

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22378 of 2016

Arising Out of PS.Case No. -156 Year- 2013 Thana -BACHWARA District- BEGUSARAI

=====

Moni Kumari under natural guardianship of his husband Rajesh Rai,
resident of village Chamtha, P.S Bachhwara, District Begusarai

.... Petitioner

Versus

1. The State of Bihar
2. Kumod Kumar, s/o Late Jai Mangal Singh, r/o vill-Chamtha, Chhat
Khut, PS- Bachhwara, Dist- Begusarai

.... Opposite Parties

=====

Appearance :

For the Petitioner : Mr. Sanjeev Kumar Singh, Advocate
For the O. P. no. 2 : Mr. Ravi Kumar, Advocate
For the State : Mr. Parmeshwar Mehta, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
TRIVEDI
ORAL ORDER

3 02-09-2016 Heard learned counsel for the petitioner as well as
learned Addl.P.P. along with learned counsel for O.P. no. 2.

Petitioner is the victim and with regard to her kidnapping. O.P. no.2, her father had instituted instant case bearing Bachhwara P.S. case no. 156/2013 having been registered under Sections 363, 366(A), 504, 506/34 of the Indian Penal Code. After being recovered, she is languishing at the remand home Gaighat, Patna as she had revolted against her parents during course of her statement under Section 164 of the Code of Criminal Procedure, though being a minor. On the basis of the findings of the medical board wherein, her age has been estimated in between

15-16 years on 29.05.2013, claiming herself to be a major, she asked for her release which, the learned lower court vide order dated 28.10.2015 has rejected and on account thereof, the instant petition has been filed.

How the age of a victim is to be ascertained, that has been taken into consideration in ***Jarnail Singh v. State of Haryana reported in 2013 Cr.L.J. 3976*** wherein it has been observed that

“ 19. In order to support his contention, that the prosecutrix was not a minor at the time of occurrence, learned counsel for the appellant place reliance on the judgment rendered in Sunil vs. State of Haryana, AIR 2010 SC 392. Ordinarily, we would have extracted the observations on which reliance was place, but for reasons that would emerge from out conclusion, we consider it inappropriate to do so.

20. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007

(hereinafter referred to as the 2007 Rules). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under.

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 of 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 other 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, 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) of (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 of, as the case may be, the Committee, for the reasons to be recorded by them, may, if

considered necessary, given 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 off 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. ”

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a

victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In

case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.”

The aforesaid view has also been followed in *State of M.P. vs. Anoop Singh reported in (2015) 7 SCC 773*.

That being so, the methodology having been adopted by getting the victim examined by the doctor for the purpose of ascertaining age is found not sustainable in the eye of law as such, it can't be a basis for entertaining the prayer of the petitioner that being so, the prayer of the petitioner is rejected.

However it is made clear that in case a prayer is made on behalf of petitioner on that very score, the learned Lower Court will proceed to follow-up the procedure so laid down by the Hon'ble Apex Court in *Jarnail Singh v. State of Haryana* (supra) case and will decide whether the petitioner happens to be minor or major and on the basis thereof, will pass appropriate order in accordance with law.

(Aditya Kumar Trivedi, J.)

rinkee/-

U		T	
---	--	---	--