

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

110**CRR 438 of 2022 (O&M)****Date of Decision: 04.09.2023**

Barmdev minor through his next friend Meera ...Petitioner

Versus

State of Punjab ... Respondent

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Bhavyadeep Walia, Advocate, for the petitioner.

Mr. Mohinder Joshi, AAG, Punjab.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner had filed the present petition against the impugned order dated 27.09.2021 and 23.11.2021 passed by the Special Court of Moga (constituted for trying offences under the Narcotic Drugs and Psychotropic Substances Act, 1985), whereby, the application filed by the present petitioner to declare him as a juvenile was ordered to be dismissed. A further prayer has been made to set aside the impugned order and charge sheet dated 23.12.2021, whereby, the charge under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, '**the NDPS Act**') was ordered to be framed against the present petitioner.

2. Learned counsel for the petitioner contends that one FIR No. 120 dated 23.07.2021 under Section 22 of the NDPS Act Police Station City Moga was ordered to be registered against the present petitioner (Annexure P-1/T). Since, the date of birth of the petitioner

was 01.10.2005, the age of the petitioner was less than 18 years. The parents of the petitioner had died and he was living with his maternal aunt Ms. Meera wife of Nirmal Singh. Since, the petitioner was a juvenile, he moved an application (Annexure P-2) before the Special Court to declare him a juvenile. In order to prove his case, the petitioner examined three witnesses, namely, AWI Surinder Pal, AW2 Ms. Meera and AW3 Ms. Shanti Devi and also exhibited his Aadhar Card and as per the Aadhar Card also his year of birth was 2005. Learned counsel further submits that vide the order dated 27.09.2021, the Special Court ordered that an ossification test may be conducted on the petitioner to determine his age and the Civil Surgeon Moga was directed to constitute a board of doctors for conducting the aforesaid test. After the receipt of the said report, the Special Court held that the age of the petitioner on the date of the occurrence, i.e., 23.07.2021 was more than 18 years. Learned counsel further contends that in the present case, even after the disposal of the application, to declare the petitioner as a juvenile, the trial Court recorded the statements of the doctors and wrongly declared the petitioner to be a major. Learned counsel further contends that even the report from the child welfare officer was completely overlooked and the charge was wrongly framed by treating the petitioner as a major. Learned counsel further submits that even the *Challan* was presented before the Court of Principal Magistrate, Juvenile Justice Board, Moga and the charge was ordered to be framed by overlooking the mandate of law. Still

further, the Special Court had completely overlooked the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter to be referred as '**the Act**').

3. On the other hand, learned State counsel has vehemently opposed the submissions made by the petitioner on the ground that the petitioner has been rightly declared to be aged more than 18 years. Learned State counsel submits that the board of doctors had rightly opined him to be more than 18 years of age. Even, the statement of Doctor Harpreet Singh Garcha, Radiologist, Civil Hospital, Moga, was recorded and the same has been reproduced below:-

“Stated that as per order of the Hon'ble Court, Senior Medical Officer, Civil Hospital, Moga constituted board for conduct of confiscation test of Bram Dev alias Mogli. That board was constituting of myself and Dr. Gautambir Singh Sodhi, Dentist, Civil Hospital, Moga. I examined Bram Dev alias Mogl and as per X-ray examination of the bones, the approximate radiological age is 20 to 22 years”.

4. Still further, the statement of Dr. Gautambir Singh Sodhi, Dentist, Civil Hospital, Moga, was also recorded and the same has been reproduced below:-

“Stated that as per order of the Hon'ble Court, Senior Medical Officer, Civil Hospital, Moga constituted board for conduct of confiscation test of Bram Dev alias Mogli. As OPG X-ray facility was not available in the Civil Hospital, Moga, Bram Dev was referred to GGS Medical College and Hospital, Faridkot. As per the

OPG report, all 4 third molars are present and root formation of above mentioned molars is also complete. The approximate age for root completion of third molars is between 18 to 25 years.

The eruption age of third molars is between 17 to 21 years. Third molars have not been clinically erupted till date, so I had given the opinion that age of Bram Dev is more than 17 years”.

