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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 1221/2013,

% *Judgment reserved on 10th February, 2015*
Judgment pronounced on 12th February, 2015

UDAY KUMAR YADAV Appellant
Through : Mr.Ajai Kumar, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through : Mr.Firoz Khan Ghazi, APP for the Stae
along with SI Mohinder, P.S. Narela.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

CRL.M.A. 14484/2013.

1. The appellant has filed the present appeal assailing the judgment dated 7.11.2012 and order on sentence dated 17.11.2012 by which the appellant was sentenced to undergo Rigorous Imprisonment for the offence under Section 363 IPC for a period of seven years and to pay fine of Rs.10,000/-, in default thereof further undergo Simple Imprisonment for a further period of one month. The appellant was also sentenced to undergo Rigorous Imprisonment for life for the offence under Section 376 (2) (f) IPC with the directions that he shall not be considered for any remissions unless he has undergone an actual sentence of Twenty years and to pay fine of Rs.50,000/-, in default thereof further simple imprisonment for five months. The appellant was

also sentenced to undergo Rigorous imprisonment for the offence under Section 380 IPC for a period of five years and to pay fine of Rs.10,000/-, in default of payment of fine shall further undergo Simple Imprisonment for a further period of one month.

2. The appeal stands admitted. Along with the appeal, appellant has filed the present application under Section 7A of the Juvenile Justice (Care and Protection of Children) Act, 2000 [hereinafter referred to as 'the Act'], for declaring the appellant as a juvenile.
3. The appellant was convicted for the offence under Sections 363, 376(2)(f), 380 of the Indian Penal Code and has been awarded imprisonment for life. The appellant has been incarcerated since December, 2011.
4. It is contended by counsel for the appellant that the appellant was a juvenile on the date of the alleged offence, as his date of birth is 27.1.1994. It is contended that the appellant was 17 years 7 months and 29 days on the date of the commission of the offence. In support of his claim of being a juvenile, the appellant relies on a transfer certificate as well as a photocopy of the certified copy of the student admission register where the appellant attended his school for the first time. It is also contended by counsel for the appellant that the plea of juvenility can be raised at any stage and in fact it can be raised even after final adjudication of the matter. Reliance is placed on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules 2007 [hereinafter referred to as 'the Rules']. We may notice that in response to this application a status report dated 14.1.2014 was filed by the State, which is reproduced below:

“STATUS REPORT

Hon'ble Sir,

It is submitted that the verification of petitioner Udai Kumar Yadav S/o Sh. Sita Ram Rai R/o Vill – Husse Pur Panchrukha PS- Sahebganj Distt.- Muzaffer Pur, Bihar was conducted. As per school record he was student of Government Middle School, Hussepur, Sahebganj, Muzafferpur, Bihar and his date of birth is 27.01.1994 with enrolment No.46/28.1.2002 in class 3rd. Copy of school report is enclosed.

In view of the submissions made above the undersigned will abide by any directions/order which this Hon'ble court choose to pass.

(GULAM SHABIR)
STATION HOUSE OFFICER
PS-NARELA, DELHI”

5. An additional status report dated 24.7.2014 was also filed by the State, which is also reproduced below:

“STATUS REPORT

Hon'ble Sir,

It is submitted that the verification of petitioner Udai Kumar Yadav S/o Sh. Sita Ram Rai R/o Vill – Husse Pur Panchrukha PS- Sahebganj Distt.- Muzaffer Pur, Bihar was conducted. The Principal of Government Middle School, Hussepur, Sahebganj, Muzafferpur, Bihar has given in writing that:-

1. As per school the record / report no such age proof document obtain by the school authority from the parents of student Udai Kumar at the time of admission in the school. There is a procedure of this school that at the time of admission the school authority do not require age proof of student.
2. Admission of student of Class 1 to 5th without obtaining age proof.

3. Admission is done at the verbal declaration of the guardians.
4. Admission of Udai Kumar was made by Devender Mishra who has been retired from service.

Apart from this, statement of Sh. Lal Babu Ram, member Ward No. 1, Gram Panchayat Vill- Husse Pur got recorded who stated that no such record/information regarding correct date of birth of Udai Kumar.

In view of the submission made above the undersigned will abide by any directions / order which this Hon'ble Court choose to pass.

