

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7899 of 2017

ORDER:

Heard learned counsel for the petitioner shown as aged 20 years involved in the offence punishable under Section 8(c) r/w 20(b)(ii)(c) of NDPS Act vide crime No.31/2017 of Rajanagaram Police Station, East Godavari District, and also the learned Public Prosecutor representing the respondent State and perused the grounds urged in the quash petition.

According to the petitioner, he filed before the Juvenile Justice Court (III Additional Judicial Magistrate of First Class) Rajamahendravaram, the unnumbered petition (SR.No.657 dated 17.08.2017) claiming that as per the school certificate he is minor not completed even 17 years and he is a juvenile, thereby he may be enlarged on bail considering as juvenile in the said crime supra.

The petition was returned on maintainability. It is impugning the same practically the present petition is filed. Needful to say on the factual background that the petitioner filed CrI.P.No.3514 of 2017 under Section 439 Cr.P.C. before this Court another Bench as A.9 of the said crime and in the course of hearing, covered by the order dated 01.08.2017 he has withdrawn the same in the petition he raised the contest as he is hardly 17 years and he is juvenile and not a major, then he sought permission and permission is accorded to withdraw the petition with liberty to file application to the concerned authority for redressal of his grievance. Even that order permitting withdrawal no way speaks much less he stated who is the authority and what manner of petition he can file or to be filed as the case may be.

It is pursuant to the said order dated 01.08.2017, on 17.08.2017 he filed the petition impugning the said return particularly mentioning that said petition was numbered in fact before returning by Special Court as CrI.M.P.No.358 of 2017. In fact as per the expression of the Apex Court in **Ravinder Singh Gorkhi Vs. State of U.P.**¹ where juvenile in a murder case for the offence punishable under Section 302 IPC and the issue in relation to the determination of age it was observed that school record under Section 35 of the Evidence Act is one of the means of proof by school leaving certificate as to the original date of birth entered therein apart from other proof if any for the fact that Section 35 of the Evidence Act is applicable to civil and criminal proceedings equally for no such distinction on the application. It is also referred the Constitution Bench expression of the Apex court in **Pratap Singh Vs. State of Jharkhand**² and the age of juvenile is not on the date of consideration or produced before the Court but as on the date of offence irrespective of subsequently he became a major. Referring to it particularly at Para 34 it is observed it was not shown as to whether the register in the school was maintained under any statute, not even shown as to whether any register was maintained in the school and not even produced the original nor there is any authenticity to look into and no person concerned with the entries in question in the school was examined and having regard to the above, the case was on facts disposed of.

However the core issue now is whether the return of the application by the Juvenile Justice Court is justifiable or not. In fact unless it is shown the petitioner is juvenile the question of

¹ 2006 (2) ALD (CrI.) 168 (SC)

² (2005) 3 SCC 551

entertaining his application to consider as juvenile by the Juvenile Justice Board does not arise. The police filed the FIR before the special Court under NDPS Act and showing he is major. Once such is the case it is left open to the petitioner pursuant to the expression to file application first to determine his age by also relying upon school leaving certificate dated 12.02.2017 issued by the Head Master of Nodal UP School showing his date of birth as 15.10.2000 apart from any proof by letting evidence in this regard to determine besides the power of the Court if at all required of forensic examination and medical examination etc., as the case may be.

With these observations, this Criminal Petition is disposed of, to entertain such application if filed by the petitioner by the Special Court under NDPS Act where the crime is pending and final report if any filed to consider and decide on own merits as early as possible.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 19.09.2017
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