

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

201

CRR-2100-2017 (O &M)
Date of Decision: 23.05.2022

GURCHAIN SINGH @ SUNNY @ GURI (MINOR) THROUGH HIS
MOTHERPETITIONER

Versus

STATE OF HARYANARESPONDENT

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

Present: Mr. P.S.Sekhon, Advocate for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner is an accused in FIR No.243 dated 23.07.2016 registered at Police Station Madhuban, District Karnal, wherein, an offence constituted under Section 15 of the NDPS Act, is embodied.

2. After the conclusion of investigation into the petition FIR, the learned trial Judge concerned has assumed cognizance thereons. The mother of the present petitioner moved an application before the learned trial Judge, wherein, she claimed an order for the present petitioner being declared a juvenile in conflict with law, and, also, obviously for an enquiry into the FIR offences, qua the petitioner, being made rather by the Juvenile Justice Board, than, by the learned trial Judge concerned.

3. The learned trial Judge concerned, proceeded to thereon make an disaffirmative order on 07.04.2017. The above order has been challenged at the instance of the present petition.

commission of the petition offence, thereupon the learned trial Judge concerned, became barred to either assume cognizance, or, to try him in respect to the petition FIR, rather the enquiry into the petition offences, was to be made by the Juvenile Justice Board concerned.

4. However, before the making of the above order, the learned trial Judge concerned, was to make an examination of all the relevant material, hence for determining whether, the present petitioner becoming amenable to be declared a juvenile in conflict with law, and, thereafter, an enquiry against him becoming amenable to be made by the Juvenile Justice Board concerned, than by the trial Judge concerned. Upon the application moved before the learned trial Judge by the mother of the present petitioner, the learned trial judge, while making a dis-affermative pronouncement thereons, had proceeded to not assign any credit to the date of birth of the present petitioner, as, carried in his birth certificate. The above non meteings of credit to the date of birth of the present petitioner, as, carried in his birth certificate, becomes grooved in the factum that therein, the name of his mother, is recorded as Kukkar Kaur, and, not Dalbar Kaur, hence there being contradiction in respect thereof, inter se the birth certificate, and, the other documents with respect, to the name of the mother of the present petitioner, inasmuch as, with the Aadhar Card, and, with the Ration Card, wherein, the name of the mother of the petitioner becomes mentioned as Dalbar Kaur, and, not as Kukkar Kaur.

5. Be that as it may, another reason which became assigned by the learned judge concerned, to discard vigor thereof, became grounded in the factum, that no evidence of the villagers concerned becoming adduced, by

the applicant, suggestive that the name of the mother of the present petitioner, as recorded therein, as Dalbar Kaur also has an alias of Kukkar kaur. The above made order has been challenged before this Court.

6. The learned trial Judge concerned, was, as evident from a reading of Sub Sections (i) (ii) of Sub Section 2 of Section 94, as carried, in the Juvenile Justice (Care and Protection of Children) Act, provisions whereof, became extracted hereafter, rather became enjoined to mete compliance thereto,

Title: Presumption and determination of age

Description:(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, 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; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) xxxxxx.....”

7. If the date of birth of the petitioner as entered in the school records is prima facie, in consonance with the best evidence, in respect thereof, and, as becomes comprised in the birth certificate, emanating from the Registrar of Births, and, Deaths, thereupon credit is to be assigned to the above, and, or upon evident interse disharmony interse both, thereupon too, credit is to be assigned to the date of birth of the person concerned, as carried in the birth certificate, as, provenly issued from the Office of the

Registrar of Births, and, Deaths.

8. If so, the best evidence in respect of date of birth of the present petitioner became comprised in his birth certificate, as emanated from the Registrar of Births, and, Deaths. However, the creditworthiness of the above became dispelled rather on the above made ground.

9. Nonetheless, today, the learned Counsel appearing for the petitioner has drawn the attention of this Court, to the original of the birth certificate as has emanated from the Registrar of Births, and, Deaths, wherein, it has been mentioned that Dalbar Kaur also has an alias of Kukkar Kaur.

10. The above original was not placed before the learned trial Judge concerned, and, obviously, the learned trial Judge concerned, could make any reasons, with respect to validity of the above appearances, in the birth certificate as became produced today before this court, especially qua the therein made, echoings qua the petitioners mother named Dalbar Kaur also having an alias of Kukkar Kaur.

11. For ensuring that completest justice is done, inasmuch as, the present petitioner, though may be, being a juvenile in conflict with law, is rather not put to trial before the learned trial judge concerned, and, rather becomes ordered to face an enquiry before the Juvenile Justice Board concerned, therefore, this Court proceeds to after, obviously annulling the impugned order, to remand the lis, to the learned trial judge concerned, for his ensuring that after his giving an opportunity to the applicant, to establish the validity of the afore revelations, in the birth certificate, his making a fresh order in accordance with law qua the apposite application.

12. The learned trial Judge will also permit, its tendering before him, and, shall also grant an opportunity to the opposite party to adduce rebuttal thereto evidence.

13. Moreover, after hearing all concerned, the learned trial Judge is directed to make a fresh order in accordance with law, and, imperatively within 6 weeks hereafter, upon, the apposite application.

14. Disposed of.

15. The original of the birth certificate after being seen, by this court, is returned to the counsel for the petitioner for his making its tenderings, before the learned trial judge concerned.

(SURESHWAR THAKUR)
JUDGE

May 23, 2022
kavneet singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No