5. In fact, by relying upon the medical evidence in terms of the Act, the petitioner has been rightly declared to be aged more than 18 years at the time of the commission of the offence.

6. I have heard learned counsel for the parties and perused the record.

7. Section 94 of the Act provides as under:-

“94. *Presumption and determination of age.--* (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 ground 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 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) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person”.

8. In the present case, the above said Rule shall be strictly applicable to determine the age of the child in conflict with law. In the present case, the date of birth certificate from the school or matriculation or equivalent certificate from the concerned examination board was not available. Still further, the birth certificate issued by the Municipal Authority or a Panchayat or any other competent Authority was also not available on record. Consequently, the Court was left with no other option but to get the age determination done by constituting a medical board and to conduct

the ossification test on the accused. Consequently, by following the provisions of Section 94 of the Act, vide the impugned order dated 27.09.2021, the Special Court, Moga had directed the Civil Surgeon to constitute a board of doctors for conducting the ossification test on the accused. After conducting the ossification test, the statement of Dr. Gautambir Singh Sodhi, Dentist, Civil Hospital, Moga, was recorded, who stated as under:-

“Stated that as per order of the Hon'ble Court, Senior Medical Officer, Civil Hospital, Moga constituted board for conduct of confiscation test of Bram Dev alias Mogli. As OPG X-ray facility was not available in the Civil Hospital, Moga, Bram Dev was referred to GGS Medical College and Hospital, Faridkot. As per the OPG report, all 4 third molars are present and root formation of above mentioned molars is also complete. The approximate age for root completion of third molars is between 18 to 25 years.

The eruption age of third molars is between 17 to 21 years. Third molars have not been clinically erupted till date, so I had given the opinion that age of Bram Dev is more than 17 years”.

9. Apart from that, the statement of Doctor Harpreet Singh Garcha, Radiologist, Civil Hospital Moga was also recorded and the same has been reproduced below:-

“Stated that as per order of the Hon'ble Court, Senior Medical Officer, Civil Hospital, Moga constituted board for conduct of confiscation test of Bram Dev alias Mogli.

That board was constituting of myself and Dr. Gautambir Singh Sodhi, Dentist, Civil Hospital, Moga. I examined Bram Dev alias Mogl and as per X-ray examination of the bones, the approximate radiological age is 20 to 22 years”.

10. From the statement of both the doctors, it is apparent that the proximate radiological age of the accused was more than 20 years. The radiologist clearly opined that as per the X Ray examination of the bones, the proximate radiological age was 20 to 22 years. Still further, as per the Dentist, all the four third molars were present and root formation of the above mention molars was also complete. The proximate age root completion of three molars is between 18 to 25 years. The eruption age of third molars is between 17 to 21 years and third molars had not been clinically erupted till date, so it was opined that the age was more than 17 years. Thus, as per the Dentist, the age was more than 17 years and as per the X ray examination, it was opined that proximate radiological age was 20 to 22 years. Consequently, based on two reports, the trial Court had rightly observed that on the date of occurrence, the age of Bramdev was more than 18 years. Thus, there is no illegality in the impugned orders dated 27.09.2021 and 23.11.2021 passed by the Special Court, Moga, whereby, the petitioner had been declared to be major.

11. Apart from that, the petitioner has also laid challenge to the impugned charge sheet and order dated 23.12.2021 passed by the

Special Court, Moga, whereby the charge under Section 22 of the NDPS Act was ordered to be framed against the present petitioner. In fact, no illegality has been pointed out in the order and the charge sheet passed by the Special Court and the same are liable to be upheld by this Court. Apart from that, the present petition had been filed primarily to challenge the orders dated 27.09.2021 and 23.11.2021 passed by the Special Court, Moga, whereby, the petitioner was declared to be aged more than 18 years and the petitioner had wrongly challenged the impugned order dated 23.12.2021 and charge sheet dated 23.12.2021, whereby, the charge under Section 22 of the NDPS Act was ordered to be framed against the petitioner.

12. In fact, it was an independent cause of action and the present petition was not maintainable at all in this regard.

13. In view of the above, there is no illegality in the impugned orders passed by the Special Court Moga and the petition is ordered to be dismissed.

14. All pending applications, if any, are disposed of, accordingly.

04.09.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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