

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

C.R.R. 2891 of 2022

***Bishal Ruidas
Vs.
State of West Bengal & Anr.***

For the petitioner : Mr. Biswajit Manna, Adv.

Heard on : 04.11.2022

Judgment On : 04.11.2022.

Bibek Chaudhuri, J.

The petitioner has filed the instant criminal revision challenging the legality, validity and propriety of the order dated 13th July, 2022 passed by the learned Judge, Special Court, (POCSO Act)-cum-Additional Sessions Judge, 1st Court at Durgapur in POCSO Case No.1 of 2021.

It is submitted by the learned Advocate for the petitioner as follows:

The petitioner along with others are facing trial in connection with Pandabeswar Police Station Case No.129 of 2020 dated 26th December, 2020 under Sections 4/6 of the Protection of Children from

Sexual Offences Act and Section 376DA of the Indian Penal Code in the Court below. On 13th July, 2022 the petitioner filed an application under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act alleging, inter alia, that at the time of commission of alleged offence, the petitioner was juvenile. The learned Trial Judge rejected the said application on the ground that similar application was previously made by the petitioner and vide order dated 11th January, 2021 the Trial Court rejected the said application on due consideration of ossification test report of the petitioner.

It is contended on behalf of the petitioner that on 11th January, 2021 when the petitioner's earlier petition was considered and rejected, he was not able to produce the birth certificate as it was misplaced. During pendency of the case birth certificate of the petitioner was found and on the basis of the said birth certificate the petitioner claimed his juvenility at the time of commission of offence, i.e. on 26th December, 2020. The learned Advocate for the petitioner has also produced the birth certificate of the petitioner which was registered on 14th February, 2015.

It is also submitted by the learned Advocate for the petitioner that the learned Trial Judge failed to apply sub-section 2 of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and acted illegally in not directing inquiry as to the age of the petitioner.

Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 runs thus:-

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

PROVIDED that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance

with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

- (3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to be Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.
- (4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

It is ascertained from the submissions made by the learned Advocate for the petitioner that the case is at the stage of trial. The learned Trial Judge vide order dated 11th January, 2021 considered the ossification test report of the petitioner and came to a finding that at the time of commission of offence, the petitioner was major or, in other words, he was not a juvenile. Subsequently, the petitioner cannot claim his juvenility on the basis of the birth certificate. Thus, there are conflict between two documents – i.e. expert opinion and the other is the birth

certificate of the petitioner. None of the documents were exhibited. Therefore, at this stage, I do not find any illegality or material irregularity in the impugned order.

However, it is open for the petitioner to take the plea of juvenility during trial and it is also open for the petitioner to bring his birth certificate in evidence during trial by adducing evidence.

The learned Trial Judge is at liberty to decide the said issue in accordance with law.

Moreover, this Court is not inclined to admit the instant revision because of the fact that had the petitioner being a juvenile, he could not have filed the instant revision of his own. On the contrary, the instant application ought to have been filed by his guardian or next friend.

Accordingly, the instant revision is **disposed of**.

(Bibek Chaudhuri, J.)

**Mithun De/
A.R. (Ct).
SI No.13.**