

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.91 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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1. Rajesh Kumar under the guardianship father of Butan Singh, Resident of Village
- Barki Kharwan, P.O. - Lal Bhadsara, P.S. - Dulhin Bazar, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ambarish Kumar
For the State : Mr. S. N. shukla, APP
For the B.S.E.B. : Mr. Gyan Shankar

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

Date: 13.01.2017

Heard learned Counsel for the petitioner, learned Counsel appearing on behalf of the Bihar School Examination Board and learned Additional Public Prosecutor representing the State.

2. The petitioner's claim for juvenility has been rejected by learned Additional Sessions Judge I, Danapur, in Sessions Trial No. 1148 of 2013, which has been challenged in the present criminal revision application filed under Section 53 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3. In course of hearing of the present matter, the



petitioner has relied on mark sheet issued by the Bihar School Examination Board, showing the marks obtained by the petitioner in the matriculation examination, in which he had failed. The date of birth mentioned in the said mark sheet is 15.02.1996. Based on that, it is the case of the petitioner that his age, as on the date of occurrence, would be 17 years 03 months and 04 days and, therefore, he was a juvenile as on the date of occurrence.

4. The genuineness of the said mark sheet has been verified and a report to this effect has been submitted by the Chairman, Bihar School Examination Board, Patna, himself.

5. The petitioner has relied on a Supreme Court's decision, in the case of **Shah Nawaj v. State of U.P. and Another**, reported in **[2011] 9 S.C.R. 859**, in support of his contention that on the basis of entry of date of birth in the mark sheet, the petitioner is entitled to be declared as a juvenile. He has placed reliance on paragraph 19 of the said decision, which reads thus:

"19. The documents furnished above clearly show that the date of birth of the appellant had been noted as 18.06.1989. Rule 12 of the Rules categorically envisages that the medical opinion from the medical board should be sought only when the matriculation certificate or school certificate or any birth certificate issued by a corporation or by



any Panchayat or municipality is not available. We are of the view that though the Board has correctly accepted the entry relating to the date of birth in the mark sheet and school certificate, the Additional Sessions Judge and the High Court committed a grave error in determining the age of the appellant ignoring the date of birth mentioned in those documents which is illegal, erroneous and contrary to the Rules.”

6. This is not in dispute that the petitioner has not passed matriculation examination and, therefore, he does not have matriculation certificate in his possession. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, stipulates following documents which can be taken on evidence in age determination enquiry of a person:-

- (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.

7. The question of matriculation certificate would arise only if a person is matriculate. In such circumstance, the decision, in the case of **Shah Nawaj** (supra) shall have no



application.

8. Since none of the documents as stipulated in Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007, are available in accordance with the scheme of the Rules, the opinion of the Medical Board will be required to be sought for determining petitioner's claim of juvenility.

9. In my opinion, this ought to have been done by the learned Additional Sessions Judge I, Danapur, while rejecting the petitioner's claim of juvenility.

10. The order, dated 26.07.2014 is accordingly set aside. The petitioner is directed to appear before the Juvenile Justice Board, Patna, whereafter the Juvenile Justice Board, Patna, shall proceed with deciding the claim of the juvenility of the petitioner after seeking opinion of a Medical Board in accordance with Rules 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007.

11. This application stands allowed with the observations, as above.

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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