

253 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-495-2022
Decided on : 22.11.2023

Bobby Petitioner
Versus
State of Haryana Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Bhisham Kumar, Advocate
for the petitioner.

Ms. Jasleen Chahal, AAG, Haryana.

Mr. Vikas Chaudhary, Advocate
for the complainant.

Manjari Nehru Kaul, J.(Oral)

The petitioner is aggrieved against the order dated 25.01.2022 passed by learned Juvenile Justice Board, Palwal and order dated 21.02.2022 passed by Addl. Sessions Judge, Palwal vide which his application for declaring him a juvenile was dismissed.

2. Learned counsel for the petitioner *inter alia* contends that despite there being ample evidence on record to substantiate his claim of being a juvenile, the Lower Court erroneously dismissed his application for according him the status of a juvenile. It has been emphasized that on the date of crime in question, the petitioner was below 18 years of age. Consequently, an application for declaring him as a juvenile was moved, which was initially dismissed by the learned JMJC, Palwal on 08.09.2016. Subsequently, upon appeal, the said order was over-turned, affirming the status of the petitioner as a juvenile in conflict

with law. The aforementioned order declaring the petitioner a juvenile in conflict with law was then challenged before this Court by the complainant by way of criminal revision i.e. CRR No.4092 of 2016. This Court vide order dated 16.11.2021 (Annexure P-2) remitted the matter back to the Juvenile Justice Board with directions to re-examine and redetermine the issue concerning the date of birth of the petitioner; this Court had also issued directions that both the parties would be given an opportunity of being heard by the Juvenile Justice Board while deciding the issue about the age of the petitioner.

3. Learned counsel has further argued that in compliance with the aforementioned order, the petitioner in support of his case examined Samina as AW-3, midwife, along with others. However, the Lower Court dismissed the application of the petitioner basing its order on the survey register of an Anganwadi worker, vide which the date of birth of the petitioner had been recorded as 13.04.1997, thus, declaring him to be an adult at the time when the crime was allegedly committed. It has been contended by the learned counsel that placing sole reliance on the survey register of the Anganwadi worker for determining the petitioner's date of birth was totally illegal and erroneous. Additionally, it has also been argued that during the cross-examination, RW-1 Darshana Devi, admitted that the register did not bear any signatures and the entries had been made therein with a pencil, which would thus, render it unreliable. Therefore, learned counsel has asserted that the Court should not have relied upon such a document. Learned counsel has submitted that conversely, the petitioner had produced his school record and three witnesses including Ajay Singh, a Science teacher of G.V.P. Public School, who verified

the petitioner's School Leaving Certificate Ex.AW-1/C, Admission Register Ex.AW-1/A and his Secondary Examination Marksheet Ex.AW-1/B. All these documents clearly indicated that the date of birth of petitioner was 03.06.1999, which had been recorded by none other but his own mother.

4. Furthermore, it has been argued by learned counsel for the petitioner that in her testimony, the petitioner's mother categorically stated that she had enrolled him in Baba Udasnath Public School and had recorded the date of birth of the petitioner as 03.06.1999. Learned counsel has also urged that there existed an eight months gap between his birth and that of his younger brother Sunny, which was also confirmed by AW-1 Samina, midwife.

5. Furthermore, learned counsel for the petitioner while relying upon Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 contended that the Matriculation Certificate held precedence over other documents. Therefore, the Lower Court's disregard for his Matriculation Certificate and instead reliance upon the Anganwadi office records was, on the face of it, erroneous.

6. Per contra, learned counsel for the respondent has vehemently controverted the submissions made by the counsel for the petitioner and has prayed for dismissal of the instant petition by urging that the impugned order was a well reasoned order, which did not warrant any interference. Learned counsel has further highlighted that there were glaring discrepancies and inconsistencies within the school records of the petitioner, rendering them unreliable for evidentiary purposes. Notably, learned counsel for the respondent vehemently argued and emphasized the presence of three different recorded

dates of birth for the petitioner, which, undoubtedly raised a big question mark qua the credibility of the school records. Learned counsel for the respondent has further contended that the Matriculation Certificate of the petitioner could not be deemed to be a reliable document as it relied solely on an admission form without as much as it not even being accompanied by any affidavit of the petitioner's parents or even familial signatures. Furthermore, it has been argued that during the cross-examination of AW-1 Ajay Singh, it became apparent that Admission Register Ex.AW-1/A was solely based on School Leaving Certificate issued by JCB Modern Sr. Sec. Public School, Palwal Ex.AW-1/C, however, on a minute scrutiny of School Leaving Certificate it stood revealed that it had been issued on 25.06.2016 whereas the petitioner had been granted admission on 29.05.2014, which indicated its non-existence when the petitioner sought admission in the school. This in turn supported the claim of the respondent that the Certificate was a fabricated document, which had been prepared after the crime in question, especially given the blatant discrepancy between the date of occurrence i.e. 17.06.2016 and the date on the Certificate i.e. 25.06.2016. In addition, it has also been argued that the Anganwadi record Ex.RW-1/A, on the other hand, proved that the date of birth of the petitioner was 13.04.1997. Learned counsel has contended that the Lower Court rightly relied on this record as per provisions of Section 35 of the Evidence Act. Consequently, it was also asserted that the petitioner was a major at the time of the alleged crime and the Court below rightly dismissed his application for declaring him as a juvenile.

7. Heard learned counsel for the parties and perused the relevant material available on record.

8. Three documents regarding the date of birth of the petitioner are on record. All three display varying dates; 03.06.1999 as per Ex.AW-1/B, 20.08.2000 as per Ex.RW-3/A and 13.04.1997 as per Anganwadi registers Ex. RW-1/A, Ex.RW-2/A and RW-2/B. The petitioner has claimed his status as a juvenile at the time of the crime in question on the basis of his Matriculation Certificate Ex.AW-1/B. However, there are glaring inconsistencies among all these documents, which raise doubts about their authenticity. Notably, discrepancies exist in school records, which are suggestive that the petitioner simultaneously attended classes at two different schools for the same class. The credibility of the petitioner's Matriculation Certificate is also questionable due to there being no proper supportive documentation. Hon'ble the Supreme Court in *Sanjeev Kumar Gupta vs. State of Uttar Pradesh and another, 2019(12) SCC 370* case has ruled that a date of birth based solely on a Matriculation Certificate would lack credibility in the absence of any supporting document. In the instant case, the prosecution has relied upon the evidence collected from the Anganwadi records with respect to the date of birth of the petitioner. On the other hand, petitioner's school admission form, which is the basis for the recorded date of birth, lacks further substantial evidence, as admittedly it is not supported by any affidavit of his parents or official birth record. Moreover, in the case of *Parag Bhati through legal guardian vs. State of Uttar Pradesh and another, 2016 (12) SCC 744* Hon'ble the Supreme Court has categorically held that if an accused perpetrates a serious and premeditated offence with evident maturity of mind, and if there exists ambiguity regarding his age while determining his juvenile status, the accused cannot invoke the protection granted

by the Juvenile Justice Act.

9. Coming to the instant case, the crime in question *prima facie* appears to be pre-planned one; the petitioner was armed with a fire-arm with which he fired three shots including the fatal shot towards the deceased. The manner in which the crime was executed by the petitioner demonstrates his mental maturity, indicating an understanding of the consequences of his act. Therefore, the petitioner, who stands nominated as an accused for a serious and heinous offence, cannot seek refuge under the Juvenile Justice Act especially when the evidence to support his claimed juvenility lacks credibility.

10. As a sequel to the above, the present petition being devoid of any merit stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

22.11.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No