

Before Satish Kumar Mittal, J.

RAMESH CHAND @ RAMESH KUMAR,—*Petitioner*

versus

STATE OF HARYANA,—*Respondent*

CRL. R. NO. 627 OF 1995

23rd November, 2004

Prevention of Food Adulteration Act, 1954—Ss. 7, 13(2) & 16—Prevention of Food Adulteration Rules, 1955—Rl. 9-A—Sample of Tata Salt found to be adulterated—Local Health Authority wrongly informing the institution of a complaint against the petitioner while sending report of Analyst to him—Rl. 9-A of 1955 Rules requires the authorities to forward a copy of the report of the Analyst within a period of ten days after the institution of prosecution—Authorities sending the report prior to the institution of the complaint—Whether the petitioner suffered any prejudice for non-compliance of Rl. 9-A—Held, no—Petitioner failing to avail an opportunity to make application u/s 13(2) for sending the second sample for analysis—Such a failure on the part of petitioner not because of delay in launching the prosecution—No prejudice to the petitioner for sending the notice & report of Analyst prior to institution of complaint—No illegality in orders of Courts below convicting the petitioner—However, petitioner held to be released on probation as he already faced protracted trial of more than 16 years.

Held, that merely because the report of the Public Analyst was sent to the petitioner along with the information to him about his right to get the second sample analysed by the Central Food Laboratory within ten days of the receipt of the said report before institution of the complaint, that itself, will not cause any prejudice to the petitioner. When the petitioner received copy of the summons of the complaint filed by the Food Inspector and when he appeared before the Court in compliance of the said summons, he was having the report of the Public Analyst with him. On the basis of that information, he could have filed application u/s 13(2) for sending the second sample for analysis to the Central Food Laboratory. If he had filed such an application and the same would have been rejected on the ground that

it was filed after ten days of the receipt of the notice, then the position would have been otherwise. But the petitioner did not apply for sending the second sample for analysis u/s 13(2) of the Act. Therefore, it cannot be said that merely because of the non-compliance of the directory provision of Rule 9-A, a prejudice has been caused to the petitioner. It is not the case of the petitioner that because of the delay or because of sending report of the Public Analyst and notice prior to institution of the complaint, he could not seek analysis of the second sample as the same was decomposed or defective. The sending of the report of the Public Analyst and the information regarding the right of the accused u/s 13(2) prior to institution of the complaint or after institution of the complaint does not make any difference.

(Para 17)

Further held, that since admittedly the petitioner has not availed the remedy u/s 13(2) of the Act to send the second sample for analysis to the Central Food Laboratory, therefore, it cannot be said that he has suffered any prejudice on account of supply of the report of the Public Analyst prior to the institution of the complaint. Thus, I do not find any illegality in the conviction of the petitioner.

(Para 17)

R.S. Sihota, Advocate, *for the petitioner*.

Rajesh Bhardwaj, AAG, Haryana, *for the respondent*.

JUDGMENT

SATISH KUMAR MITTAL, J.:

(1) Petitioner Ramesh Chand has filed this criminal revision against the judgments, passed by both the Courts below,—*vide* which he has been convicted under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs. 1,000.

Facts :

(2) On 27th September, 1988, a sample of Tata Salt was drawn from the shop of the petitioner by the Food Inspector. As per the report of the Public Analyst, Haryana, Karnal, dated 5th October,

1988 (Ex. PF), the said sample was not containing the minimum prescribed limit of iodine. *Vide* notification dated 9th December, 1987, issued by the Government of Haryana, the sale of common salt other than iodised salt was prohibited by the Food (Health) Authority, Haryana. In view of the said notification, the sample of Tata Salt taken from the premises of the petitioner was found to be adulterated.

(3) Subsequently, on 15th November, 1988, Local Health Authority sent a letter (Ex. PW3/A) to the petitioner along with report of the Public Analyst, intimating him that a complaint has been instituted by the Food Inspector in the Court of Chief Judicial Magistrate, Hisar on 7th November, 1988, in which the next date is 11th January, 1989. The said intimation was issued in compliance of Section 13 (2) of the Act and rule 9-A of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules) which requires that the Local Health Authority, within a period of ten days of institution of the prosecution, shall forward a copy of the result of the analysis in Form III delivered to him under sub-rule (3) of Rule 7 by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector.

