



CRR-1336-2024 (O&M)

1

**110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-1336-2024 (O&M)****Date of Decision: 19.07.2024****RAHUL KUMAR****.....PETITIONER****Vs.****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN****Present:-** Mr. Gagandeep Singh Virk , Advocate,
for the petitioner.

Ms. Himani Arora, A.A.G., Punjab.

HARPREET KAUR JEEWAN J.

1. Challenge in the present Criminal Revision is to the order dated 09.05.2024, passed by the learned Additional Sessions Judge, (Fast Track Special Court), Ludhiana, dismissing the application moved by the petitioner for declaring him as juvenile.
2. The petitioner is facing the trial before the learned Additional Sessions Judge, (Fast Track Special Court), Ludhiana in case FIR No. 189, dated 10.09.2023, under Sections 363, 366-A and 376 of the IPC and Sections 4 and 12 of the Protection of Children from Sexual Offences, Act, 2012, registered at Police Station Samrala, District Khanna (Annexure P-1).
3. Learned counsel for the petitioner *inter alia* contends that after the presentation of the final report ('*challan*') before the Area Magistrate, the same was committed to the Court of Sessions and has been entrusted to the Court of Additional Sessions Judge. The application moved by the petitioner for declaring him juvenile, as his date of birth is 22.08.2007, as per birth



certificate, dated 28.11.2022 (Annexure P-3), has been wrongly dismissed by the trial Court, without conducting any inquiry.

4. Learned counsel for the State while referring to the impugned order, contends that as per the Aadhar card and affidavit of the mother of the petitioner, his date of birth is 22.08.2003 and not 22.08.2007 as alleged in the said application.

5. I have considered the aforesaid contentions.

6. The petitioner has filed an application, dated 23.01.2024 (Annexure P-2), before the trial Court, making a request to the trial Court that he was actually 16 years of age at the time of the alleged occurrence, as such, made a request to declare him a juvenile and reference of the trial to J.J. Board. The father of the petitioner had submitted the birth certificate, dated 28.11.2022 (Annexure P-3), which is alleged to have been issued by the District Female Hospital, Unnao, wherein the date of birth of the child is reflected as 22.08.2007. Name of the mother is recorded as Kalawati and name of the father is recorded as Phul Kumar. The State has filed reply (Annexure P-4), taking the objection that the accused alongwith his mother had given copy of the Aadhar card and an affidavit to the effect that the date of birth of the accused is 22.08.2003. The trial Court has dismissed the application, merely on the following reasons:-

“Nothing comes out on the record that on the basis of which document the date of birth of the accused has mentioned as 22.08.2007. Applicant Phool Kumar cannot be permitted to give two contradictory statements to take the benefit of Juvenility of accused. Finding no merits in the present application, same is hereby ordered to be dismissed.”



7. Before dismissing the application, the trial Court has not conducted any inquiry to determine the age of the petitioner. It is well settled that the claim of juvenility can be raised at any stage. As per the provisions of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short '*the Act of 2015*') if a person claims juvenility, who is alleged to have committed an offence, when brought before the Court other than a Board (Juvenile Justice Board), it is mandatory for that Court to make an inquiry to determine the age of such person. The said section further provides that the claim of juvenility can be raised before any Court even after the dismissal of the case. The scope of Section 9 of the Act of 2015 was considered by the Division Bench of this Court in Suraj vs. State of Haryana (CRA-D-856-DB-2017), decided on 11.01.2023 wherein the following observations were made:-

XXXX

XXXX

XXXX

XXXX

XXXX

“38. As a result of above discussion, the following directions are issued.

(i) As and when any person brought before a Court (including an appellate Court), who is alleged to have committed an offence, claims before that Court that he is a child or was a child on the day of commission of the offence, the said Court shall promptly conduct an enquiry to determine the age of that person [sub-section (2) of Section 9];

(ii) The courts and the authorities are required to deal with children differently from adults. While dealing with children, the Principle of presumption of innocence, Principle of participation, Principle of best interest, Principle of non-stigmatizing semantics, Principle of non-waiver of rights and Principles of natural justice as contained in Section 3 of the Act of 2015, are required to be followed.

(iii) The Judicial officers and the authorities dealing with the children are required to be pro-active during the process of age determination. The evidence regarding the age can be sought from the authorities wherever such evidence is available. The documents mentioned in Section 94 (2) of the Act of 2015 should be taken into consideration and the process to determine the age as mentioned therein should be quickly followed.

(iv) The parent (s) or the guardian having the actual charge of the child should be joined during the proceedings in respect of a child by the authorities, Child Welfare Committee, Juvenile Justice Board and by any Court in compliance of the provisions of Section 90 of the Act of 2015.

XXXX XXXX XXXX XXXX XXXX

8. In view of the ratio of the aforesaid decision and considering the fact that proper inquiry has not been conducted by the learned trial Court, while dismissing the claim of the petitioner regarding juvenility, as such, the present Criminal Revision Petition is allowed. The impugned order, dated 09.05.2024, passed by the learned Additional Sessions Judge, (Fast Track Special Court), Ludhiana, is set aside. The trial Court shall conduct an inquiry in terms of Section 9 of the Act of 2015 and decide the application moved by the petitioner, afresh.
9. Pending miscellaneous application(s), if any, shall also stand disposed of.

July 19, 2024

nitin

(HARPREET KAUR JEEWAN)

JUDGE

Whether Speaking

Whether reportable

Yes

No