

Gurmit Singh Vs. State

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Court : Delhi

Decided On : Jul-11-2000

Reported in : 2000(55)DRJ159; 2000(72)ECC573

Judge : R.S. Sodhi, J.

Acts : [Narcotic Drugs and Psychotropic Substances Act, 1985](#) - Sections 15

Appeal No. : Criminal Revision No. 25 of 2000

Appellant : Gurmit Singh

Respondent : State

Advocate for Def. : M.S. Butalia, Adv.

Advocate for Pet/Ap. : Kamna Vohra, Adv

Disposition : Petition allowed

Judgement :

R.S. Sodhi, J.

1. By this Criminal Revision Petition No. 25 of 2000, the petitioner seeks to challenge the judgment and order of the Additional Sessions Judge, Delhi, Special Courts NDPS Act in Sessions Case No. 201 of 1999 arising out of FIR No. 192 of 1999 under Section 15 of NDPS Act, Police Station Timar Pur. The grievance of

the petitioner is that at the time of commission of the offence he was below the age of 16 years and, therefore, is entitled to the benefit of Section 5 of the Juvenile Justices Act.

2. Brief facts of the case, as stated by the prosecution, are that on 11.4.1999 at around 2.15 p.m. the petitioner along with two other persons was apprehended near Sindhi Baba Mandir, Outer Ring Road, Delhi with 15kg. of Poppy Husk in their possession. Three separate FIRs one against each of the three accused were filed. The petitioner after being arrested in FIR No. 192 of 1999 applied for grant of bail under , Section 439 of the Code of Criminal Procedure and was granted bail till the filing of the challan vide order dated 26th May, 1999.

3. Upon the challan being filed, the petitioner was taken into custody on 1.11.1999 as per the condition of the bail order dated 26.5.1999. The petitioner thereafter moved an application before the Court of Additional Sessions Judge. Special Court, NDPS for grant of benefit under the Juvenile Justices Act since, as claimed by him, he was below the age of 16 years. The learned Additional Sessions Judge by his judgment and order dated 4.1.2000 declined the benefit while holding that the ossification test is to be treated as the authentic for the purposes of ascertaining the age of the accused giving a go-by to the date of birth as entered in the school records. The learned Additional Sessions Judge held that the bony test showed the petitioner to be more than 17 years but less than 18 years. He also held that 'as per the bony, age of the accused as on 12.11.1999 has been found to be more than 17 years but less than 18 years which means that as on 11.4.1999, the bony age of the accused was more than 16 years. The date of birth given in the school leaving certificate appears to be based on the declaration of the father of the accused as per his guess because this declaration before the school was not on the basis of the birth entry or on the basis of any sworn declaration before the Magistrate'. therefore, on this reasoning the learned Additional Sessions Judge rejected the plea of the petitioner.

4. Learned counsel appearing for the petitioner has argued before me that it is settled law that where school leaving certificate is available and that it is shown to be an authentic school leaving certificate, should be given preference over any

ossification test which leaves a margin of two years on either side.

5. I have heard learned counsel for the petitioner as also counsel for the State and have gone through the record of the case. I am of the opinion that the admission register maintained at the school where the petitioner was a student ought to be given due weightage and that the test conducted by the Radiologist is not an accurate test which leaves a margin of two years. In this case the test shows the age of the petitioner to be more than 17 years but less than 18 years as on 12.11.1999. Could well be an estimate giving a margin of two years in which case on 11.4.1999 the petitioner could very well be slightly over 16 years or below 16 years. This test, as already stated not being absolutely accurate, there is no reason why the school leaving certificate should not be given due weightage. No doubt, an entry on the birth and death register maintained by the Corporation or the Chowkidar of the Village would have added to the authenticity at the school leaving certificate but in the absence of the school leaving certificate indicating the age of the accused ought not to be discarded. Presumption is that the age mentioned in the school records is correct unless shown to be otherwise.

6. In this View of the matter, I hold that the date of birth given in the school leaving certificate of the petitioner be taken as authentic unless evidence to the contrary is produced. Accordingly, I set aside the order dated 4-1-2000 of the learned Additional Sessions Judge, Delhi, Special Court, NDPS in Sessions Case No. 201 of 1999 arising out of FIR No. 192 of 1999, under Section 15 NDPS Act, Police Station Timar Pur.

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