

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

CRWP No.167 of 2015

Date of decision: 15th July, 2016

Sahabudeen

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. S.S. Rana, Advocate for the petitioner.

Mr. J.S. Brar, Asstt. Advocate General, Punjab
for the respondents/State.

FATEH DEEP SINGH, J.

The petitioner who also happens to be a convict namely Sahabudeen through this invocation by the aid of Article 226 of the Constitution of India has prayed for issuance of appropriate orders/directions seeking the same against respondents No.2 and 3 to hold an enquiry regarding the date of birth of the petitioner based on his certificate (Annexure P1) and to declare the petitioner as juvenile and thus, to release him from jail by virtue of the provisions contained in Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 and Rule 12 of the Rules of this Act (in short, 'the Act' and 'the Rules').

It is the own case of the petitioner that he was one of the accused in case FIR No.113 dated 25.08.2002 under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short, 'the Act') pertaining to Police Station City Phagwara, District Kapurthala and was found guilty and convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1.00 lac through judgment of conviction and order of sentence dated 12.02.2007 by the learned trial Court. It is also admitted stance of the petitioner that he challenged the conviction by way of criminal appeal No.602-SB of 2007 and the same was dismissed by this Hon'ble Court vide judgment dated 18.03.2011 upholding the findings of the trial Court.

It is so pleaded and is also admitted by the petitioner side before this Court that till the decision of his appeal and which findings, as is argued before this Court, have since then attained finality, he never agitated his age or the plea of juvenility at the time of commission of offence and then at this belated stage through this instant invocation he has sought to claim by way of Annexure P1 that his date of birth is 13.07.1985 and thus, on the date of commission of offence i.e. 25.08.2002 he was 17 years 1 month old. It is further claimed that he has undergone incarceration for a period of about 8 years of actual sentence and since he was a juvenile at the time of occurrence he needs to be outrightly released from custody.

No doubt, under the provisions of Section 7A of the Act, at any point of time a Court, if finds a person to be a juvenile on the date of commission of the offence, needs to forward his case to the concerned Juvenile Justice Board for passing an appropriate order and any such sentence so passed against the juvenile ceases to have any effect, for which learned counsel for the petitioner has sought to place reliance on **‘Narinder Singh v. State of Punjab & others’ 2014(3) RCR (Criminal) 43; ‘Hari Ram v. State of Rajasthan & another’ 2009(2) RCR (Criminal) 878; ‘Mohan Mali & another v. State of Madhya Pradesh’ (2010)3 SCC (Cri) 208;** and a judgment of this Hon’ble Court in the case of **‘Shaminder Singh @ Bittu v. State of Punjab & others’ (CRM 178 of 2014 in CRWP 2090 of 2013, decided on 16.10.2014)** and which position of law has not been controverted by the learned State counsel. However, in the light of the submissions of the two sides, the petitioner admittedly was involved in an occurrence which took place on 25.08.2002 and claims that his date of birth is 13.07.1985 and thus a juvenile less than 18 years of age.

It is well writ large on the records and is the stand of the petitioner that at no point till filing the instant petition there has been exercise of such a stand. The genuineness of the stand of the petitioner is reflected from his own documents. The alleged school certificate (Annexure P1) which has been issued on 07.08.2014 and the birth certificate purported to have been issued by Registrar of Births and

Deaths (Annexure P2) which shows that the registration of this birth took place on 11.09.2014 and was issued on 24.09.2014, is in itself reflective that seven years after the judgment of conviction the petitioner has managed to get himself registered before the Registrar, Births and Deaths as well as to get so called educational qualification certificate, are matters which impinge upon judicial conscience and apparently are suggestive enough of the purpose of all these documents which are mere to get out of the judicial custody by any means, hook or crook.

Furthermore, as is pointed out, the names detailed in these so relied documents are much at variance besides the fact that academic certificate issued by the school authorities (Annexure P1) does not suggest on what basis this so called date of birth was reflected in the admission book from which this is purported to have been issued. In the light of contentions of learned State counsel which could not be controverted by learned counsel for the petitioner, it is the own stand of the petitioner as per (Annexure P1) that he was admitted in the school on 25.04.1990 even if assuming in the 1st class, what to talk of LKG and UKG, he left the school on 31.12.1994 from 5th class, are matters which further corroborate this suspicion and totally leaving blank the places on receipts and police station with district in the certificate, are matters which furthers this suspicion. To the mind of this Court, it is only a belated afterthought attempt to hoodwink the law which has brought them before justice. Thus, in the totality of what has been detailed and

discussed above, there is no cause for this Court to show indulgence and exercise its powers to advance the cause of justice, which is nowhere there in the case of the petitioner.

The petition is hopelessly without merits and stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 15, 2016
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No