

(2013) 11 DEL CK 0256
In the Delhi High Court
Case No : Writ Petition (Criminal) 865 of 2013

Sunil @ Sonu

APPELLANT

Vs

State of NCT of Delhi

RESPONDENT

Date of Decision : 20-11-2013

Acts Referred:

Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 15(3), 2(k)

Citation : (2013) 11 DEL CK 0256

Hon'ble Judges : G.S. Sistani, J

Bench : Single Bench

Advocate : S.B. Dandapani, for the Appellant; Manvi Priya for Mr. Dayan Krishnan, ASC for the State and S.I. Birender Singh P.S. C.R. Park, Delhi, for the Respondent

Final Decision : Allowed

Judgement

G.S. Sistani, J.—By the present petition, petitioner seeks a direction to the Jail Superintendent, to make necessary arrangement for conducting a bone age test which is the age determination test, to determine the age of the petitioner. As per the petition, the petitioner has served a sentence of 12 years and 4 months out of the total sentence of life imprisonment. The appeal of the petitioner was dismissed by the High Court on 27.01.2010. Counsel for the petitioner submits that on the date of commission of offence i.e. 14.4.2000, the age of the petitioner was 16 years.

2. Notice was issued in this matter. A status report has been filed. Today documents on the basis of which the status report has been filed have been handed over in court.

3. It is no longer res integra that a plea of juvenility can be raised at any stage, even after all the remedies have been exhausted.

4. In a recent decision rendered by the Supreme Court of India in the case of Abuzar Hossain @ Gulam Hossain Vs. State of West Bengal, , it has been held

that the claim of juvenility can be raised at any stage irrespective of the delay in raising the same. The Supreme Court has further held that this plea can be raised even in appeal if such a claim was not pressed before the trial court and in fact can be raised even after disposal of the case. Framing guidelines in the case of Abuzar Hossain (supra) it has been held that for making a claim with regard to juvenility, after conviction, the claimant must produce some material which may, prima facie, satisfy the Court that an inquiry is necessary and for which the initial burden has to be discharged by the person, who has made such a claim. While no exhaustive list can be prepared as to the nature of material, which would be sufficient to raise such a plea, but the documents, which find mentioned in Rules 12(3)(a)(i) to (iii), would be sufficient to call for an enquiry by the Court.

5. Rule 12 (3) (a) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 reads as under:

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the Court or the Board, as the case may be, the Committee by seeking evidence by obtaining-

(a) (i) the matriculation or equivalent certificates, if available; and in absence whereof;

(ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

6. Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended upto date defines a juvenile as "juvenile or child means a person, who has not completed 18 years of age".

7. Operative portion of the Status report filed by the State reads as under:

The enquiry in the said matter was conducted and during the enquiry he records from the school where the petitioner studied i.e. The Municipal Corporation Primary Boys School, Janta Grih-II, Kalkaji, New Delhi-19, Central zone were collected. The records show that the date of birth entered in the school records as 07/02/1987. It is submitted that at the time of the admission of the petitioner in the school, date of birth certificate was also attached which reads his date of birth to be 25/08/1986.

8. In the present case the status report is based upon a certificate issued by the school, a copy of the admission and withdrawal register as per which the date of birth of the petitioner as per the record of the school is 7.2.1987. The status report also reveals that at the time of admission of the petitioner in the school, date of birth certificate was also attached, as per which his date of birth is 25.8.1986. The documents have been duly verified by the State and thus in my view no further enquiry in the matter is necessary and it would only be an empty

formality.

9. In the light of the status report, I see no useful purpose would be achieved and it would be an empty formality to carry out further enquiry into the matter or refer the matter to the Board. The petitioner shall suffer further in case such an enquiry is initiated, as the petitioner has already undergone more than 12 years of sentence, whereas the maximum sentence as prescribed u/s 15(3) of the Juvenile Justice Act is three years, which period the petitioner has already undergone. Accordingly, the petitioner is declared to be a juvenile on the date of incident. The petition is allowed. The petitioner shall be released forthwith, unless he is wanted in any other case. Copy of the order will be sent to Superintendent, Central Jail, Tihar.