

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M-6436-2023
Date of Decision: 07.02.2023

Sukhchain Singh @ Sukha ...Petitioner
Versus
State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Piyush Sharma, Advocate for the petitioner.

Mr. Harsimar Singh Sitta, DAG, Punjab.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
74	14.06.2019	Khuian Sarwar, District Fazilka	22 of NDPS Act

Aggrieved by the dismissal of the prayer of the petitioner being treated as a juvenile in conflict with law and straightway putting up the matters for examination of DWs, the petitioner has come up before this Court.

2. The petitioner, namely, Sukhchain Singh @ Sukha was born on 03.05.2002 and as such, on the date of occurrence i.e. 14.06.2019, he was above 16 years of age but less than 18 years of age. Under Section 2 (33) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (after now called Juvenile Act), it is specified that when the offence prescribes minimum sentence for 07 years then such child despite the fact that he is under 18 and subject to the lower age is to be treated as an adult. Since the petitioner's age fell in the category and was more than 17 years and recovery of contraband was commercial which would attract the minimum punishment for 10 years, prima facie Section 2(33) of the Juvenile Act got attracted towards the petitioner.

3. A perusal of the order dated 30.10.2019 passed by the Principle Magistrate Juvenile Justice Board, Fazilka reveals in para 7 that the Juvenile Justice Board had conducted the preliminary assessment in accordance with under Section 15/18 of the said Act and had also called the report from the Probation Officer and recorded the statement of child in conflict with law. After pursuing the social investigation report, examination of the child, the Board was of the opinion that the child was mature enough and as such, he was directed to be treated child as an adult.

4. After that vide order dated 18.03.2021, the Judge, Special Court, Fazilka ordered framing of charges under Section 22 of the NDPS Act against the petitioner.

5. Vide order dated 27.07.2021, the application of the petitioner separating his trial from co-accused Jaspreet Singh was dismissed on the grounds that the trial had already started.

6. After that, the petitioner/accused filed another application for non-compliance of Section 7 and 18 of the Juvenile Act. In the impugned order dated 16.01.2023, the Additional Sessions Judge, Fazilka dismissed the said application for the reasons that the petitioner was stated as an adult vide order dated 30.10.2019 and he had remedies against the said order which was not challenged.

7. Feeling aggrieved, the petitioner came up before this Court by filing the present petition.

8. It is undisputed that the age of the petitioner at the time of commission of offence was 17 years 01 month and 11 days. A perusal of the order dated 30.10.2019 reveals that the Juvenile Board had conducted preliminary assessment in accordance with Sections 15 and 18 of the Juvenile Act and had decided to proceed against the accused as an adult.

9. I have gone through the said order and there is no illegality in it and rather it is in accordance with law.

10. Regarding the second prayer that the matter has been put up for defence evidence and arguments, it is clarified that the trial has to proceed as per the provisions of Code of Criminal Procedure, 1973 and on the face of it, no violation is pointed out in fact charges were framed in 2021 and the petitioner is silent about the stage of the trial. Needless to say that the criminal trial proceeds in a procedure whereby firstly the prosecution witnesses are examined and after that in case there is incriminating evidence then stage of 313 Cr.P.C comes and after that the stage of defence witnesses comes.

11. Counsel for the petitioner did not point out towards any of the violation of the aforesaid procedure.

12. Given above, there is no merit in the present petition and the same is dismissed. All pending miscellaneous applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

07.02.2023
Jyoti-II

Whether speaking/reasoned:	Yes
Whether reportable:	No.