

(2011) 07 DEL CK 0177

In the Delhi High Court

Case No : Criminal M.A. 3691 of 2011 and Criminal A. 73 of 2011

Firoz

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15, 16, 2(1)
Juvenile Justice (Care and Protection of Children) Rules, 2007 — Rule 12(3)

Citation : (2011) 07 DEL CK 0177

Hon'ble Judges : Veena Birbal, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Hasan Anzar and Osama Suhail, for the Appellant; Richa Kapur, for the Respondent

Judgement

Badar Durrez Ahmed, J.—By way of this application, the Appellant Firoz claims that he was a juvenile in conflict with law as defined in Section 2(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as "the said Act") on the date of the incident, that is, on 13.01.2003.

2. We find that even in his statement recorded u/s 313 Cr. P.C, he had given his age as about 24 years. The said statement was recorded on 11.05.2010. This would indicate that he was born sometime in the year 1986. Along with this application, a copy of the transfer certificate of Rajkiya Madhyamik Vidhyalaya, Bagridi, Bagro, Kodarma, Jharkhand was filed which indicated his date of birth recorded at the time of his admission to be 05.10.1986. By virtue of our order dated 28.04.2011, we had directed the Respondent/ State to have the school certificate verified. The status report regarding the verification of the said school certificate has been submitted by the Station House Officer, Police Station Vasant Vihar and the same is dated 06.07.2011. The same is taken on record. As per the said report, the date of birth of Mohd. Firoz, the Appellant herein, was found to be 05.10.1986. Information was collected from the school, namely, Rajkiya Madhyamik Vidhyalaya, Bagridi, Bagro, Kodarma, Jharkhand which was attended

by the Appellant and a certified copy of the transfer certificate in respect of the Appellant Mohd. Firoz was obtained. The same has been filed along with the status report and is marked as Annexure "D-1". There is also a certificate issued by the Principal of the said school which is marked as Annexure "D", which also indicates that the date of birth of the Appellant, as recorded in the school, was 05.10.1986. From the transfer certificate (Annexure D-1) to the said status report, it is apparent that the Appellant had taken admission in the said school on 15.09.1996 and had left the said school on 31.12.1999. At that point of time, the Appellant was a student of class V. Annexure "D-2" to the status report is a certified copy of the extract of the admission register at the time the Appellant was granted admission to the said school and the same also indicates his date of birth to be 05.10.1986 and that he had been admitted to class III of the said school on 15.09.1996.

3. The enquiry conducted by the Respondents also indicates that this is the only school which was attended by the Appellant and this has been confirmed by the statement of the Appellant's father Mohd. Halim Mian which was recorded in the presence of Mehboob Ansari, who was a member of the Panchayat. The said document is Annexure "E" to the said report.

4. In view of the foregoing and in accordance with the procedure prescribed in Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as "the said Rules") and in particular Rule 12(3)(a)(ii), the date of birth of the Appellant Mohd. Firoz is determined to be 05.10.1986, as indicated by the date of birth certificate from the school first attended, namely, Rajkiya Madhyamik Vidhyalaya, Bagridi, Bagro, Kodarma, Jharkhand.

5. If that be the case, then Mohd. Firoz was sixteen years, three months and eight days old on the date of the occurrence, that is, 13.01.2003. This would bring him within the definition of a juvenile in conflict with law in terms of the said Act. Consequently, he could not have been detained beyond a period of three years under the provisions of the said Act by virtue of Sections 15 and 16 thereof. We find from the nominal roll dated 10.02.2011 that as on that date, the Appellant had already undergone judicial custody for a period of eight years and eighteen days. He was, however, granted interim suspension of sentence on 24.05.2011 and, therefore, it would mean that he has already undergone a period of over eight years and two months in judicial custody. The learned Counsel for the Appellant submits, on instructions from the Appellant, who is also present in Court that he does not wish to challenge the conviction and would be satisfied if the benefit of the said Act is given to the Appellant. Consequently, the appeal, insofar as the conviction is concerned, is dismissed but the order on sentence dated 07.07.2010 is set aside. The Appellant has been in custody for more than three years, which is the maximum period of detention provided even under the said Act. Therefore, the Appellant is entitled to be set at liberty straightaway. The Appellant has been granted interim suspension of sentence by virtue of our order dated 24.05.2011 and he has been released on bail for a

period of eight weeks on 10.06.2011 on his furnishing a personal bond in the sum of Rs. 10,000/- and providing one surety. In view of the fact that he is being set at liberty by virtue of this order, the sentence against him is set aside and the bail bonds stand cancelled and the surety stands discharged. This application as well as the appeal stand disposed of accordingly.