(4) Actually, in this case, no complaint was instituted on 7th November, 1988. Rather, it was instituted on 12th January, 1989, as is evident from the order sheet of the court, and the petitioner was summoned for 9th February, 1989. Before that date, on 30th January, 1989, the petitioner appeared before the trial court and sought his exemption from appearance on 9th February, 1989 on the ground that he had to go out of station on the said date for attending the marriage of his close relative. *Vide* order dated 30th January, 1989, the petitioner was granted exemption from personal appearance for 9th February, 1989. It is also apparent from the record that neither on 30th January, 1989 nor on the date subsequent thereto, throughout the course of trial, the petitioner did make any application to the Court for sending the second sample for analysis to the Director, Central Food Laboratory in exercise of his right provided to him under Section 13(2) of the Act.

(5) After conclusion of the evidence, the petitioner was found guilty for the offence under Section 7 read with Section 16 of the Act and was accordingly convicted and sentenced, which has been upheld in appeal by the appellate Court. Hence, this revision petition.

Arguments on behalf of Petitioner :

(6) Counsel for the petitioner submitted that in this case, the mandatory provision of Section 13(2) of the Act has not been complied with. As per requirement of this provision and Rule 9-A of the rules, the Local health Authority is required to send notice along with report of the analysis in Form III delivered to him under sub-rule (3) of Rule 7 to the person from whom the sample of article was taken, within a period of ten days after institution of the prosecution informing such person that he may make an application to the court within a period of ten days from the date of receipt of the copy of report to get the sample of the article of food kept by the Local Health Authority analysed by the Central Food Laboratory. Counsel for the petitioner further submitted that the aforesaid notice and report of the Public Analyst has to be sent to the accused only after institution of the prosecution and not prior to that. He submitted that in the instant case, notice on Form III was sent to the petitioner with report of the Public Analyst,—*vide* forwarding letter dated 15th November, 1988, Annexure PW3/A, in which intimation was given to the petitioner that complaint against him was instituted in the Court on 7th November, 1988 and the next date fixed is 11th January, 1989. However, neither any complaint was filed on 7th November, 1988 nor the date was fixed as 11th January, 1989. Actually, the complaint was filed on 12th January, 1989 and no notice has been issued to the petitioner, after institution of the said complaint.

(7) Counsel for the petitioner further submitted that by not following the aforesaid mandatory requirement, a great prejudice has been caused to the petitioner. The right of the vendor to get the second sample analysed under Section 13(2) of the Act is a valuable right, which accrues to him only after receipt of the report of Public Analyst. The petitioner could have apply for analysis of the second sample within ten days of the receipt of the report of the Public Analyst, sent to him by the Local Health Authority. Since by the time, the aforesaid notice alongwith report of the Public analyst was received by the petitioner, neither any complaint was instituted in the Court nor it was instituted within a period of ten days, when the petitioner could apply for analysis of the second sample. The contention of counsel for the petitioner is that in the instant case, the complaint was instituted on 12th January, 1989 i.e. much after ten days of the receipt of the

notice by the petitioner. Therefore, the petitioner could not have approach the Court to exercise his right for analysis of the second sample. Counsel for the petitioner submitted that both the Courts below have rejected the contention, raised by counsel for the petitioner in this regard, only on the ground that since after appearance in the Court on 30th January, 1989 in the complaint filed on 12th January, 1989, the petitioner did not apply for analysis of the second sample, therefore, no prejudice was caused to him. Counsel for the petitioner submitted that the provision of Section 13(2) of the Act is mandatory and if it has been violated, then conviction of the petitioner is liable to be set aside. In support of his contentions, counsel for the petitioner relied upon a decision of the Allahabad High Court in **Parmod Kumar versus State (1)**, wherein it has been held that under the provision of Section 13(2) of the Act, the right conferred on the applicant/accused can be exercised only after institution of the prosecution under the Act. If the Local Health Authority serves the applicant with notice under Section 13(2) of the Act before institution of the prosecution, then in that situation, the entire proceedings against the applicant culminating in his conviction stand vitiated for non-compliance of the mandatory provisions as contained in Section 13(2) of the Act. In this case, it was held that prosecution against the applicant will be deemed to have been instituted on the date on which the complaint was presented in the Court of the Magistrate.

