

(2022) 04 GAU CK 0024

In the Gauhati High Court

Case No : Criminal Revision Petition No. 3 Of 2022

Md. Safiqur Rahman

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 21-04-2022

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 — Section 9(2), 22(c), 29
Juvenile Justice (Care And Protection Of Children) Act, 2015 — Section 94

Citation : (2022) 04 GAU CK 0024

Hon'ble Judges : Robin Phukan, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Dismissed

Judgement

1. Legality, propriety and correctness of order, dated 23.07.2021, passed by the learned Sessions Judge, Kamrup(M), at Guwahati in B.A. Case No. 196/2021 is challenged in this revision petition, by the petitioner- Md. Safiqur Rahman. It is to be noted herein that vide impugned order, the learned Session Judge has rejected the plea of juvenility taken by the petitioner, and consequently rejected his bail petition considering the nature and gravity of the offence.

2. The factual background leading to filing of the present petitioner is briefly stated as under:-

"On 06.03.2021 Intelligence Officer, Narcotic Control Bureau (NCB), Guwahati Zonal Unit - Shri Phani Narjinary along with a team of NCB, apprehended a vehicle being registration No. MN-05A-7260 and recovered suspected narcotic contrabands from the said vehicle and arrested the present petitioner along with another co-accused namely, Krishan Mahapatra Mali. On receipt of a complaint to this effect from Shri Phani Narjinary, NCB Crime Case No. 06/2021, under Section 22(C)/29 of the NDPS Act has been registered and investigated upon. While the petitioner is in judicial custody, he preferred a bail application before

the learned Session Judge, Kamrup being BA 196/2021, and upon hearing the learned advocates of both the side and also considering the documents placed on record, the learned Court below rejected the plea of juvenility taken by the petitioner before the learned Court below and consequently rejected his bail application."

3. Being highly aggrieved for rejection of the plea of juvenility, the petitioner approached this Court by filing the present revision petition on the following grounds:-

a. that, the learned counsel below has ignored the object and reasons as well as the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015;

b. that, the learned Court below has ignored the provisions of Section 9(2) of the said Act, which makes it mandatory for determination of juvenility as per the provisions contained in the said Act of 2015 and that the learned Special Judge ought to have relied upon the documents mentioned in Section 94 of the 2015 Act, but the learned Special Judge had relied on Adhar Card, Driving license produced by the prosecution which have no bearing to determine the age of juvenile;

c. that, the learned Court below while rejecting the claim of juvenility, did not verify the Certificate issued by the Board regarding the age of the petitioner; and

d. that, the learned Special Judge, Kamrup have no jurisdiction to decide the plea of juvenility as provided in 2015 Act and ought to have forwarded the case to Juvenile Justice Board for deciding the claim of the juvenility.

4. The respondent No.1, i.e. Union of India (NCB) has contested the petition by filing affidavit in opposition. It is stated that along with the commercial quantity of the contraband substance, it has seized the Driving Licence and Adhar Card of the petitioner which clearly shows the date of birth of the petitioner as 16.03.2001 and as such he is major and the same stands fortified by the ossification test report. Therefore, it is contended to dismiss the petition as according to it the learned court below has rightly rejected the plea of juvenility taken by the petitioner.

5. I have heard Mr. A. Ahmed, learned counsel for the petitioner and Mr. S. C. Kayal, learned standing counsel for the NCB.

6. Mr. Ahmed, learned counsel for the petitioner submits that while deciding the plea of juvenility, the learned Court below has not recorded any conclusive finding regarding the genuineness of the certificate produced by the petitioner. Mr. Ahmed further submits that as per the certificate produced by the petitioner, he is below 18 years and as such, he is entitled to get the benefit of 2015 Act and that the plea of juvenility has to be decided on the basis of documents mention in Section 94 of the 2015 Act and that Adhaar Card and Driving License, which the learned Court below has relied upon, has no bearing in determining the age of the juvenile. Mr. Ahmed further submits that it is a settled principle of

law that when two views are possible, the view which is favourable to the accused should be accepted and as such, the learned Court below has failed to follow the aforesaid principle and consequently the impugned order passed by it, is liable to be set aside. Mr. Ahmed has referred one case law: (i) Rishipal Singh Solanki -vs- State of Uttar Pradesh & Ors., Criminal Appeal No. 1240 of 2021.

7. On the other hand, Mr. S. C. Kayal, learned standing counsel for the NCB submits that the Adhaar Card and Driving License, which were seized from the possession of the petitioner at the time of his arrest, shows that his date of birth is 16.03.2001 and the school certificate produced by him shows that his date of birth is 16.03.2003 and that the said certificate was issued on 02.03.2020 and as such, the learned Court below has not relied upon the same and instead relied upon the ossification test report of the medical board, which reveals that at the relevant time the age of the petitioner was 20-22 years and as such, the learned Court below has not committed any error in rejecting the plea of juvenility and the impugned order suffer from no illegality or infirmity requiring any interference of this Court. Mr. Kayal has relied upon following case laws to support his contention:-

(i) Parag Bhati (Juvenile) Through Legal Guardian -vs- State of Uttar Pradesh & Anr., reported in (2016) 12 SCC 744;

(ii) Om Prakash -vs- State of Rajasthan & Anr., reported in (2012) 5 SCC 201; and

(iii) Abuzar Hossain @ Gulam Hossain -vs- State of West Bengal, reported in (2012) 10 SCC 489.

