

01.12.2022
Court No. 3
Sl. No. 2

CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI

C. R. R. 275 OF 2022

In Re: An application under Section 482 of the Code of Criminal Procedure, 1973 read with Section 102 of Juvenile Justice [Care and Protection of Children Act, 2015]

And

In the matter of: **Md. Gufaran @ Gufran**

Petitioner.

Mr. Bappa Dutta

Mr. Bhaskar Roy Mahasaya

.....For the Petitioner

Ms. Aditi Sankar Chakraborty

Mr. Niloy Chakraborty

.....For the State

The instant application is filed under Section 482 of the Code of Criminal Procedure, 1973 challenging the impugned Order No.27 dated 03/11/2022 passed by the Judge, Special Court under N.D.P.S Act, 1st Court, Jalpaiguri whereby the Petitioner was directed to undergo ossification test for ascertaining his age.

The Petitioner was implicated in NDPS Case No.117 of 2021 arising out of NJP Police Station Case No.1291 of 2021 dated 05/12/2021 under sections 20(b)(ii)(c) of the N.D.P.S. Act. In course of trial of the case, Taiyab Shah being the

father of the accused Gurfan @ Gufran claimed that the later was juvenile at the time of commission of the offence. He produced one birth certificate issued by the Registrar (Birth & Death), Gram Panchayat, Sultanpur, Bihar and Aadhar Card of Taiyab Shah which were marked as exhibits. The Trial Court observed that the birth of Gurfan was registered on 01/04/2022 after initiation of the prosecution against Gurfan @ Gufran. The Trial Court could not rely on the birth certificate of Gurfan @ Gufran for which order was passed to hold ossification test.

On being aggrieved by the said impugned order, the instant application was preferred.

Mr. Roy Mahashay, the Learned Counsel appearing for the petitioner submitted that ossification test can only be ordered to be held when the documents prescribed in section 94(2)(i) and 94(2)(ii) of the Juvenile Justice (Care and Protection of Children) Act 2015 are not available. In this case birth registration certificate by the competent authority was produced which was admitted in evidence, rendering ossification test redundant and superfluous. He relied upon the observation of the Supreme Court of India in **Rishipal Singh Solanki vs The State of Uttar Pradesh [(2022) 8 SCC 602]** and **Vinod Katara vs The State of Uttar Pradesh [2022 LiveLaw (SC) 757]** to buttress his arguments.

Per contra, the learned Public Prosecutor submitted that Court can make enquiry to ascertain the age of the juvenile in order to elicit truth. Therefore, according to him there is no illegality in passing the impugned order.

The principle of law is well-explained by the Supreme Court of India in **Rishipal singh Solanki and Vinod Katara's Case (Supra)**. It is explained in this case that when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(a)(i), (ii) and (iii) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised. In the case in hand birth certificate issued by the competent authority was adduced in evidence. When there is birth certificate as contemplated in Section 94 (2) (ii) ossification test is uncalled for. Burden of proof has already been discharged.

In view of express provision of law and salutary principle explained by the Supreme Court of India the impugned order cannot be sustained. Accordingly the impugned order is set aside.

The instant application is accordingly disposed of.

(Sugato Majumdar, J.)