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

+ **CRL.REV.P. 252/2019 and CRL.M.A. 4842/2019 &
4844/2019**

BABLU

..... Petitioner

Through: Mr R.N. Yadav, Advocate.
versus

STATE

..... Respondent

Through: Ms Kusum Dhalla, APP for
State.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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24.02.2020

VIBHU BAKHRU, J

1. The petitioner has filed the present revision petition, *inter alia*, impugning an order dated 31.03.2018 passed by the Juvenile Justice Board, whereby the petitioner was found to be a major and accordingly, his files were sent to the concerned Court.

2. The petitioner is an accused in FIR bearing no. 16/2018, under Section 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), registered with PS F.P. Beri, Delhi. An inquiry had been conducted regarding the age of the petitioner and two doctors, Dr Gaurav Vinod Jain (CW1) and Dr Puneet Garg (CW2) were examined. They opined that the petitioner is a major and is more than twenty-one years of age on the date of examination; that is, as on 29.01.2018. It was alleged that the offence had been

committed in June/July 2017. Considering the above, the learned JJB concluded that the petitioner was not a minor on the date of the offence.

3. The petitioner has filed the present petition, *inter alia*, stating that subsequent to passing of the said order, the petitioner had found a certificate dated 01.07.2010, issued by the Children's Academy J.H. School, Bareilly, which indicates the petitioner's date of birth to be 30.05.2000.

4. The learned counsel for the appellant submits that in view of the above, the impugned order is liable to be set aside as a certificate issued by the school is required to be given precedence over medical examination.

5. It is seen that the certificate produced by the petitioner is a transfer certificate, which indicates that the petitioner was admitted in class sixth of the Children's Academy J.H., Bareilly on 09.07.2009 and was removed on 15.05.2010. Clearly, this is not a certificate issued by the school first attended by the petitioner and it is also not a matriculation certificate.

6. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides for an order of preference in respect of evidence for determining whether the person is a minor or not on the date of the offence. Section 94 of the said Act is relevant and reads as under:

“94. Presumption and determination of age.– (1)

Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the

purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age.

(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —

- (i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;
- (ii) the birth certificate given by a corporation or a municipal authority or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall,

for the purpose of this Act, be deemed to be the true age of that person.”

7. In the first instance, a matriculation or equivalent certificate is required to be considered. If the same is not available, then the date of birth certificate from the school first attended by the person could be considered, and in absence of the two, the birth certificate given by a corporation or a municipal or a panchayat can be considered. In absence of any of these, a medical opinion could be sought.

8. In the present case, the certificate produced by the petitioner is not a matriculation certificate; a certificate of the date of birth from the school first attended; or a birth certificate given by a corporation. In absence of any of these certificates, the petitioner’s age was required to be determined on the basis of a medical opinion. In the present case, such an opinion was sought by the learned JJB and the petitioner’s age was determined on the basis of such opinion.

9. The impugned order does not fall foul of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and this Court finds no infirmity with the impugned order.

10. The petition is, accordingly, dismissed. The pending applications are also disposed of.

VIBHU BAKHRU, J

FEBRUARY 24, 2020
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