(8) Counsel for the petitioner further relied upon a decision of the Madras High Court in **State versus Panchanadham (2)**, wherein it has been held that when notice was issued to the accused before institution of the prosecution, then it violates the mandatory provision of Section 13(2) of the Act, because this provision requires that the notice has to be issued after institution of the prosecution against the person from whom the sample of article of food was taken. In that case, notice was issued on 7th November, 1976, whereas the complaint was filed on 10th November, 1976. Because of this violation, conviction of the accused in that case was set aside. Counsel for the petitioner also relied upon another judgment of the Allahabad High Court in **State of U.P. versus Buche Singh (3)**. In that case, notice

-
- (1) 1981 (1) Prevention of Food Adulteration Cases 161
 - (2) 1982 (1) Prevention of Food Adulteration Cases 328
 - (3) 1992 (1) Prevention of Food Adulteration Cases 328

and report of the Public Analyst were sent to the accused on 21st February, 1978 whereas the complaint against him was filed on 27th February, 1978. In that situation, it was held that sending of the report and information earlier and instituting the prosecution later will not amount to full and proper compliance with the terms of Section 13(2) of the Act and furthermore, the accused will be left wandering as to in which Court and when he should make application. In these circumstances, conviction and sentence of the accused was held to be bad in law for non-compliance of the aforesaid mandatory provision. Counsel for the petitioner further relied upon another judgment of the Allahabad High Court in **Rajan Lal versus State of U.P. (4)**, wherein it was held that sending of copy of report of the Public Analyst in Form III along with intimation to the accused 12 days prior to the institution of the prosecution violates the mandatory provision of Section 13(2) of the Act and certainly causes prejudice to the accused, which vitiates the trial. In such situation, it was held that it cannot be said that no prejudice was caused to the accused because he did not apply for analysis of the second sample subsequently.

(9) In the alternative, counsel for the petitioner contended that if this Court did not find any fault in conviction of the petitioner, then in the facts and circumstances of this case, the sentence imposed upon the petitioner be reduced and the petitioner be released on probation. In this regard, counsel for the petitioner submitted that the petitioner is a small shopkeeper and was not aware of the notification, *vide* which sale of common salt other than iodised salt was prohibited. He further submitted that the petitioner was selling the branded salt and he cannot be blamed for adulteration in the same. If the salt was non-iodised, then it cannot be taken that the petitioner has removed iodine from the salt. In such a situation, case of the petitioner is governed by the second proviso of Section 16 of the Act, which provides that for the special reasons to be mentioned in the judgment, where the offence is pertaining to sub-clause (ii) of clause (a) and is with respect to the contravention of any rule made under clause (a) or clause (g) of sub-Section (1-A) of Section 23 or under clause (b) of sub-section (2) of Section 24, the Court may impose a sentence of imprisonment for a term which may extend to three months and with fine which may extend to five hundred rupees. Counsel for the petitioner

(4) 1985 (1) Prevention of Food Adulteration Cases 27

submits that in the instant case, sample of the salt was taken from the premises of the petitioner in the year 1988. He has faced the protracted trial for a period of more than 15 years and is first offender. Keeping in view these circumstances, while relying upon a judgment of this Court in **Jog Dhian versus State of Haryana (5)**, counsel for the petitioner submitted that even in cases where minimum sentence has been prescribed, benefit of probation can be given in special facts and circumstances of a case.

Arguments on behalf of Respondent :

(10) On the other hand, counsel for the respondent-State submitted that mere violation of the procedural requirements under Section 13(2) of the Act will not result into acquittal of the petitioner, until and unless it is established by him that because of such violation, a prejudice has been caused to him. He submitted that in this case, though report of the Public Analyst and the intimation as required under Rule 9-A of the Rules and Section 13(2) of the Act were sent prior to institution of the complaint, but it is also admitted position on record that at no point of time, when the petitioner appeared before the court or subsequent thereto, he made an application for sending the second sample for analysis. Thus, in these facts, it cannot be said that a prejudice was caused to the petitioner because of sending the notice and report of the Public Analyst prior to institution of the complaint. He submitted that it is not the case of the petitioner that because of the delay or because of sending of report of the Public Analyst and notice prior to the institution of the complaint, he could not seek analysis of the second sample, as the same was decomposed or became defective. In support of his contention, learned counsel relied upon a decision of the Hon'ble Apex Court in **Ajit Prasad Ram Kishan Singh versus The State of Maharashtra (6)**. In that case, accused took the plea that he was deprived of his right to have the second sample analysed on account of delay in service of summons. On the said plea, the accused was acquitted by the Magistrate, who found that on account of delay in service of summons, it would be a futile exercise to have second sample analysed. The said order of acquittal was reversed by the High Court. While upholding the judgment of the High Court, the Hon'ble Apex Court held that when

