

Advance List.
Serial no. 6

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

CrlM No. 750/2019 in
WP(Crl) No. 262/2019

Abrar Ahmad Ganie

...Petitioner(s).

Through: Mr. Wajid Haseeb, Advocate

Vs.

State of JK and others

...Respondent(s)

Through: Mr. N. H. Shah, Sr. AAG

Coram:

Hon'ble Mr. Justice Sanjeev Kumar, Judge.

ORDER

Notice. Notice accepted by Mr. Shah, learned Sr. AAG. He shall file counter affidavit by next date of hearing.

The issue raised by the petitioner in this petition whether the petitioner-detenu is a minor and, therefore, is required to be treated as Juvenile shall also be addressed in the counter /reply affidavit.

The petitioner has already placed on record the marks card which indicates date of birth of the detenu as 15.03.2003. District Magistrate concerned to look into this aspect specifically and revert to this Court on the next date of hearing.

List on 01.10.2019.

Copy of this order be provided to learned counsel for the respondents under the seal and signature of the Bench Secretary.

**(Sanjeev Kumar)
Judge**

Srinagar
24.09.2019
Imtiyaz

HIGH COURT OF JAMMU AND KASHMIR AT SRINAGAR.

**CrIM 749/2019
In WP (C) 299/19**

Date of order 25.09.2019

Umer Bashir Naikoo

...Petitioner/detenu

Through : Mr. Wajid Haseeb, adv.

V/s

State of J&K and ors

...Respondents

Through : Mr. B.A Dar, Sr. AAG

CORAM:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

ORDER

1. This Habeas Corpus petition has been filed by applicant namely Umer Bashir Naikoo through his brother-in-law, challenges the detention order no. 25/DMS/PSA/2019 dated 10.08.2019, purporting to have been passed by District Magistrate, Srinagar, which is pending decision before the Court.

2. The applicant-petitioner has filed the instant application seeking a direction for shifting of detenu namely Umer Bashir Naikoo s/o late Bashir Ahmad Naikoo R/o Memender, District Shopian to Juvenile Observation Home, claiming the benefit of Juvenility on the strength of age as recorded 16th March 2005 in the “**Maktabia Islamia High School, Shopian Kashmir**”.

3. The claim is made on the strength of photo copy of certificate issued by Principal Maktabia Islamia High School, Shopian on 30.08.2019 under serial no. 126, certifying that the Date of Birth of detenu namely Umer Bashir Naikoo S/o Late Bashir Ahmad Naikoo R/o Memender District Shopian is 16th March 2005. Certificate further mentions that the detenu was enrolled in the institution from 2011 to 2014 and read upto 5th class.

4. When this matter was taken up on motion hearing on 28th August, 2019, the Court while registering the claim made in the petition asked the State counsel Mr. B.A Dar, Sr. AAG to file response by or before 4th Sept.

2019. Response stands filed by District Magistrate, Shopian, indicating therein that the detenu was admitted in the School on 01.03.2012 vide admission no. 823 in class 3rd and at the time of admission no certificate of birth was produced by the parents of applicant-detenu nor the school administration bothered to procure/demand the same from the concerned offices viz Chowkidar, Municipality or Hospital. However, the brother of the detenu furnished an affidavit mentioning the date of birth of the applicant-detenu as 16.03.2005, and school administration has already issued the certificate to this extent. The District Magistrate's response further indicates that many mutilations were notice in the recorded Date of Birth of many candidates from the Admission Registrar of the School.

5. Since in the instant case, the claim of Juvenility has been raised in terms of Section 8 of the ***Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013*** (hereinafter referred to as the Act of 2013), an enquiry is required to be made to determine the age of applicant-detenu as on the date of the detention. The Apex Court in case "***Abuzar Hussain v State of W.B.,(2012) 10 SCC 489***" and "***Shah Nawaz v State of UP.,(2011) 13 SCC 751***" had recorded it's satisfaction that the entry relating to the date of birth entered in the marks sheet is one of the valid proof of evidence for determination of age of an accused person. However, it is further revealed from the portion of the judgment in paragraphs (23) & (24), *that the certificate had been proved by the statement of the Clerk of the concerned School and corroborated by other documents*. The certificate produced in this application in proof of the date of birth of the applicant-detenu is neither the original document nor attested by any person, much less an authorized person, therefore, cannot be taken as conclusively establishing the date of birth of the applicant-detenu.

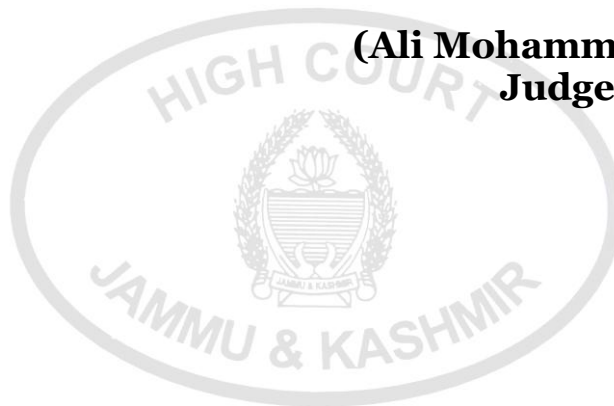
6. In the aforesaid circumstances and to meet the ends of justice, it is provided as under:

- i) That the Registrar Judicial, High Court Wing of Srinagar, shall hold an enquiry and take such evidence as may be necessary (but not an affidavit) to determine the age of applicant-detenu namely Umer Bashir Naikoo s/o late Bashir Ahmad Naikoo R/o Memendar, District Shopian, as nearly as may be, on the date of the alleged detention, dated on 10.08.2019.

- ii) The Registrar Judicial shall complete such enquiry within a period of 10 days from today and submit the report in sealed cover.
- iii) Registry to list the main WP (C) 299/2019 together with the present application for arguments and consideration before the Court on 14th Oct. 2019.
- iv) Learned counsel for the parties shall ensure full cooperation as required by the Registrar Judicial during the enquiry enabling her to frame her report.
- v) Registrar Judicial shall have all powers to summon the parties in terms of the High Court Rules and Civil Procedure Code.
- vi) Copy of the order be furnished to learned counsel for the parties.

List as directed i.e (14th Oct. 2019.)

Srinagar
25.09.2019
S.A Hussain,



**(Ali Mohammad Magrey)
Judge**