

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

115

CRR-488-2024 (O&M)
Date of order: 11.03.2024

Sumon @ Saman

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Balwinder Singh Chahal, Advocate
for the petitioner.

Mr. R.S. Arya, Addl. AG Haryana.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 17.02.2024 passed by learned Additional Sessions Judge (Fast Tract Special Court to try the offences of Rape and under POCSO Act) Kurukshetra, whereby the application filed by the petitioner for declaring him as a juvenile in case FIR No.305 dated 07.12.2023 registered under Section 6 of POCSO Act and Section 506 IPC at Police Station Ismailabad, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that the admitted date of birth of the petitioner as per Aadhaar card is 01.01.2007; whereas the date of alleged incident is 01.05.2023. It is submitted that accordingly, the petitioner was 16-and-a-half years old at the time of incident. Thus, the learned trial Court is in patent error in dismissing the application filed by the petitioner for treating him as Child in

Conflict with Law and petitioner's prayer for the case to be sent to the Juvenile Justice Board for adjudication, has been wrongly dismissed.

3. Per contra, learned State Counsel submits that the victim was 17 years of age at the time of incident. One child has been born out of the relationship between the petitioner and the victim whose DNA report is still awaited. FIR was registered on the basis of statement of the victim herself. Learned counsel submits that it is admitted fact on record that date of birth of the petitioner in the School Leaving Certificate (produced as Exhibit A1/AW1 before the learned trial Court) has been mentioned as 01.01.2007, on the basis of Aadhaar Card of the petitioner. Admittedly, no other document was produced by the petitioner side to prove date of birth of the petitioner.

4. No other argument is made on behalf of the parties.

5. I have heard learned counsel for the parties and perused the case file in detail.

6. Brief facts of the case are that victim/complainant 'A' aged 17 years moved a complaint that she had gone to her sister's house in May 2023, where the petitioner/accused was on visiting terms. It is alleged that the petitioner allured her on the pretext of marriage and started sexually abusing her. Subsequently, when she informed him that she is about to give birth to his child, then he refused to acknowledge the same and told her that she is making false allegations against him. On this basis, FIR No.305 dated 07.12.2023 was registered under Section 6 of POCSO Act and Section 506 of IPC.

7. It has been claimed on part of the petitioner that as per documentary evidence placed on record by the petitioner, his date of birth is 01.01.2007, and therefore, the petitioner should be treated and tried as a juvenile. Perusal of the record shows that in support of this claim, the petitioner had examined his father who appeared as AW1 and who had placed on record the School Leaving Certificate (Exhibit A1/AW1), family ID (Exhibit A2/AW1) and copy of Aadhar Card (Exhibit A3/AW1). In all the said documents, the date of birth of the petitioner was depicted as 1.1.2007. It is on this basis that the petitioner is claiming that he should be tried as a juvenile.

8. On the other hand, the prosecution had examined SI Taro as RW1, who had deposed that she had verified the admission record of the petitioner/accused as per which he had taken admission on 16.05.2015 in 1st standard at Sr. No.7027 in Government Primary School Ismailabad. However, his name was struck off on 29.06.2015 due to long absence. His date of birth is mentioned as 01.01.2007 on the basis of Aadhaar card submitted by the parents. He never attended the school for a single day. His birth certificate could not be traced. She has proved the admission register (Exhibit R1/RW1) and the admission form (Exhibit R2/RW1).

9. In the present case, admittedly, date of birth in the School record of the petitioner has been added on the basis of his Aadhaar Card, which as per Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, is not in the list of documents stipulated for determining the date of birth/age of the accused/Child in Conflict with Law.

Said Section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, is reproduced hereinbelow:-

“(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) 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.”(Emphasis added)

10. From the above provision it is clear that age has to be determined on the basis of the date of birth certificate issued by the school; birth certificate issued by municipal Corporation; or by an ossification test. Whereas, in the present case, the petitioner is seeking to prove his age on the basis of his Aadhaar card which is not in the stipulated list of documents. No other document has been produced by the petitioner to prove his date of birth in accordance with law, either before this Court or

before the Id. Court below. It is on this basis that the learned court below held that the petitioner had failed to prove his minority.

11. I find no infirmity in the reasoning of the learned Additional Sessions Judge, Kurukshetra, as recorded in the impugned order. The present petition accordingly, stands **dismissed**.

12. Pending application(s) if any also stand(s) disposed of.

11.03.2024
Sunena

(Nidhi Gupta)
Judge

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