(5) 2001 (2) R.C.R. (Criminal) 331

(6) 1972 Prevention of Food Adulteration Cases 545

the accused never applied to the court to have part of the sample re-analysed, then no prejudice could be said to have been caused to him. It was further held that for taking benefit of violation of the mandatory provision of Section 13(2) of the Act, the defence has to establish on record that because of the alleged violation, a prejudice was caused to him.

Analysis :

(11) According to the scheme of the Act, when a sample of any food article is taken under sub-section (1) or (2) of Section 10 of the Act, the Food Inspector is required to send a sample of the said food article immediately to the Public Analyst of the local area concerned for its analysis. Section 11 of the Act provides that any sample so taken by the Food Inspector shall be divided into three parts and each part shall be sealed in such manner as prescribed, out of which one part is to be sent to the Public Analyst under intimation to the Local (Health) Authority and the remaining two parts to the Local (Health) Authority for the purposes of sub-section (2) of Section 11 and sub-sections (2-A) and (2-E) of Section 13. Section 13(1) of the Act provides that the Public Analyst shall deliver result of the analysis of the said food article to the Local (Health) Authority. Sub-section (2) further provides as under :—

“On receipt of the report of the result of the analysis under sub-section (1) to the effect that the article of food is adulterated, the Local (Health) Authority shall, after the institution of prosecution against the person from whom the sample of the article of food was taken and the person, if any, whose name, address and other particulars have been disclosed under Section 14-A, forward, in such manner as may be prescribed, a copy of the report of the result of the analysis to such person or persons, as the case may be, informing such person or persons that if it is so desired, either or both of them may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the article of food kept by the Local (Health) Authority analysed by the Central Food Laboratory.”

Sub-section 2-A provides as under :—

“When an application is made to the court under sub-section (2), the court shall require the Local (Health) Authority to forward the part or parts of the sample kept by the said

Authority and upon such requisition being made, the said Authority shall forward the part or parts of the sample to the court within a period of five days from the date of receipt of such requisition.”

Sub-section 2-B further provides as under :—

“On receipt of the part or parts of the sample from the Local (Health) Authority under sub-section (2-A), the court shall first ascertain that the mark and seal or fastening as provided in clause (b) of sub-section (1) of Section 11 are intact and the signature or thumb-impression, as the case may be, is not tampered with, and despatch the part or, as the case may be, one of the parts of the sample under its own seal to the Director of the Central Food Laboratory who shall thereupon send a certificate to the court in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis.”

Sub-section (3) of Section 13 of the Act provides that the certificate issued by the Director of the Central Food Laboratory [under sub-section (2-B)] shall supersede the report given by the public analyst under sub-section (1).

(12) From the bare perusal of the scheme as well as the aforesaid provisions of the Act, it is clear that a valuable right has been conferred on the vendor by Section 13(2) of the Act to have the second sample analysed by the Director of the Central Food Laboratory. By specifying time at various stages, it has been made clear that prosecution will proceed in such a manner that such right will not be denied to the vendor because of any delay. This right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. This right has been given to the vendor for his satisfaction and proper defence, so that he should be able to have the second sample analysed by a greater expert whose certificate is treated by the court as conclusive evidence. In a case if this valuable right is denied to the vendor on account of the deliberate conduct of the prosecution or a negligent, which has resulted into a serious prejudice to him as he could not get the second sample analysed or the second sample could not be analysed because of any defect or decomposition of the same, in that situation, it would not be proper to uphold his conviction on the basis of the report of the Public Analyst. If the vendor inspite of having an

opportunity to make an application to the court for sending the sample to the Central Food Laboratory for analysis did not avail the same, then in that situation, it cannot be said that he is entitled for acquittal because some irregularity was committed while sending the notice to him under Section 13(2) of the Act or delay was caused in sending the report or filing complaint in the court.