8. The proposition of law, that can be crystallised from the aforesaid cases, are that the claim of juvenility lacks credibility and frivolous claim of juvenility or patently obscured or inherently improbable claim of juvenility must be rejected by the Court at the threshold, whenever raised, and also to contend that the Court should be sensitive in dealing with the juvenile, who is involved in cases of serious nature like sexual molestation, rape, gang rape, murder and host of other offences. The accused cannot be allowed to abuse the statutory protection by attempting to prove himself as a minor when the documentary evidence to prove his minority gives rise to a reasonable doubt about his assertion of minority. Under such circumstance, the medical evidence based on scientific investigation will have to be given due weight and precedence over the evidence based on school administration records which give rise to hypothesis and speculation about the age of the accused. The matter, however, would stand on a different footing, if the academic certificates and school records are alleged to have been withheld deliberately with ulterior motive and authenticity of the medical evidence is under challenge by the prosecution. Mr. Kayal therefore, contended to dismiss the petition.

9. Having heard the submissions of learned advocates of both side, I have carefully gone through the petition and the grounds mentioned therein and the

documents placed on record and the case laws referred by the learned advocates of both the side and also the impugned order dated 23.07.2021.

10. In the case of Rishipal Singh Solanki (Supra) Hon'ble Supreme Court, in paragraph 47, has held that Section 94 of the JJ Act, 2015 raises a presumption regarding juvenility of the age of the child brought before the JJ board or the Committee. But in case the Board or Committee has reasonable grounds for doubt about the person brought before it is a child or not, it can undertake the process of determination of age by seeking evidence. Thus, in the initial stage a presumption that the child brought before the Committee or the Juvenile Justice Board is a juvenile has to be drawn by the said authorities. The said presumption has to be drawn on observation of the child. However, the said presumption may not be drawn when the Committee or the Board has reasonable grounds for doubt regarding the person brought before it is a child or not. In such a case, it can undertake the process of age determination by the evidence which can be in the form of:

- (i) Date of birth certificate from the school or the matriculation certificate from the concerned board, if available or in the absence thereof;
- (ii) The birth certificate given by a corporation or by a municipal authority or a panchayat and in the absence of the above;
- (iii) Age has to be determined by an ossification test or any other medical age determination test conducted on the orders of the committee or the board.

11. It appears from the impugned order that while rejecting the plea of juvenility taken by the petitioner, the learned Court below has considered birth certificate produced by the petitioner before the Court claiming his date of birth as 16.03.2003. But, the learned Court below has not relied upon the said certificate as the Adhar Card and driving license, which the NCB team has seized from the possession of the petitioner at the time of his arrest, shows that his date of birth was 16.03.2001 and as such he is a major. Moreover, the birth certificate produced by the accused issued only on 02.03.2020 and he failed to produce the original birth certificate which was issued by the concerned authority at the time admission in the school. Therefore, the learned court below has not accepted the birth certificate of the petitioner and subjected him to ossification test and the report of such examination by the medical board reveals that his age was 20-22 years at the time of conducting ossification test. Thus, the learned Court below has doubted the genuineness of the birth certificate and consequently relied upon the report of ossification test of the medical board and rejected the plea of juvenility.

12. It also appears that in arriving at the aforesaid finding, the learned Court below has relied upon the decision of Hon'ble Supreme Court in Om Prakash vs. State of Rajasthan & Anr., (2012) 5 SCC 201, (Criminal Appeal No. 651/2012), wherein, it has been held that:-

"In absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law breakers and not accused of matured mind who uses the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the Court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused."

13. The learned Court below has also relied upon a decision of Hon'ble Supreme Court reported in *Parag Bhati (Juvenile) Through Legal Guardian-Mother-Rajani Bhati vs. State of Uttar Pradesh & Anr.* (2016) 12 SCC 744, wherein it has been held that:-

"Juvenile should be referred to the Medical Board for determination of age if the certificate of birth and school creates any doubt regarding the genuineness of the same."

14. It has also relied upon another decision of Hon'ble Supreme Court in *Ram Suresh Singh Vs. Prabhat Singh @ Chhotu Singh & Anr.* reported in AIR 2009 Supreme Court 2805 where it has been held that:-

"while determining the age of the accused the age of School Admission Register is to be relied on and opinion of Medical Board is to be preferred only when Birth Certificate from school first attended is not available."

15. Further it appears that the learned court below has also not relied upon the HSLC Certificate produced by the petitioner as the petitioner has failed to produce certificate of Birth which was produced at the time of first attending the school. The learned court below, thus, has recorded a categorical finding upon the HSLC Certificate, and as such, the contention of Mr. Ahmed, the learned counsel for the petitioner, appears to be bereft of substance.

16. Thus, it appears that the learned Court below has relied upon the ossification test report, of the petitioner to ascertain his age, while he failed to produce the original Birth Certificate, which was issued by the concerned authority at the time of admission in the school and as his date of birth, i.e. 16.03.2003, as mentioned in the School Certificate, is contradicted by the date of birth i.e. 16.03.2001, mentioned in his Adhaar Card and Driving License, which was seized by the NCB from his possession at the time of his arrest. Thus, the learned Court below, to the considered opinion of this court, has not committed any error in relying upon

the ossification test report, to arrive at a finding of juvenility of the petitioner.

17. I have considered the rival submission of learned Advocates of both side, in the light of facts and circumstances on the record and also in the light of ratios laid down in the case laws discussed herein above and I find no substance in the submission of Mr. A. Ahmed, learned counsel for the petitioner.

18. In the result, I find that the impugned order, dated 23.07.2021, passed by the learned Sessions Judge, Kamrup (M), Guwahati, suffers from no infirmity or illegality requiring any interference of this Court. Accordingly, the petition stands dismissed. The parties have to bear their own costs.