

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

CRWP No.841 of 2015

Date of decision: 15th July, 2016

Rakesh Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for the respondent/State.

FATEH DEEP SINGH, J.

The petitioner who also happens to be a convict namely Rakesh Kumar 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 nine accused in case FIR No.151 dated 02.08.2001 under Sections

302/307/120-B/394/216-A/213 of the IPC read with Section 25 of the Arms Act, pertaining to Police Station City Khol, District Rewari and was found guilty and convicted to rigorous imprisonment for life through judgment of conviction and order of sentence dated 29.07.2006 by the learned trial Court. It is also admitted stance of the petitioner that he challenged the conviction by way of criminal appeal No.601-DB of 2006 and the same was dismissed by this Hon'ble Court vide judgment dated 25.01.2008 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 17.12.1983 and thus, on the date of commission of offence i.e. 03.08.2001 he was 17 years 4 months old. It is further claimed that he has undergone incarceration for a period of 11 years 9 months 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 02.08.2001 and claims that his date of birth is 17.02.1983 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 only semblance of evidence is sought to be a certificate by way of unattested photostat copy of the second copy which is more or less illegible. The same neither bears signatures of the issuing authority nor the date of issuance and rather is totally silent as to on what basis the school authorities have recorded this alleged date of birth. The words ‘checked up’ carry beneath them a date 04.08.2001 and which shows that it was in possession of the petitioner at the time immediately after the occurrence, much prior to his trial, conviction and

dismissal of the appeal. To the very query of the Court, learned counsel for the petitioner was totally at loss of words why the same was never put forth during all this period, are matters which certainly reflects a grave doubt and suspicion over this document. Apparently, at the time of the trial as well as at the time of entering into jail, the accused has taken a stand as to his age to be around 28 years, rather a difference of more than 10 years, creates a greater suspicion over the veracity of their stand. What appears is that the petitioner has embarked upon another venture and which he had been repeatedly doing so while entering District Jail, Rewari and consequent upon his transfer to District Jail, Rohtak which age is given by the convict and on his thumb impression and particulars is entered in Register No.1 maintained in the concerned jail. Even otherwise, the alleged document is unsupported of something which apparently could prima facie show genuineness of the claim of the petitioner to enable this Court to take cognizance of his plea and hold an enquiry to this effect.

For the foregoing reasons, detailed and discussed above, the petition is hopelessly meritless and stands dismissed.

(FATEH DEEP SINGH)
JUDGE

July 15, 2016
rps

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