



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

CRM-M No.40983 of 2017 (O&M)

Date of decision: 17.05.2024

Dr. Raj Saini

... Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Dr. Deepak Jindal, Advocate for the petitioner.

Mr. Praveen Bhadu, AAG, Haryana for respondent No.1.

Mr. Gaurav Saini, Legal Aid Counsel for respondent No.2.

MAHABIR SINGH SINDHU, J.

Present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (*for short 'Cr.P.C.'*), for quashing of the impugned order dated 11.10.2017, whereby learned Sessions Judge, Rewari, while granting regular bail to respondent No.2, declared him as juvenile in FIR No.42 dated 12.02.2016, under Sections 147, 109, 323, 324, 427, 455 & 506 read with Section 149 of the Indian Penal Code, 1860 (*for short 'IPC'*), registered at Police Station Dharuhera, District Rewari.



(2) Above FIR was registered on the basis of statement made by present petitioner with the allegations that she is having civil litigation with her husband-Dr. Parkash Saini regarding Parkash Hospital & Nursing Home, Dharuhera. Further alleged that petitioner is residing and practicing with her son Vishav Parkash since long in the aforesaid Nursing Home. On 11.02.2016, at about 13.45 hours, Dr. Parkash Saini along with his sister-Sheela Devi came in the hospital and threatened the petitioner to dispossess her from the Nursing Home. Also alleged that Dr. Parkash Saini called his 20-25 henchmen on the spot and they were armed with deadly weapons i.e. iron rod, knives, pistol, swords. All the accused attacked the petitioner as well as her son-Vishav Parkash and caused multiple injuries to both of them. After seeing the incident, passerby assembled and one of them gave intimation to the police in this regard. Police party arrived on the spot, but in the meantime, upon hearing the siren of police vehicle, all the accused ran away along with their respective weapons from the spot while extending threat of dire consequences to the petitioner as well as her son.

(3) Respondent No.2 was arrested by the police on 19.08.2017 and his regular bail was declined by learned Judicial Magistrate First Class, Rewari (*for short 'JMIC'*) on 20.09.2017. Thereafter, he approached learned Sessions Judge, Rewari for seeking regular bail and which was allowed vide impugned order dated 11.10.2017, while treating him as juvenile.

(4) Learned counsel for the petitioner fairly submitted that he has no grievance against the bail granted to respondent No.2, but the part of the



impugned order, whereby he has been declared as a juvenile is not legally sustainable.

(5) **Contentions on behalf of the petitioner**

(i) It is contended that alleged occurrence had taken place on 11.02.2016; as per Birth Certificate dated 28.08.1997 issued by the Registrar (Births and Deaths), Rewari, (for short, 'Registrar') the date of birth of respondent No.2 has been recorded as 11.08.1997; therefore, having attained the age of 18 years and 06 months, he cannot be termed as juvenile.

(ii) Further contended that learned Sessions Judge has completely ignored the entry recorded in the aforesaid Birth Certificate of respondent No.2 and other materials on record, while declaring him as juvenile, merely on the basis of Matriculation Certificate; thus, the same is not legally sustainable.

(iii) Again contended that learned Sessions Judge has committed grave error, while ignoring the material aspect that entry regarding the date of birth of respondent No.2 was made by the Registrar within 17 days of his birth i.e. on 28.08.1997; thus, same being a public document, would be *per se* admissible.

(iv) Also contended that learned Sessions Judge failed to consider that respondent No.2 is facing criminal trial as an adult in FIR No.431 dated 23.10.2015, Police Station Pataudi, District Gurugram, under Sections 147, 148, 296, 298, 323, 506 IPC before learned Sub Divisional Judicial Magistrate, Pataudi (*for short* 'SDJM') and he never raised the plea of being



juvenile in that case, despite the fact that it was registered prior in time to the present case.

