

CRM-M-30845-2021 (O&M)

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

**CRM-M-30845-2021 (O&M).
Decided on: November 26, 2021.**

Arsheed Ahmad Rather

.. Petitioner

VERSUS

State of Punjab

.. Respondent

*** * ***

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

*** * ***

**PRESENT Mr.Ruhani Chadha, Advocate,
for the petitioner.**

Mr.Randhir Singh Thind, DAG, Punjab.

JASGURPREET SINGH PURI, J.

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of the impugned order dated 9.7.2021 (Annexure P-4) which has been passed by the learned Judge Special Court, Jalandhar, vide which the application filed by the petitioner to declare him as a juvenile and sending his case to the Juvenile Court in FIR No.284 dated 8.10.2020, registered at Police Station, Shahkot, District Jalandhar, under Section 15 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985

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has been dismissed.

The present FIR was lodged against the petitioner and three other co-accused under the NDPS Act, on 8.10.2020. The petitioner filed an application before the Judge Special Court, Jalandhar for declaring the petitioner as juvenile and sending his case to the Juvenile Court. As per petitioner his date of birth is 26.11.2003 and since the occurrence had taken place on 8.10.2020, he was less than 18 years of age and therefore, was “juvenile” within the meaning of Section 2 (35) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short called as ‘J.J.Act 2015’). Evidence was led before the learned Judge Special Court by the petitioner as well as by the State. A relative of the petitioner produced one school leaving certificate issued by the Headmaster of Govt. EGS/Primary School, Daramdoora, Jammu and Kashmir, according to which his date of birth is 26.11.2003. In order to prove his date of birth the petitioner examined one Rameez Ahmad son of Mohd. Ashraf Mir (Teacher), resident of Daramdoora Shopian, Tehsil Keegam, District Shopian and copy of his I.D. card was also produced and exhibited as EX.B-1. As per his deposition based upon the record of admission register at Sr. No.53 dated 4.3.2009, the petitioner was admitted in their school and as per their record the date of birth of the petitioner was 26.11.2003. Copy of the admission and withdrawal register was also proved and exhibited as EX.B-2, copy of the result register as EX.B-3 and copy of discharge certificate was also proved as EX.B-4. Copy of the authority letter was proved as EX.D-3 and copy of the application form for the admission in the school was proved and

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exhibited as EX.D-4.

The prosecution also examined two witnesses RW-1 Surinder Kumar I.O. and RW-2 ASI Salinder Singh who produced EX.RW1/C which is photocopy of the Aadhaar Card of the petitioner to show that the date of birth of the petitioner as per the Aadhaar card was 10.3.1990 and therefore, the petitioner was above the age of 18 years at the time of occurrence.

Learned counsel for the petitioner has argued that the learned Judge Special Court, Jalandhar, while dismissing the application filed by the petitioner for declaring him as a juvenile relied upon the Aadhaar card but ignored the admission and withdrawal register of the school. The learned counsel submitted that admission register was of the year 2009 and it has been duly proved by the teacher of the school and the same has also been exhibited. Even the school leaving certificate issued by the Headmaster of the School has also been proved wherein the date of birth of the petitioner has been mentioned as 26.11.2003 and therefore, the date of birth of the petitioner has been duly proved by the petitioner and there was no reason for the learned Judge Special Court, Jalandhar, to have relied upon the date of birth mentioned in the Aadhaar card. He submitted that date of birth mentioned in the Aadhaar card is based upon the information which is stated before the Aadhaar Card Authorities by the person who is interested to make the Aadhaar card and therefore, no authenticity can be attached to the date of birth mentioned in the Aadhaar card as there is no verification etc. done by the authorities. He further submitted that the

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impugned order was contrary to Section 94 read with Section 9 (2) and (3) of the J.J.Act 2015. He submitted that vide Section 94 (2) of the J.J.Act, 2015, a procedure has been prescribed for the purpose of determining the age of the persons brought before the J.J. Board and it is the date of birth certificate from the school, or the matriculation, or equivalent certificate from the concerned examination Board, if available, which is to be relied upon and in the absence of the same, the birth certificate given by a corporation or a municipal authority or a panchayat is to be relied upon and in case of absence of the aforesaid two evidences, age shall be determined by ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. He submitted that in the present case the date of birth certificate from the school has been produced and proved on record and the admission register of the year 2009 itself has also been proved vide which the petitioner was admitted in the school and as per the school record his date of birth as mentioned is 26.11.2003 and therefore, reliance made by the learned Judge Special Court, Jalandhar, in the impugned order on the Aadhaar card ignoring the admission register of the school was erroneous. He further submitted that although ossification test was not required in view of the fact that the date of birth record by the school itself was produced, still the State filed an application for conducting ossification test and the same was dismissed by the learned Judge Special Court, Jalandhar, on 2.7.2021 vide Annexure P-5 on the ground that since the school record as well as the Aadhaar card are available, there is no need to conduct ossification test. The learned counsel

has relied upon the judgment of the Hon'ble Supreme Court in *Rishipal Singh Solanki Vs State of Uttar Pradesh & Ors. 2022(1) R.C.R.(Criminal) 151*, and submitted that once school record incorporating the date of birth of the petitioner was produced and proved before learned Judge Special Court, Jalandhar, there was no occasion for the learned Judge Special Court, Jalandhar, to have relied upon the Aadhaar card of the petitioner in view of Section 94 read with Section 9 (2) and (3) of the J.J. Act, 2015. The learned counsel further relied upon two orders passed by this Court in CRWP-7832 of 2021 and CRM-M-22138 of 2017 to contend that the Aadhaar card is not firm proof of date of birth of any person since no verification is done by the Unique Identification Authority of India in respect of the date of birth disclosed by the applicant for an Aadhar Card.