(GULAM SABIR)
STATION HOUSE OFFICER
PS-NARELA, DELHI”

6. Based on the additional status report, a Division Bench of this court in the order of 28.7.2014 directed the trial court to conduct an enquiry into the plea of juvenility of the appellant and submit a report to this court. During the enquiry an application was filed by the SHO, Narela, seeking permission of the court for getting the ossification / age determination test conducted in view of the fact that no authentic document of age was produced and the documents on which the appellant was relying *prima facie* did not appear to be authentic. Operative portion of the order dated 21.8.2014 passed by learned ASJ, reads as under:

.... At this stage, application has been filed by the SHO Narela seeking permission for getting the ossification / age determination test of convict Udai Kumar Yadav conducted in view of the fact that till date no authentic document of age is being produced and the documents on which the convict is relying *prima facie* do not appear to be authentic.

I have considered the rival contentions. In the interest of justice, permission is granted to get the ossification / age

determination test conducted upon the convict Udai Kumar Yadav. Meanwhile, final report with regard to the verification of the documents furnished by the convict along with the list of witnesses to be examined by the prosecution and also the list of witnesses to be examined by the convict in age inquiry, be placed before this Court within 15 days from today.

Be listed for evidence on the age inquiry on 8.9.2014.”

7. Thereafter the court of the Additional Sessions Judge who was directed to conduct the enquiry directed the Investigating Officer to collect and verify the documents regarding the age of the appellant, including Parivar Register, election card, ration card, details of family members with the date of birth, statement of the neighbours and statements of other witnesses, who could throw light on the age of the appellant. A final enquiry report has been submitted, as per which the appellant was approximately 22 years of age at the time of the incident. Counsel for the appellant submits that the report of the enquiry cannot be relied upon on the ground that the procedure laid down in terms of Rule 12 of the Rules, has not been followed.
8. Counsel for the State submits that since the documents relied upon by the appellant were unreliable, the trial court conducted a proper enquiry by examining the witnesses and conducting an ossification test on the appellant as well.
9. Counsel for the appellant submits that there is no document or statement on record, nor any finding has been recorded that the documents relied upon by the appellant are either forged or fabricated or do not fall within the list of prescribed documents as per Rule 12 (3) of the Rules. It is the case of the appellant that in the light of the first status report, no further enquiry was required.
10. Before the rival submissions of the parties can be considered, we deem it

appropriate to reproduce Section 7A of the Act:

“7A. Procedure to be followed when claim of juvenility is raised before any court.- (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under Sub-section (1), it shall forward the juvenile to the Board for passing appropriate orders, and the sentence if any, passed by a court shall be deemed to have no effect.”

11. Rule 7A of the Act lays down the procedure to be followed when a claim of juvenility is to be raised before any court. Rule 12 lays down the procedure to be followed in determination of the age. Rule 12 of the Rules, is reproduced below:

“12. Procedure to be followed in determination of Age— (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie

on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(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 or, as the case may be, the Committee by seeking evidence by obtaining-

- (a) (i) the matriculation or equivalent certificates, if available; and in the 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;
- (b) And only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

12. It is no longer *res integra* that a plea of juvenility may be raised at any stage and even after the disposal of the case and delay in raising the plea of juvenility cannot by itself be a ground for rejection of such a claim. In the case of **Abuzr Hossain @ Gulam Hossain Vs. State of West Bengal** reported at 2012 (10) Scale 101, the court highlighted that for raising a claim with regard to the juvenility after conviction the claimant must produce some material, which may *prima facie* satisfy the court that an enquiry into the claim of juvenility is necessary and the final burden has to be discharged by the person, who claims juvenility. We deem it appropriate to reproduce paragraph 36 of the judgment, where the court has summarized the position :

“36. Now, we summarise the position which is as under:

- (i) A claim of juvenility may be raised at any stage even after final disposal of the case. It may be raised for the first time before this Court as well after final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be

- raised for the first time before this Court though not pressed before the trial court and in appeal court.
- (ii) 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 into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.
 - (iii) As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rule 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the votersâ€™ list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard and fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh² and Pawan⁸ these documents were not found prima facie credible while in Jitendra Singh¹⁰ the documents viz., school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellantâ€™s age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7A and order an enquiry for determination of the age of the delinquent.
 - (iv) An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age

of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of age of the delinquent.

- (v) The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in 2000 Act are not defeated by hyper-technical approach and the persons who are entitled to get benefits of 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered *prima facie* on the touchstone of preponderance of probability.
- (vi) Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at threshold whenever raised.”