(13) The right of the vendor to get the second sample analysed by the Director of Central Food Laboratory, as conferred by Section 13(2) of the Act, was considered by the Hon'ble Apex Court in **Babulal Hargovindas versus State of Gujarat (7)**, wherein it was held that the defence taken by the accused that he has been deprived of his right under Section 13(2) of the Act due to delay in launching the prosecution is not open when he has not filed an application under Section 13(2) of the Act for sending the second sample for analysis during the trial and when there is no evidence to show that any prejudice was caused to him. Therefore, it was no longer open to him to contend that he had no opportunity to send the sample in his custody to the Director, Central Food Laboratory under Section 13(2) of the Act, since he did not make any application to the Court for sending it. The principle was subsequently followed by the Hon'ble Apex Court in **Ajitprasad Ramkishan Singh versus The State of Maharashtra (supra)**, where it was held that in the absence of any application by the accused under Section 13(2) of the Act for getting the second sample analysed by the Director, the accused could not complain that he was deprived of his right to have the second sample analysed by the Director. The mere delay and laches on the part of the complainant in getting the summons served was not, in the absence of evidence to show that the sample has deteriorated when the summons was served, sufficient to hold that the accused was prejudiced by reason of deprivation of the right under Section 13(2).

(14) In **Prabhu versus State of Rajasthan (8)**, the Hon'ble Supreme Court has again considered this aspect of the matter and held that when the accused had not availed the remedy under Section 13(2) to send sample of the food article for analysis by the Central Food Laboratory, it cannot be held that he had suffered prejudice on account of delay in laying the prosecution, until and unless he has specifically proved a specific prejudice caused to him.

(7) AIR 1971 S.C. 1277

(8) 1994 (1) Prevention of Food Adulteration Cases 194

(15) According to Section 13(2) of the Act, the Local (Health) Authority is required to forward report of the result of the analysis, in such manner as may be prescribed, to the person from whom the sample of food article was taken, informing him that if it is so desired he may make an application to the court within a period of ten days from the date of receipt of the copy of the report to get the sample of the food article analysed by the Central Food Laboratory. Rule 9-A of the Rules provides that the Local (Health) Authority shall within a period of ten days after the institution of prosecution forward a copy of the report of the result of analysis in Form III delivered to him under sub-rule (3) of Rule 7, by registered post or by hand, as may be appropriate, to the person from whom the sample of the article was taken by the Food Inspector, provided that where the sample conforms to the provision of the Act or the rules made thereunder, and no prosecution is intended under sub-section (2) or no action is intended under sub-section (2-E) of Section 13 of the Act, the Local (Health) Authority shall intimate the result to the vendor from whom the sample has been taken within 10 days from the receipt of the report from the Public Analyst. However, after January 4, 1977, the word 'immediately' was used replacing the words "within ten days".

(16) A question as to whether requirement of Rule 9-A is mandatory or directory was considered by the Hon'ble Apex Court in *Tulsiram versus The State of Madhya Pradesh* (9). While holding this Rule as directory, it was held as under :—

“...Rule 9-A is made in the context of the amended Section 13(2) which provides for the forwarding of the Public Analyst's Report to the person from whom the sample was taken after the institution of prosecution and enables that person to apply to the court to have analysed by the Central Food Laboratory the sample kept with the Local (Health) Authority. In the context the expression 'immediately' is only meant to convey 'reasonable despatch and promptitude' and no more. The idea is to avoid dilatoriness on the part of official dom and prevention of unnecessary harassment to the accused. But the idea is not to penalise the prosecution and to provide a technical defence. First to construe 'immediately' as meaning at once or 'forthwith'

and next to hold delay to be fatal to the prosecution would perhaps be make Rule 9-A ultravires Section 13(2). We do not think it is permissible to interpret Rule 9-A in such a way. The real question is, was the Public Analyst's Report sent to the accused sufficiently early to enable him to properly defend himself by giving him an opportunity at the outset to apply to the court to send one of the samples to the Central Food Laboratory for analysis. If after receiving the Public Analyst's Report he never sought to apply to the court to have the sample sent to the Central Food Laboratory, as in the present case, he may not be heard to complain of the delay in the receipt of the report by him, unless, of course, he is able to establish some other prejudice. Our conclusions on this question are : The expression 'immediately' in Rule 9-A is intended to convey a sense of continuity rather than urgency. What must be done is to forward the report at the earliest opportunity, so as to facilitate the exercise of the statutory right under Section 13(2) in good and sufficient time before the prosecution commences leading evidence. Non-compliance with Rule 9-A is not fatal. It is a question of prejudice."

