

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

(1) CWP No. 10227 of 2018 (O&M)
Date of decision: 19.07.2018

Balwinder Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

(2) CWP No. 10229 of 2018 (O&M)
Date of decision: 19.07.2018

Jaswant Singh

...Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. P.P.S. Duggall, Advocate for the petitioner(s).

Ms. Deepali Puri, Addl. A.G., Punjab.

Jitendra Chauhan, J. (Oral)

The aforementioned petitions are being decided by way of common order, as the issues involved in the matter being common.

Earlier, the instant petitions were filed as Criminal Writ Petition under Section 226 of the Constitution of India seeking direction to release the petitioner(s) from custody, keeping in view the provision of Section 7-A of Juvenile Act and in consonance of the provisions of Article 20(1) of the Constitution of India as well as of the fundamental rights contained in Article 39(f) of the Constitution of India as the

petitioner(s) were juvenile at the time of occurrence.

Thereafter, a Co-ordinate Bench of this Court passed the following order whereby the Registry was directed to register both the petitions as Civil Writ Petitions:-

“Prayer in both these petitions is for releasing the petitioners from the custody in view of the provisions of Section 7-A of Juvenile Justice Act.

The Hon'ble Division Bench of this Court has passed an order dated 22.01.2018 in CRWP-64-2018, which reads as under:-

“The petitioner has filed the present writ petition with the following prayer:-

“It is, therefore, respectfully prayed that emergency parole of 2 weeks may kindly be granted to the petitioner to meet his family, in case FIR No.109 dated 24.12.2013, under Section 21 of NDPS Act, P.S. Lambra, Distt. Jalandhar, in the interest of justice.”

The petition has been styled as 'Criminal Writ Petition'.

The High Court has framed Writ Jurisdiction (Punjab and Haryana) Rules, 1976, which is forming part of Punjab and Haryana High Court Rules and Orders, Volume-5, Chapter-R, Part- F. Rule-3 thereof provides for Criminal Writ Petitions, which reads as under:-

“3. Criminal Writ Petitions.- A petition for the issuance of a writ in the nature of habeas corpus or any petition challenging order of punishment passed in pursuance to any proceedings before a Court Martial or its equivalent tribunal shall be styled as 'Criminal Writ Petition'.”

A perusal of the aforesaid Rule shows that a Criminal Writ Petition can be filed in the nature of habeas corpus or any petition challenging order of punishment passed in pursuance to any proceedings before a Court Martial or its equivalent tribunal. The relief claimed in the present petition does not fall in any of the categories prescribed in the rule.

After realizing that the Criminal Writ Petition for the relief claimed is not maintainable, learned counsel for the petitioner submitted that the same be treated as Civil Writ Petition.

Without opining on the maintainability as such of Civil Writ Petition or any other kind of petition for seeking relief prayed for in the present petition, the Registry is directed to register the present petition as a Civil Writ Petition and list the same as per roster on 30.1.2018.

In view of the above, Registry is directed to register both these cases as Civil Writ Petitions and list the same as per roster.

A photocopy of this order be placed on the file of connected case.”

Hence, the instant civil writ petitions.

Learned counsel for the petitioner(s) argued that petitioners were convicted for 10 years in FIR No.161 dated 13.05.2005, registered under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'), at Police Station Sadar, Jalalabad. The appeal assailing the conviction was also dismissed upto Hon'ble the apex Court. Learned counsel further states that the petitioners were juvenile at the time of occurrence and since, they have already undergone the maximum sentence of 03 years of imprisonment as prescribed under the Juvenile Act, therefore, the present petitions deserve to be allowed.

On the other hand, learned State counsel opposes the prayer made and states that the contraband recovered from the petitioners was commercial in nature and since the appeal has been upheld upto Hon'ble the Supreme Court, therefore, no benefit could be passed to the petitioner.

Heard, learned counsel for the parties and perused the

record.

The foundation of the argument raised by learned counsel for the petitioner(s) is that order passed by this Court in a bail petition wherein the petitioners have been referred to as minor, however, the petitioners have never been declared juvenile as per the requirement of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the Act'). The bail petition does not deal with the question of minority and the intended purpose of filing the bail petition was not to get the petitioners declared as a minor, rather, the same was filed for the grant of concession of bail. Otherwise also, the bail order is not an expression on the merit of the case. It is only for the purpose of bail alone. The juvenility has to be proved as per the provisions envisaged in the Act. Moreover, the appeal filed by the petitioners against their conviction has been upheld upto Hon'ble the Supreme Court, therefore, at this stage, no benefit can be extended to the petitioners. Finding no merit in the present petitions, the same are hereby dismissed.

19.07.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No