On the other hand, Mr.Randhir Singh Thind, learned Deputy Advocate General, Punjab, has submitted that the petitioner is accused in the FIR registered under the NDPS Act wherein 325 kgs. of poppy husk was recovered and there are total four accused in the present FIR. He submitted that the parents of the petitioner had provided the copy of Aadhaar card of the petitioner to the police and the police sent the same for verification to the Ministry of Electronics and I.T. Govt. of India, Unique Identification Authority of India, Regional Office, Sector 17-B, Chandigarh, which intimated that the Aadhaar card of an individual can be verified from the website of UIDAI and the learned trial Court has got checked up the date of birth of the petitioner through Ahlmad of the Court from the said website link and date of birth of the petitioner was found to be

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10.3.1990 as per the details of the Aadhaar card of the petitioner available on the online portal and it was because of this reason that the learned trial Court has dismissed the application of the petitioner. He further submitted that even at the time of arrest of the petitioner, he had disclosed his age as 20 years to the police and therefore, the learned State counsel has prayed for the dismissal of the present petition.

I have heard the learned counsel for the parties.

In the present case the petitioner claims his date of birth to be 26.11.2003 whereas as per the prosecution his date of birth is 10.3.1990. The date of alleged occurrence is 8.10.2020. The petitioner has produced the school record to prove that his date of birth is 26.11.2003 and therefore, he was below the age of 18 years at the time of alleged occurrence. The admission register at Sr. No.53 dated 4.3.2009 and withdrawal register EX.B-2, result register EX.B-3, discharge certificate EX.B-4 and school leaving certificate issued by the Headmaster of the school wherein the date of birth has been mentioned as 26.11.2003, has been produced before the learned trial Court to prove the date of birth of the petitioner.

On the other hand, the prosecution has produced Aadhaar card wherein date of birth of the petitioner has been mentioned as 10.3.1990 and therefore, for the purpose of considering as to out of two contrary evidences one produced by the petitioner and the other produced by the prosecution which should be relied upon by the Court is the moot point to be determined in the present case. It is not only the provision of law i.e.

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Section 94 read with Section 9 (2) and (3) of the J.J. Act 2015, which is to be considered but the credibility attached to various documents should also be considered. Section 94 of the J.J. Act, 2015, provides for a provision regarding presumption and determination of age and as per sub section 2 when the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining — (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available. In case the aforesaid documents are not available then the birth certificate given by a corporation or a municipal authority or a panchayat is to be considered and in the absence of the aforesaid two documents, it can be determined by way of an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board. When a person alleged to have committed an offence makes a claim before a Court other than a Board then the provisions of Section 9 of the J.J. Act 2015, would apply which provides that in such a situation, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be and in case the Court finds that such person was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

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A perusal of the Section 94 of the J.J.Act, 2015, would show that primacy has to be given to the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, and in case these documents are not available then the remaining documents can be relied upon. In the present case, the petitioner has produced record of the school including the admission register, withdrawal register and the school leaving certificate wherein date of birth of the petitioner has been mentioned as 26.11.2003. The admission register has the Sr.No.53 and is of the year 2009 bearing the date as 4.3.2009 and therefore, credibility can certainly be attached to the aforesaid record of the school which incorporates the date of birth of the petitioner as 26.11.2003. Furthermore, it is not the case of the prosecution that the aforesaid documents relied upon by the petitioner were forged or fabricated documents. However, the case of the prosecution is that instead of relying upon the school record, the Court should rely upon the Aadhaar card which incorporates different date of birth. Therefore, it has to be seen as to out of these two documents which should be relied upon by the Court while considering the application of the applicant (petitioner) to be declared as juvenile. Neither Section 94 nor Section 9 of the J.J. Act, 2015, provides any provision for Aadhar card. Rather date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, is to be given primacy. In the absence of any challenge to the authenticity of the school record, reliance has to be made on the school record by virtue of Section 94 read with Section sub Sections 2 and

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3 of the J.J.Act, 2015. Although the date of birth of the petitioner was got checked up from the website of the UIDAI but it is a common practice that Aadhaar cards are made on the basis of information supplied by the applicant regarding his date of birth and in many cases proper verification is not done. The issue regarding declaring a person to be juvenile or not is a vital issue and affects the rights of an individual vested in him under a Statute.

The Hon'ble Supreme Court in *Rishipal Singh Solanki* (surpa) laid down various parameters with regard to the claim of juvenility. It has been observed that an application claiming juvenility could be made either before the Court or the JJ Board. When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the J.J. Act, 2015 but when a person is brought before a Committee or J.J. Board, Section 94 of the J.J. Act, 2015 applies. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be. It was further observed that if two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. It was further observed that when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the

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discharge of official duty would have greater credibility than private documents. In the present case, the school record has been proved wherein date of birth of the petitioner has been mentioned as 26.11.2003 and there is nothing on the record to show that there is any challenge to the authenticity of the aforesaid documents proved by the petitioner which have been kept in ordinary course.

In view of aforesaid position, the present petition is allowed. Impugned order dated 9.7.2021, passed by learned Judge Special Court, Jalandhar, is set aside. It is held that the petitioner was a juvenile on the date of the incident and he has to be tried by the Juvenile Justice Board. Learned Judge Special Court, Jalandhar, is directed to forward file qua the petitioner to the concerned Juvenile Justice Board to proceed further with the inquiry so far as the present petitioner is concerned.

Pending misc. application, if any, shall also stand disposed of accordingly.

November 26, 2021.
raj arora

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes / No
Yes / No