13. The short question which comes up for consideration in this case is that once the appellant had produced the documents from the school attended by him i.e. the copy of the students attendance register, where the appellant attended school for the first time and the transfer certificate and in the absence of any finding that the aforesaid two documents were either forged, fabricated or procured what was the nature of enquiry required to be conducted by the learned Additional Sessions Judge.
14. In the enquiry so conducted one SW-1, Devinder Mishra, Incharge Teacher (Retd.) from MS Ussepur Pachrukhiya, Police Station Sahbganj, Mujjaffarpur, Bihar, produced the original admission record of the appellant, showing his date of birth as 27.1.1994. According to this witness there was no other document available in the school, showing the date of birth of the appellant on the basis of which the date of birth

was mentioned. During cross-examination this witness testified that this date was entered into by him based on the date given to him by his mother and father. SW-2 Smt. Neeta Kumar, Incharge Principal at MS Hussepur, P.S. Sahebganj, Distt. Muzaffarpur, Bihar proved the original record of admission of the appellant showing his date of birth as 27.1.1994. This witness also testified that this date of birth was entered into on the basis of information provided by the parents. Both these witnesses have also testified that the child (appellant) was admitted into class 3, some children with the same date of birth were admitted in class 1 or class 2 based on the physical appearance, mental age by taking test of certain question to test the knowledge and I.Q. as well.

15. We may notice that as per the ossification test carried out the appellant was stated to be 22 years of age on the date of the incident. We may also notice that a detailed enquiry was conducted and the Additional Sessions Judge has put court questions to the witnesses and then given a report. It has not been pointed out to us that in this detailed report a conclusion has been reached that either the attendance register or the birth certificate as provided by the school were forged or fabricated, and in fact the original record was produced in support thereof.
16. Rule 12 (3) of the Rules provides that the age determination inquiry shall be conducted by the Court or the Board by seeking evidence by obtaining (i) a matriculation certificate or any certificates equivalent thereto, in the absence whereof (ii) date of birth certificate from the school (other than a play school) first attended; and in the absence whereof (iii) birth certificate given by a corporation or a municipal authority or a Panchayat. Clause (b) of sub-Rule 3 of Rule 12 makes it abundantly clear that only in the absence of (i), (ii) and (iii) of clause (a) the medical opinion is to be sought from a duly constituted Medical

Board. Rule 12(3) (b) reads as under:

“12. Procedure to be followed in determination of Age— (1)

XXXXXXX

(b) And only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.”

17. An argument has been raised before us that since the date of birth was provided by the parents of the appellant the basis on which certificate has been issued cannot be treated as authentic.
18. In the case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh** reported at (2012) 9 SCC 750, it was held that while conducting an enquiry of juvenility only procedure laid down under Rule 12 of the Rules need to be followed. In the said case the appellant had in support of his plea of juvenility produced the attested marksheets of the high school, upon which an objection was raised by the mother of the victim that no evidence had been adduced to show that the entry made in the

school register was correct and normally parents do not give correct date of birth on the admission register. An enquiry was ordered and father of the appellant was examined, the court of Chief Judicial Magistrate got an ossification test conducted and the Chief Judicial Magistrate felt that the school record including mark-sheets could not be relied upon and consequently the application raising the plea of the juvenility was dismissed. An appeal against the said order was filed before the First Additional Sessions Judge. The First Additional Sessions Judge summoned the original record of the school, horoscope of the child was called and thereafter the appeal was dismissed, which order was confirmed by the High Court. In this backdrop the following observations were made by the Supreme Court, where the matter was decided:

“12. We are unhappy in the manner in which the CJM Court, First Additional Sessions Judge’s Court and the High Court have dealt with the claim of juvenility. Courts below, in our view, have not properly understood the scope of the Act particularly, meaning and content of Section 7A of the J.J. Act read with Rule 12 of the 2007 Rules. Before examining the scope and object of the above mentioned provisions, it will be useful to refer some of the decided cases wherein the above mentioned provisions came up for consideration, though on some other context.

13. *In Arnit Das v. State of Bihar*, [(2000) 5 SCC 488], this Court held that while dealing with the question of determination of the age of the accused for the purpose of finding out, whether he is a juvenile or not, hyper technical approach should not be adopted while appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile and if two views are possible on the same evidence, the court should lean in favour of holding the accused to be juvenile in borderline cases. In *Arnit Das* case, this Court has taken the view that the date of production before the Juvenile Court was the date relevant in deciding whether the appellant was juvenile or not for the purpose of trial. The law laid down in *Arnit Das* to that extent was held to be not

good law, in *Pratap Singh v. State of Jharkhand* [(2005) 3 SCC 551], wherein a five Judge Bench of this Court decided the scope of sections 32 and 2(h), 3, 26, 18 of the Juvenile Justice Act, 1986 and took the view that it was the date of the commission of the offence and not the date when the offender was produced before the competent court was relevant date for determining the juvenility.”

