

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 255 of 2016**

Naresh Sahu S/o Johat Ram Sahu, aged 17 years (now aged 23 years) R/o Pachripara, Kurud, P.S. - Kurud, District - Dhamtari (CG)

---- **Petitioner****Versus**

The State of Chhattisgarh through the Station House Officer, P.S. Kurud, District - Dhamtari Chhattisgarh

---- **Respondent**

For Petitioner	:	Mr. J.K. Gupta, Advocate.
For Respondent/State	:	Mr. L.K. Sharma, Panel Lawyer.

Order On Board**04/04/2016**

1. With consent of the parties, matter is heard finally at motion stage itself.
2. Facts in brief required for adjudication of instant CRMP are that police of Kurud, Distt. Dhamtari after registering Crime No. 184/2008 under Section 302 of the Indian Penal Code, 1860 had filed charge sheet against the petitioner before the Judicial Magistrate First Class, Kurud. Said Magistrate committed the matter. Learned Additional Sessions Judge, Dhamtari vide order dated 28-1-2009 held that the juvenile in conflict with law was below the age of 18 years on the date of incident i.e. 23-5-2008, hence directed that the case be filed before the Juvenile Justice Board. On 11-2-2009, charge sheet was filed against the petitioner/juvenile in conflict with law before the Juvenile Justice Board, Raipur. The petitioner had filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (in brevity 'Cr.P.C.') being CRMP No. 481/2009. This court vide order dated 11-12-2009 directed the Juvenile Justice Board to hold a detailed inquiry in relation to the age specially to provide an opportunity of adducing the document of *Kotwari* entry, birth register, school entry register, other evidence necessary for arriving at a definite finding relating to the age of the petitioner. Thereafter on the basis of the said order and further

proceeding, the Juvenile Justice Board, Dhamtari after affording opportunity as directed, vide order dated 5-8-2015 passed in Cr. Case No. 72/2009 held that the petitioner was above the age of 18 years at the time of crime. Hence the Juvenile Justice Board returned the charge sheet to the concerned Station House Officer of police station for filing the same before competent court and discharged the petitioner/juvenile in the said case. Against said order, the petitioner preferred Cr. Revision No. 50/2015 before the Additional Sessions Judge, Dhamtari. The Revisional Court vide order dated 7-12-2015 held that the Juvenile Justice Board has not committed any illegality, impropriety or incorrectness in the order dated 5-8-2015 hence held that the same be affirmed and dismissed the revision filed by the petitioner. Against said order, the petitioner has preferred instant CRMP praying that jurisdiction available under Section 482 of the Cr.P.C. may be invoked, order dated 7-12-2015 passed by the Revisional Court be set aside and the Juvenile Justice Board be directed to proceed with the case considering the petitioner to be juvenile on the date of incident.

3. Heard learned counsel for the parties.
4. Learned counsel for the petitioner submits that as per statement of mother of the petitioner Smt. Basanti Bai, the petitioner born on 17-7-1991. She never sent him to school, also not recorded his name in Kotwari register. In the inquiry, Ration card and Adhar card were filed. Both were prepared prior to the date of incident. The petitioner adduced witnesses. They deposed that the petitioner never went to school and as per entries made in the Ration card and Adhar card the birth of the petitioner is mentioned as 17-7-1991. Further ground taken is that reliance cannot be placed on the report of ossification test as the same is based on presumption hence not correct. It is further submitted that as the petitioner never went to school, his name was not recorded in Kotwari register and on the basis of Ration card and Adhar card, both the courts below have committed an error in arriving at a finding that the date of birth of the petitioner is 25-5-1988. Hence it is submitted that the petitioner may be held as juvenile on the date of incident and by not appreciating the above facts, both the courts

below committed error. It is prayed that inherent jurisdiction of this Court be invoked and the revisional court's order dated 7-12-2015 be quashed and the relief as sought may be granted.

5. For the purpose of appreciation of the arguments advanced, instant CRMP, the orders passed by both the courts below, the order passed by this Court in CRMP No. 481/2009 dated 11-12-2009 are perused. After perusal of the material available, it is found that the trial Court appreciated that the mother of the petitioner has stated that she is stating the age of the petitioner on the basis of memory and she does not know as to whether her husband i.e. father of the petitioner admitted him to Primary School, Kurud wherein date of birth of petitioner was mentioned as 25-5-1988. As the mother was illiterate, she does not know regarding months January, February, March, April, also she failed to state her date of birth and the date of marriage including she was not in a position to state the date of last Holi and Dipawali. Therefore, the trial court observed that mother of the petitioner is an interested witness and she is not deposing truth. The petitioner has stated that his mother is not literate and he is mentioning the date of birth as the mother told him. During investigation, the school register and other evidence was adduced. The court below appreciated that as all other brothers and sisters of the petitioner went to school, their names are in the school register so it is highly improbable as to why the petitioner only did not go to school and he failed to demonstrate whether any other person namely Naresh son of Johat Ram is also living in the same village or ward as mentioned in the school register. The basis for recording the date of birth in Ration card and Adhar card is not found to be trustworthy and the school register and the entries were not denied specifically. Upon considering all the evidence adduced, the trial Court appreciated that witness Dinupal admitted that petitioner was also with him in the Primary School, Kurud. The trial Court held that there is no reason to make any suspicion about statement of said witness Dinupal. As per school register, date of birth is mentioned as 25-5-1988 which is also supported by ossification test. On the other hand, the evidence adduced was not of sterling in nature and therefore, the trial Court

held that on the date of incident, the petitioner was aged about 20 years. The court below vide detailed order appreciated all the evidence adduced. The revisional court also appreciated entire facts and affirmed the order passed by the trial Court. In the considered view of this Court whatever evidence petitioner had adduced does not inspire confidence so as to hold the petitioner to be below the age of 18 years at the time of incident. Courts below have not committed any error by placing reliance in the school register and also in the light of other relevant evidence surfaced even by the witnesses adduced on behalf of the petitioner.

6. On due consideration, this court is of the considered view that both the courts below have not committed any illegality, impropriety or incorrectness in arriving at the conclusion that the petitioner was above the age of 18 years at the time of incident. Both the orders do not call for any interference.
7. In view of above, the petition is dismissed as not maintainable.

Sd/-
(Chandra Bhushan Bajpai)
Judge