Result :

(17) In the light of the aforesaid legal position, I do not find any merit in the contention raised by counsel for the petitioner. Merely because the report of the Public Analyst was sent to the petitioner along with the information to him about his right to get the second sample analysed by the Central Food Laboratory within ten days of the receipt of the said report before institution of the complaint, that itself, in my opinion, will not cause any prejudice to the petitioner. When the petitioner received copy of the summons of the complaint filed by the Food Inspector and when he appeared before the court in compliance of the said summons, he was having the report of the Public Analyst with him. On the basis of that information, he could have filed application under Section 13(2) for sending the second sample for analysis to the Central Food Laboratory. If he had filed such an application and the same would have been rejected on the ground that it was filed after ten days of the receipt of the notice, then the position would have been otherwise. But in the instant case, the

petitioner did not apply for sending the second sample for analysis under Section 13(2) of the Act. Therefore, it cannot be said that merely because of the non-compliance of the directory provision of Rule 9-A, a prejudice has been caused to the petitioner. It is not the case of the petitioner that because of the delay or because sending report of the Public Analyst and notice prior to institution of the complaint, he could not seek analysis of the second sample as the same was decomposed or defective. In my opinion, the sending of the report of the Public Analyst and the information regarding the right of the accused under Section 13(2) prior to institution of the complaint or after institution of the complaint does not make any difference. The only requirement of Rule 9-A is that within ten days of institution of the complaint, the Local (Health) Authority is required to send report of the result of the analysis to the person from whom the sample was taken. The object to send the second sample within specific time is to provide an opportunity to the vendor to get the second sample analysed by the Central Food Laboratory without any delay. When in the instant case, the report was sent prior to the institution of the complaint, that does not defeat the very purpose and object of Rule 9-A. In none of the judgments, cited by counsel for the petitioner in support of his contentions, the various afore-mentioned judgments of the Hon'ble Supreme Court have been considered and taken notice of. In these circumstances, by following the consistent law laid down by the Hon'ble Apex Court in the aforesaid judgments, I am of the considered view that since admittedly, the petitioner has not availed the remedy under Section 13(2) of the Act to send the second sample for analysis to the Central Food Laboratory, therefore, it cannot be said that he has suffered any prejudice on account of supply of the report of the Public Analyst prior to the institution of the complaint. Thus, I do not find any illegality in the conviction of the petitioner.

(18) No doubt, the cases under the Prevention of Food Adulteration Act should be seen with strictness, yet in view of the judgments of this Court in **Narain Dass versus State of Haryana (10)**, and **Jog Dhian versus State of Haryana (supra)**, and keeping in view the facts and circumstances of this case i.e. the petitioner has already faced the protracted trial of more than 16 years, he is first offender, was a petty shop keeper in rural area and was selling the branded non-iodised salt ; which was prohibited,—*vide* notification

just one year prior to the taking of sample and the fact that his case is covered by the second proviso of section 16 of the Act, I am of the opinion that ends of justice will be met if the petitioner is let off on probation. The judgment of conviction is therefore maintained and the order of sentence is modified to the extent that the petitioner will be released on probation on his furnishing requisite bonds to show good conduct for a period of one year before the trial Magistrate within a period of one month from the date he receives certified copy of this judgment.

(19) This revision petition is, thus, partly allowed in the manner indicated above.

R.N.R.

Before Satish Kumar Mittal, J.

BALKAR SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

CRL. R. NO. 1823 OF 2004

16th December, 2004

Juvenile Justice Act, 2000—Ss. 2(k), 12 & 18—Indian Penal Code, 1860—Ss. 302/365/34—FIR against petitioner & his two brothers—On investigation police finding petitioner innocent & framing no charge against him—After examination of complainant trial Court summoning the petitioner u/s 319 Cr. P.C.—Claiming himself to be a juvenile u/s 2(k), petitioner seeking concession of bail as well as separation of his trial from other co-accused—Petitioner producing two school leaving certificates to prove his status as juvenile—Trial Court ignoring the evidence merely on the basis of conjectures that the date of birth given at the time of admission in school is seldom correct & does not depict the actual age of the child—No contrary evidence regarding the age of petitioner led by the prosecution—No allegation that the school leaving certificates are not genuine—Evidence led by the petitioner clearly establishes that he was juvenile at the time of alleged occurrence—Petitioner held to be entitled for concession of bail & separation of trial.