

**In the High Court of Punjab and Haryana at Chandigarh**

**CRR No. 1460 of 2021 (O&M)**  
**Date of Decision: 02.12.2021**

Sukhdev @ Sukha

.....Petitioner

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR**

Present: Mr. Vikram Singh, Advocate  
for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

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**SURESHWAR THAKUR, J. (ORAL)**

1. FIR bearing No. 70 of 8.2.2021, is registered at Police Station Chandni Bagh, District Panipat, therein offences constituted under Section 302 IPC, and, under Section 25, 54, 59 of the Arms Act, are embodied. The petitioner herein is named as an accused in the FIR (supra). After committal to trial of the accused, by the learned Committal Court, to the learned Sessions Court concerned, the accused-petitioner herein moved an application before the learned Sessions Judge concerned. In the afore application, he claimed that he is a juvenile, and consequently, he claimed that the learned Sessions Judge concerned, cannot assume valid jurisdiction, to hold him, to trial for a charge which became framed against him, for commission of offences under Section 302 read with Section 34 IPC, and, under Section 25(1-B) of the Arms Act. The learned Sessions Judge

concerned, after seeking adduction of evidence, in respect of the juvenility of the petitioner herein, and, after evidence became adduced, before her, by the petitioner, and, by the respondent-State, proceeded to dismiss the application (supra). The petitioner is aggrieved from the afore made order, and, has cast a challenge to it, through his filing the instant petition before this Court.

2. The learned counsel for the petitioner has argued, with much vigour, before this Court that the discarding by the learned Sessions Judge concerned, of the apposite birth certificate, as was procured by him, from the office of the Registrar, Births and Deaths concerned, rather merely on the ground, that the afore endeavour, was belatedly made by the petitioner, hence subsequent to the lodging of the FIR, is, a flimsily drawn conclusion. He submits, that since the school leaving certificates, as became issued by the schools concerned, from where the petitioner took education, at various stages, of his academic pursuits, do contain reflections parameteria, with the reflections occurring in the birth certificate of the petitioner, as became procured from the office of the Registrar of Births and Deaths. Therefore, he contends that utmost credence is acquired by all supra qua, that, hence, the impugned order is vitiated.

3. In case the afore made submission is correct, thereupon this Court would be constrained to quash, and, set aside the impugned order. However, a perusal of the relevant observations, occurring in the impugned order, and, which are extracted hereinafter, evidently disclose that there is not only dichotomy inter se the birth certificate, and, the school leaving certificates, but also there is inter se dichotomy inter se all the school leaving certificates, which became obtained by the petitioner, from various

schools, from where he obtained his education, at various phases, of his academic pursuits.

*“However, since AW2 Nand Pal could not explain as to on what basis, the date of birth of the applicant-accused was recorded in the record of Guru Dronacharya Vidya Mandir Public School, Panipat as 10.3.2003, the certificate issued by the Principal of said school and the testimony of AW2 Nand Pal cannot be stated to be reliable enough to prove that the date of birth of the applicant-accused was 10.3.2003 and not 10.3.2000 in view of the fact that in the record of all the three schools wherein the applicant-accused had studied subsequently, his date of birth was recorded as 10.3.2000 and not 10.3.2003”*

4. Therefore prima facie the afore submission becomes blunted. Moreover, during the course of hearing, being done, the learned counsel for the petitioner has not been able to falsify the afore factum. He may have falsified the afore factum when during the course of cross-examination, being conducted by his counsel, upon, the officials of the school concerned, he was able to make successful suggestions, that the apposite applications, as made to the school concerned, hence regarding the date of birth of the petitioner, being entered in the records of the school concerned, rather the date of birth of the petitioner therein, is otherwise than the one, which occurs in the school leaving certificates, as became issued from time to time, by various school authorities concerned. However, no such successful, suggestion has been meted by the counsel, for the accused to the witnesses, of the respondent concerned.

5. Though, in the face of afore factum probandum, this Court may not be inclined to grant any relief to the petitioner. Nonetheless, in the larger interests of justice, and, for ensuring that, upon, the afore errors as

committed by the learned counsel, for the petitioner, during the course of the stepping into the witness box of the respondent's witnesses, rather the petitioner does not suffer, it is deemed fit to make an order, upon, the learned Sessions Judge concerned, to permit the learned counsel, for the petitioner, to tender into evidence, the application forms which became filed, by him, before the various schools concerned.

6. Therefore, since only for the afore predominant reasons, and, besides for ensuring that upon the awarding sentence to the petitioner herein, upon, his lawful conviction, being made by the learned trial Judge, he may not suffer imprisonment in jail, than in a Observation Home, if he is lawfully convicted by the learned Juvenile Justice Board concerned, for the offence under Section 302 IPC. Moreover, since the learned Sessions Judge concerned, could well have, on her own proceeded to recourse the afore endeavour, even after adduction of evidence viz-a-viz the juvenility of the petitioner, whereas, hers omitting to do so. Therefore, the impugned order is set aside.

7. Therefore, after setting aside the impugned order, the learned Sessions Judge concerned, is directed to afford one last opportunity for purpose (supra) to the petitioner. The afore opportunity shall be granted to the petitioner, within two weeks hereafter. After adduction of relevant evidence (supra), by the learned counsel for the petitioner, before the learned Sessions Judge, obviously followed with an opportunity to the respondent to adduce rebuttal evidence, the latter shall proceed to make an objective appreciation of the evidence, as becomes adduced before her, and, thereafter shall record a fresh decision, in accordance with law, upon the petitioner's application.

8. The entire process be concluded within three months hereafter.
9. Copy dasti.

**(SURESHWAR THAKUR)**  
**JUDGE**

**December 02, 2021**  
**Gurpreet**

**Whether speaking/reasoned : Yes**  
**Whether reportable : Yes**