

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.286 of 2018

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Ajit Singh @ Ajit Kumar Singh S/o Late Nageshwar Prasad Singh, R/o
Kashimpur, P.S.- Khagaria Mufassil, District- Khagaria.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Department of Home,
Government of Bihar
2. Satya Narayan Mahato, S/o Late Uchit Mahto, R/o Village- Rahuwa, P.S.-
Khagaria, District- Khagaria.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate Mr. Anuj Kumar, Advocate
For the Respondent/s	:	Mr. Sanjay Parasmani, AC to GP-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

11 23-06-2022 Heard learned counsel for the petitioner and learned
counsel for the State.

This writ application has been filed for the following
reliefs:

“(A) A writ in the nature of certiorari or any other
appropriate writ/s, order/s direction/s quashing:-

(i) The Reference Letter No. 193/20.11.2014 vide which
the medical board constituted by the Civil Surgeon,
Khagaria, assessed the age of the petitioner to be
between 40 and 45 years and thus took a mean and
assessed the final age on 27.11.2014 as 42.5 years thus
concluding that the petitioner was 19 years of age as on
the date of occurrence on 28.05.1991.

(B) A writ in the nature of mandamus or any other
appropriate writ/s, order/s direction/s, directing the
authorities:-



- (i) To consider the juvenility of the petitioner in terms of the report of the medical board dated 16.12.1991 which assessed the age of the petitioner to be 15-16 years and again a report dated 07.03.1992 which assessed the age of the petitioner as 15 years at the time of occurrence.
- (C) To any other relief/s to which the petitioner is found entitled to.”

Learned counsel for the petitioner submits that on the basis of medical report dated 27.11.2014 alone the Juvenile Justice Board, Khagaria has assessed the age of the petitioner to be 19 years on the alleged date of occurrence. Learned counsel submits that in view of the recent judgment of the Hon’ble Supreme Court in the case of **Rishipal Singh Solanki vs. State of Uttar Pradesh and Ors.** reported in **AIR 2022 SC 630**, the ossification test cannot be the sole criteria for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of the medical opinion.

On perusal of the record this Court, however, finds that the petitioner has not challenged the order determining the age of the petitioner passed by the learned Juvenile Justice Board, Khagaria. The petitioner is seeking quashing of the opinion of the medical board which may perhaps be not possible as this Court sitting in its writ jurisdiction would not substitute its own opinion in the place of the opinion of the experts.



To this Court, it is crystal clear that whatever be the contention of the petitioner as regards the medical opinion of the experts based on which the age determination of the petitioner has been done that could have been agitated only by way of filing an appeal against the order of Juvenile Justice Board, Khagaria in terms of sub-section (1) of Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as the “Act of 2015”).

Having sensed that this writ application may perhaps not proceed and the interest of the petitioner lies in availing the remedy of appeal only, Mr. Ansul, learned counsel for the petitioner seeks permission to withdraw this application with liberty to the petitioner to avail the remedy of appeal before the Special Judge, Children Court, Khagaria.

Mr. Sanjay Parasmani, learned counsel for the State is present and has no objection to the petitioner withdrawing this writ application in order to seek his remedy of appeal.

This Court permits the petitioner to withdraw this application and grants him liberty to avail the remedy of appeal under sub-section (1) of Section 101 of the Act of 2015.

Mr. Ansul, learned counsel has expressed a concern as regards the issue of limitation which may come in course of



consideration of his appeal on merit. Although, this Court would not express any final view on the matter but would at least indicate to this extent that this writ application is pending in the High Court since 19.01.2018 and the petitioner has been prosecuting his writ application under a legal advise. The issue is that of a claim of juvenility, therefore, the petitioner deserves a consideration on his appeal on merit. The learned Special Judge shall, therefore, deal with the issue of limitation if the appeal is preferred within a period of 30 days from today keeping in view the observation of this Court.

(Rajeev Ranjan Prasad, J.)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