(v) Still further contended that respondent No.2 is a previous convict in FIR No.182 dated 24.05.2018, under Section 379A IPC, registered at Police Station Model Town, District Rewari and apart that, he is facing three more criminal cases i.e. (i) FIR No.276 dated 14.07.2018, under Section 379 IPC registered at Police Station Model Town, District Rewari; (ii) FIR No.128 dated 16.07.2018, under Section 379 IPC registered at Police Station Rampura, District Rewari; (iii) FIR No.108 dated 03.03.2018, under Sections 323, 452, 506, 294 IPC registered at Police Station Pataudi, District Gurugram.

(6) *Per contra*, learned Counsel for respondent No.2 vehemently opposed the prayer of petitioner on the premise that alleged occurrence had taken place on 11.02.2016; as per Matriculation Certificate, the date of birth of respondent No.2 has been recorded as 07.08.1998; therefore, he being 17 years, 06 months and 04 days, has rightly been declared as juvenile by learned Sessions Judge, while passing the impugned order.

(7) Learned State Counsel, while making reference to para No. 7 of the affidavit dated 7.12.2017 filed by Shri Gajender Kumar, HPS, Deputy Superintendent of Police (HQ) Rewari, submitted that date of birth of respondent No.2 was recorded as 11.08.1997 by the Registrar and as such, there was no occasion for learned Sessions Judge to declare him as juvenile merely on the basis of Matriculation Certificate.



(8) Heard learned counsel for the parties and perused the paper-book.

(9) Upon perusal of the impugned order dated 11.10.2017, it is discernable that during the course of hearing bail application, the police was asked by learned Sessions Judge to verify the age of respondent No.2 recorded in his Matriculation Certificate. After verification on the same day, the SHO concerned apprised the Court that as per school record, his date of birth is recorded as 07.08.1998 and consequently, he was declared as juvenile being less than 18 years on the date of alleged occurrence.

Here it would be relevant to mention that learned counsel for the complainant (petitioner herein) specifically disputed the date of birth of respondent No.2 recorded in his Matriculation Certificate, being contrary to the Birth Certificate, but the same was ignored by learned Sessions Judge, while giving preference to the Matriculation Certificate.

(10) Of course, in such like cases, under Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Matriculation Certificate is having precedence over other documents for proof of age, but the date of birth recorded by the Registrar, cannot be ignored altogether, especially when there are other attending circumstances for lending credence in this regard.

(11) It is quite evident that respondent No.2 is a previous convict and facing trial as an adult in an FIR No.431 dated 23.10.2015, which was



registered prior in time to the present case i.e. FIR No.42 dated 12.02.2016. In the earlier case, i.e. FIR No.431 dated 23.10.2015, respondent No.2 never raised any plea that he was a juvenile at the time of alleged occurrence in that case and he is facing trial as an adult without any objection.

That apart, it is not in dispute that he is a previous convict in FIR No.182 dated 24.05.2018 and had been sentenced to undergo rigorous imprisonment for a period of 05 years by learned Sessions Judge, Rewari on 07.11.2019.

(12) Again not in dispute that respondent No.2 is facing three more criminal cases i.e. FIR No.276 dated 14.07.2018, FIR No.128 dated 16.07.2018 & FIR No.108 dated 03.03.2018; thus, he is having a chequered criminal history.

(13) During the course of hearing, learned State counsel apprised the Court that respondent No.2 is successfully evading the process of law and not coming forward to join the proceedings in FIR No.276 dated 14.07.2018, FIR No.128 dated 16.07.2018 & FIR No.108 dated 03.03.2018 and proceedings under Section 82 Cr.P.C have already been initiated against him by the Court of competent jurisdiction.

(14) In view of the facts and circumstances discussion herein above, it is apparently clear that learned Sessions Judge failed to consider the material aspect of the case and declared respondent No.2 as juvenile, while passing the impugned order dated 11.10.2017, in a very hasty manner; hence, the same is not legally sustainable.



(15) Consequently, petition is partly allowed; impugned order dated 11.10.2017 to the extent of declaring respondent No.2 as juvenile, is quashed and set aside and the matter is remitted to the Juvenile Justice Board, Rewari, to determine the age of respondent No.2, in accordance with law.

(16) It is clarified that above observations be not construed as an expression of opinion on merits of the case in any manner.

Pending application(s), if any, shall also stand disposed off.

17th May, 2024
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes