18.06.1989 in School Leaving Certificate issued by the Principal of Nehru Preparatory School, Dadheru, Khurd-O-Kalan, Muzaffarnagar as well as the said date of birth mentioned in the school register of the said school at S. No. 1382 which have been proved by the statement of the Principal of that school recorded before the Board. Apart from the clerk and the Principal of the school, the mother of the appellant has categorically stated on oath that the appellant was born on 18.06.1989 and his date of birth in his academic records from preparatory to Class X is the same, namely, 18.06.1989, hence her statement corroborated his academic records which clearly depose his date of birth as 18.06.1989. Accordingly, the appellant was a juvenile on the date of occurrence that is 04.06.2007 as alleged in the FIR dated 04.06.2007.”*

Learned counsel for the petitioner has further placed

reliance on '**Ashwani Kumar Saxena versus State of M.P.,**

**2012(4) R.C.R. (Criminal) 391** wherein it was held as under:-

*“We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”*

Learned State counsel, on the other hand, has submitted that the Certificate Annexure P-2 could not be taken in consideration while determining the age of the petitioner as the said certificate had not been issued by the school which was first attended by the petitioner.

Petitioner is facing criminal proceedings in FIR No. 85 dated 11.2.2001, registered at Police Station City Hisar, under Section 363, 366, 376, 506 of the Indian Penal Code, 1860. Petitioner was convicted and sentenced along with his co-accused by the Trial Court qua commission of offence punishable under Section 363, 366, 376 IPC vide judgment/order dated 9.4.2002/11.4.2002. In appeal filed by the petitioner, this Court vide order dated 1.3.2011 (Annexure P-1) remanded the case to the Juvenile Justice Board, Hisar to determine the age of the petitioner. It was further ordered that in case the Board found that the petitioner was less than 18 years of age on the day of occurrence, he be dealt with under the provisions of the Act.

Vide order dated 3.10.2013 (Annexure P-3), the Juvenile Justice

Board ordered that ossification test of the petitioner be got conducted with a view to determine his age, as there was no sufficient evidence regarding his age, on record. Aggrieved against the said order by the Board, petitioner preferred a revision petition. The Court of Revision dismissed the revision petition filed by the petitioner vide order dated 17.11.2014 (Annexure P-5). Hence, the present petition by the petitioner.

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 ('Act' for short) reads as under:-

***“Procedure to be followed in determination of***

***Age.— (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.***

***(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail .***

***(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 or, as the case may be, the Committee by seeking evidence by obtaining-***

- (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 whereon;*
- (iii) *the birth certificate given by a corporation or a municipal authority or a panchayat;*
- (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.*

*x x x x x x''*

Thus, as per the above provision, in order to determine the age of the juvenile, the matriculation or equivalent certificate can be taken in consideration at the first instance and in case the said certificate is not available, then the date of birth certificate from the school first attended by the accused can be relevant certificate for determining the age of the juvenile.

Petitioner had placed reliance on certificate (Annexure P-2). As per the said certificate, the date of birth of the petitioner is 26.1.1985. The said certificate was issued to the effect that

the petitioner had passed the preliminary examination in March 1996 as a self studying student. In order to prove the said certificate, petitioner had examined the Principal of Navbharat Senior Secondary School. Petitioner also produced the Clerk of the concerned office to corroborate the statement of the Principal of the school. Ajeet Singh, Clerk, B.E.O, Hisar also proved on record the affidavit dated 11.0.1995 submitted by the father of the petitioner. Father of the petitioner was also examined as AW-3. Court of Revision after examining the said document rightly held that the certificate (Annexure P-2) could not be treated as a certificate issued by the school first attended by the petitioner. Since the petitioner had failed to prove on record any certificate in terms of Rule 12(3) (a) of the Act, the learned Juvenile Justice Board rightly ordered that the ossification test of the petitioner be got conducted in order to determine his age. The Courts below rightly held that Annexure P-2 was not the relevant certificate for determining the age of the petitioner. Moreover, petitioner will not suffer any prejudice on account of conduct of his ossification test.

In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for the petitioner fail to advance the case of the petitioner.

No ground for interference by this Court is made out.

Dismissed.

**(SABINA)  
JUDGE**

**September 04, 2015**  
***Gurpreet***