

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

114.

CRR No.560 of 2024 (O&M)

Date of Decision:18.03.2024

Akshay Dagar

... Petitioner

Versus

State of Haryana

... Respondent

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ramesh Kumar Dhiman, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 401 Cr.P.C. for setting aside the judgment dated 08.02.2024 passed by the learned Additional Sessions Judge, Palwal whereby the order dated 13.05.2022 passed by the Principal Magistrate, Juvenile Justice Board, Palwal allowing the application filed by the complainant for making inquiry with respect to the age of the petitioner has been upheld.

2. In brief, facts of the case are that the petitioner was arrested in FIR No.202 dated 24.07.2021 registered under Sections 302 IPC and Sections 25 of the Arms Act at Police Station Sadar Palwal and on investigation, he was found to be juvenile on the date of alleged incident and accordingly, challan was presented against him. Being juvenile, he applied for bail before the learned Principal Magistrate, Juvenile Justice Board, Palwal but his bail application was dismissed vide order dated 30.05.2022 on the ground that if he is released on bail, there is possibility to expose juvenile to moral, physical or psychological danger as the family of the deceased is also residing in same vicinity and his release would defeat the ends of justice. Aggrieved by the order dated 30.05.2022, petitioner preferred

an appeal before the learned Sessions Judge, Palwal but the same was dismissed vide order dated 12.07.2022. The petitioner assailed both the aforesaid orders before this Court in CRR No.1610 of 2022, which was allowed vide order dated 10.08.2022 and the petitioner was ordered to be released on bail. The petitioner also filed a civil suit for declaration and mandatory injunction to the effect that the actual date of birth of the petitioner is 01.01.2006 as per transfer certificate of 8th class wherein date of birth of the petitioner was mentioned as 01.01.2006, however, due to typographical mistake, his date of birth was wrongly mentioned as 01.01.2005 in the form sent to the Central Board of Secondary Education (in short CBSE). In the said civil suit, complainant has also been impleaded as defendant vide order dated 17.08.2023 passed by the Civil Court. Thereafter, the complainant filed an application before the learned Principal Magistrate, Juvenile Justice Board, Palwal for making inquiry with respect to the age of the petitioner, which was allowed vide order dated 13.05.2022 and age of the petitioner was considered as 01.01.2005. Feeling aggrieved against the said order, petitioner preferred an appeal before the learned Additional Sessions Judge, Palwal, which was dismissed vide order dated 13.05.2022. Hence, the present petition.

3. Learned counsel for the petitioner *inter alia* contends that petitioner has brought on record Ex.R1 i.e. his admission form in Saraswati Shishu Mandir School and further reliance is placed on Ex.R2, which is transfer certificate from 7th standard to 8th standard wherein his date of birth is mentioned as 01.01.2006. Even the appeal filed by the petitioner was dismissed by the learned Additional Sessions Judge, Palwal vide order dated 08.02.2024 against the settled law and the factual matrix of the case. In support of this contention, he relies upon the judgment passed by the Hon'ble Supreme Court in ***Barun Chandra Thakur Vs. Master Bholu and another 2023 (2) RCR (Criminal) 686*** and the judgment passed by the Gujarat

High Court in *Child in Conflict with law Vs. State of Gujarat 2023 NCGUJHC 47956*.

4. Having heard learned counsel for the petitioner and after perusing the record of the case, this Court finds no force in the argument advanced by the learned counsel for the petitioner. A perusal of the record clearly indicates that date of birth of the petitioner in the matriculation certificate and the adhar card is mentioned as 01.01.2005. The documents relied upon by the petitioner are found incomplete. Ex.R1 and R2 bear no date, month and year and do not contain the photograph of the student or the signatures of School Teacher, Incharge or Principal. RW-1Vijay Kumar, Clerk of the school produced by the petitioner in his cross-examination stated that office use portion of the form did not bear signature of any clerk, branch incharge or Principal and further admitted that signature of the student is not available on these forms. The petitioner had sought change in date of birth after registration of the FIR. The Juvenile Justice (Care and Protection of Children) Rules, 2007 give a place of primacy to the matriculation certificate over the other proofs of date of birth, however, that provision has been replaced by the Act of 2015. Section 94 of the Act of 2015 governs the procedure for determination of age, according to which, date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board is given primacy and in the absence thereof, birth certificate issued by a Corporation or a Municipal Authority or a Panchayat is to be considered. The Hon'ble Supreme Court in the judgment passed in *P. Yuvaprakash Vs. State rep. by Inspector of Police AIR 2023 SC 3525* has held that transfer certificate and extracts of admission register are not what Section 94 (2) (i) of the Act of 2015 mandates nor are they in accord with the same.

5. In view the aforesaid facts and circumstances, the Principal Magistrate, Juvenile Justice Board, Palwal has rightly considered the age of the petitioner as 01.01.2005 vide order dated 13.05.2022, which has been affirmed by the learned Additional Sessions Judge, Palwal vide order dated 08.02.2024. This Court finds no infirmity in the aforesaid orders passed by the Courts below and upheld the same. Consequently, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

March 18, 2024
Pankaj*

Whether speaking/reasoned Yes/No

Whether reportable Yes/No