

05.07.2023
Sl. No.14
akd
[ALLOWED]

C. R. M. (NDPS) 924 of 2023

In Re: An application for bail under Section 439 of the Code of Criminal Procedure filed on 26.04.2023 in connection with English Bazar Police Station Case No.873 of 2021 dated 28.07.2021 under Sections 21(c)/29 of the NDPS Act.

And

In Re: ***Sourav Mandal***

... .. Petitioner

Mr. Amitabha Karmakar
Mr. Arup Kumar Bhowmick

... .. for the petitioner

Mr. Antarikhya Basu

... .. for the State

Petitioner pleads that he is a child in conflict with law. Date of birth recorded in the matriculation certificate is 19.09.2005. As per the said entry, petitioner was below 16 years of age at the time of occurrence. He has also relied on the transfer certificate issued by the primary school.

Verification report with regard to the documents relied upon by the petitioner in support of his plea of juvenility is placed on record.

Perused the report.

The report notes that in the admission register of the school, name of the petitioner has been recorded twice. In the first entry, no date of birth was recorded but in the subsequent entry his date of birth was recorded. Nothing is placed on record to show that the matriculation certificate relied upon by the petitioner is not genuine. Even if one ignores the admission register, the matriculation certificate establishes the juvenility of the petitioner. As per Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the said certificate prevails over the ossification report.

It may not be out of place to note even the ossification report shows petitioner is aged between 17 to 18 years. It is trite law that medical opinion as to age is an approximation and would vary, plus and minus, two years.

In the light of the aforesaid discussion, we are of the view that the matriculation certificate is the best piece of evidence with regard to the age of the petitioner and shows that he was below 16 years at the time of occurrence.

In view of the aforesaid, we note petitioner is entitled to the beneficial provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and accordingly, he may be enlarged on bail.

Therefore, the accused/petitioner, namely **Sourav Mandal**, be released on bail upon furnishing bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court, under the NDPS Act-cum-Additional District Judge, 2nd Court, Malda subject to condition that the said petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate witnesses or tamper with evidence in any manner whatsoever or commit similar offences in future.

In the event he fails to appear before the trial court without any justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application for bail, thus, stands allowed.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