19. It would also be useful to reproduce paragraphs 25 and 26 of the same judgment, wherein the court has highlighted that an enquiry is to be conducted as provided in the Rules of 2007 and not an enquiry as provided in the Code of Criminal Procedure:

“25. Section 7-A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the J.J. Act. Criminal Courts, JJ Board, Committees etc., we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. Statute requires the Court or the Board only to make an “inquiry” and in what manner that inquiry has to be conducted is provided in JJ Rules. Few of the expressions used in Section 7A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7A has used the expression “court shall make an inquiry”, “take such evidence as may be necessary” and “but not an affidavit”. The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates etc. as evidence need not be oral evidence.

26. Rule 12 which has to be read along with Section 7A has also used certain expressions which are also be borne in mind. Rule 12(2) uses the expression “prima facie” and “on the basis of physical appearance” or “documents, if available”. Rule 12(3) uses the expression “by seeking evidence by obtaining”. These expressions in our view re-emphasize the fact that what is contemplated in Section 7A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the

inquiry has to be conducted and completed. The word “inquiry” has not been defined under the J.J. Act, but Section 2(y) of the J.J. Act says that all words and expressions used and not defined in the J.J. Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.”

20. The Court has also highlighted that the Rule 12 of the Rules enable the court to seek evidence and in that process the court can obtain matriculation and other certificates as per Rule 12 (3) (a) (i), (ii) and (iii) of the Rules and opinion from a Medical Board would arise only in the absence of the certificates. Paragraphs 31 to 35, 38-40 and 42-43 of the judgment read as under:

31. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a *parens patriae* because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. “Age determination inquiry” contemplated under section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may not be correct. But Court, J.J. Board or a Committee functioning under the J.J. Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the Court, the J.J. Board or the Committee need to go for medical report for age determination.

35. We have come across several cases in which trial courts have examined a large number of witnesses on either side including the conduct of ossification test and calling for odontology report, even in cases, where matriculation or equivalent certificate, the date of birth certificate from the school last or first attended, the birth certificate given by a corporation or a municipal authority or a panchayat are made available. We have also come across cases where even the courts in the large number of cases express doubts over certificates produced and carry on detailed probe which is totally unwarranted.

38. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the principal of school and having noticed the fact that the appellant was born on 24.10.1990, what prompted the Court not to accept that admission register produced by the principal of the school.

The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11.02.2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the School Admission Register. We are of the view the above document produced by the principal of the school conclusively shows that the date of birth was 24.10.1990 hence section 12(3)(a)(i)(ii) has been fully satisfied.

39. The Sessions Judge, however, has made a fishing inquiry to determine the basis on which date of birth was entered in the school register, which prompted the father of the appellant to produce a horoscope. The horoscope produced was rejected by the Court stating that the same was fabricated and that the Pandit who had prepared the horoscope was not examined. We fail to see what types of inquiries are being conducted by the trial courts and the appellate courts, when the question regarding the claim of juvenility is raised.

40. The Legislature and the Rule making authority in their wisdom have in categorical terms explained how to proceed with the age determination inquiry. Further, Rule 12 has also fixed a time limit of thirty days to determine the age of the juvenility from the date of making the application for the said purpose. Further, it is also evident from the Rule that if the assessment of age could not be done, the benefit would go to the child or juvenile considering his / her age on lower side within the margin of one year.

42. In *Shah Nawaz v. State of Uttar Pradesh and Another* [(2011) 13 SCC 751], the Court while examining the scope of Rule 12, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a Corporation or a municipal authority or a panchayat or municipal is not available. The court had held entry related to date of birth entered in the mark sheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.

43. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.”
[Emphasis added]

21. Similar view has been reiterated in the cases of Jodhbir Singh Vs. State reported at AIR 2013 SC 1 and Ranjeet Goswami Vs. State of Jharkhand & Anr. reported at (2014) 1 SCC 588.
22. In the case of Shah Nawaz v. State of U.P reported at (2011) 13 SCC 751 the Court while examining the scope of Rule 12 of the Rules, has reiterated that medical opinion from the Medical Board should be sought only when matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available. The Court had held that entry related to date of birth entered in the marksheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.
23. We are of the view that the trial court has completely misread Rule 12. Having once examined the authenticity of the documents produced by the appellant and on the basis of the evidence of the Principal and Teacher of the school of the appellant, only an enquiry as contemplated under Rule 12 could have been carried out. Having regard to the fact that the law laid down by the Supreme Court in the case of Ashwani Kumar Saxena (Supra), we find the trial court has conducted a roving and fishing enquiry and could not have directed conducting an ossification test on the appellant. The case of the Ashwani Kumar

Saxena (Supra) is applicable to the facts of this case on all force. Resultantly the application is allowed. The appellant is declared to be a juvenile on the date of the commission of the offence, based on the birth certificate of the appellant.

24. In view of the enquiry conducted where the original record of the school was produced and the evidence of the teacher and principal has been recorded; and having reached to a conclusion that the appellant was a minor on the date of the incident and having regard to the fact that as per the provisions of Sections 15 and 16 of the Act, a juvenile can be sent to a special home for a period of three years, whereas the appellant has been in jail for about 3 years and 52 days (as per the nominal roll called today), no further enquiry is required to be ordered.
25. Ordinarily if a convict is held to be a juvenile, the case has to be remitted to the Juvenile Justice Board for an enquiry and for passing an appropriate order. We feel that no useful purpose would be achieved if the case of the appellant is remitted to the Juvenile Justice Board, as the appellant has already remained in custody for about 3 years and 52 days.
26. Similar view was taken by a Division Bench of this Court in Raju v.State (Govt. of NCT) of Delhi reported at 184 (2011) DLT 100 (DB).

Para 10 of the same reads as under:-

10. The fact that the petitioner had not raised the plea of juvenility before the trial court or before the Division Bench at the stage of the appeal or even before the Supreme Court would not come in his way of seeking the remedy and relief that is sought by virtue of this petition in view of the clear and express provisions of Section 7-A of the said Act. Once we have determined that the petitioner was a „juvenile“ as on the date of the incident, he has to be given the benefit thereof under the said Act. Sections 15 and 16 of the said Act clearly indicate that no juvenile can be kept in custody or detained for a period in excess of 3 years. In the present case, the appellant has already been in custody for over 10 years and 4 months as per the nominal roll on record. Therefore, it

is clear that the petitioner has been in custody for a period far in excess of the maximum period of 3 years that is contemplated under the said Act. In these circumstances, he is eligible to be released forthwith. Insofar as the sentence is concerned, the same is deemed to have no effect in view of the provision of Section 7-A(2) of the said Act.”

27. The Apex Court also took a similar view in Satish @ Dhanna v. State of Madhya Pradesh & Ors. (2009) 14 SCC 187. Paragraphs 5 and 6 of the same read as under:

“5. In Bhola Bhagat v. State of Bihar (1997) 8 SCC 720 this Court after referring to the decision in Gopinath Ghosh v. State of W.B. 1984 Supp SCC 228 and Bhoop Ram v. State of U.P. (1989) 3 SCC 1 held that an accused who was a juvenile cannot be denied the benefit of provisions of the 2000 Act. The course this Court adopted in Gopinath and Bhola Bhagat cases was to sustain the conviction, but at the same time modify the sentence awarded to the convict.

6. At this distant point of time to refer the appellant to the Juvenile Board would not be proper. Therefore, while sustaining the conviction for the offence for which he has been found guilty, the sentence awarded is restricted to the period already undergone. The appellant be released from custody forthwith unless required to be in custody in connection with any other case.”

28. The Apex Court has reiterated the same view in its later judgments Amit Singh v. State of Maharashtra & Anr. reported at (2011) 13 SCC 744 and Ashwani Kumar Saxena v. State of M.P. (2012) 9 SCC 750.

29. The application stands disposed of, in above terms.

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30. By a separate order the application of the appellant raising the plea of juvenility has been allowed. As per sections 15 and 16 of the Act, the punishment to be awarded to a juvenile is of three years. The appellant has already been served the period of sentence of 3 years and 52 days.

The appeal is allowed and the appellant be released forthwith, unless he is wanted in any other case.

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31. In view of the order passed in the appeal and in the application [CRL.M.A. 14484/2013] no further orders are required to be passed in the present application and the same stands disposed of.
32. Copy of the judgment be sent to the Jail Superintendent through e-mail and fax for compliance.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 12, 2015

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