

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.222 of 2022

Arising Out of PS. Case No.-596 Year-2019 Thana- MADHAURAH District- Saran

Suraj Kumar Singh @ Suraj Singh @ Surja Son Of Late Ram Naresh Singh
@ Naresh Singh Resident Of Village And P.O.-Basdilla, P.S.-Jalalpur,
District-Saran.

... .. Petitioner/S

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajesh Kumar Singh, Sr. Advocate Mr. Anil Kumar Tiwary, Advocate Mr. Ranvijay Naraijan Singh, Advocate
For the Respondent/s	:	Mr. Akshansh Ankit, Advocate Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 17-01-2023

Heard learned counsel appearing on behalf of the parties.

2. This Criminal Revision Petition has been filed against the order dated 08.01.2021 passed by the Learned Juvenile Justice Board, Saran, in Sessions Trial No. 43/2021 whereby and whereunder the revisionist/petitioner was declared to be a major on the date of occurrence (20.08.2019) and his age was assessed as 18 years 7 months 19 days on the date of occurrence.

3. It is submitted by learned counsel appearing on behalf of the petitioner that on the date of incident, which took place on 20.08.2019, the petitioner was minor as his date of birth appears from his school leaving certificate is 15.03.2002, which was



issued by D.B.I. Public School, on 03.04.2013. It is also submitted that the school transfer certificate issued by the Education Department, Government of Bihar, dated 01.12.2015 is also showing the date of birth of petitioner as 15.03.2002 and as such, on the date of occurrence, the age of petitioner was of 17 years and 5 months.

4. It is further submitted that interestingly, the petitioner has declared juvenile by J.J.B. Board, Saran, in Darauda P.S. Case No. 188 of 2019 of District- Siwan, where occurrence took place on 27.08.2019 and the age of petitioner was assessed thereof as 17 years, 5 months and 14 days. It is further submitted that the impugned order is within the frame of patent illegality, as when on occurrence of subsequent date, the petitioner was declared juvenile how by ignoring all such evidence, petitioner was declared adult for the occurrence of previous occasion, by taking only the note of medical board finding.

5. While arguing over the subject, the learned counsel relied upon paragraph nos. 20, 21 and 22 of the judgment passed in the matter of **Rishipal Singh Solanki Vs. State of Uttar Pradesh & Ors. reported in AIR 2022 SC 630** read as follows:-

“20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be



decided prima facie on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining : (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. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year. If a juvenile in conflict with law was found to be below 18 years, an order had to be passed declaring the status of the juvenility by the Court. The said procedure was also applicable to dispose off cases where the status of the juvenility had not been determined in accordance with the Act and the Rules made thereunder.

21. On repeal of JJ Act, 2000 and on the enforcement of JJ Act, 2015, the procedure to be followed

when a claim of juvenility is raised before any court, other than a Board is stipulated under section 9(2)&(3). The same reads as under –

“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.

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(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 the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.”

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There is no corresponding Rule to determine juvenility akin to Rule 12 of the JJ Rules, 2007.

22. On the other hand, under section 94 of the JJ Act, 2015, a presumption is raised that when a person is brought before the JJ Board or the Child Welfare Committee ('Committee' for short) (other than for the purpose of giving evidence) and the said person is a child, the JJ Board or the Committee 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. But where the said Board or the Committee has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the JJ Board or the Committee, 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. The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. For immediate reference section 94 of JJ Act, 2015 is extracted 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 –

a) 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;

b) the birth certificate given by a corporation or a municipal authority or a panchayat;

c) 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.”

6. Learned counsel has further relied upon paragraph no. 29 of the judgment in the case of **Rishipal Singh Solanki (supra)** read as follows:-

“29. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:

(i) A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

(ii) An application claiming juvenility could be made either before the Court or the JJ Board.

(iia) When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.

(iib) If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

(iic) When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence



and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i),

(ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(v) That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of [section 94](#) of 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

(vi) That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a



person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

(vii) This Court has observed that a hyper-technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

(viii) If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per [Section 35](#) of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(x) Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the [Indian Evidence Act](#) viz., [section 35](#) and other provisions.

(xi) Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

7. In view of the above facts and circumstances by



taking note of the legal position and the factual scenario that in the subsequent date of occurrence, the petitioner has been declared juvenile, the impugned order dated 08.01.2021 passed by the Learned Juvenile Justice Board, Saran, in Sessions Trial No. 43/2021 is set aside and the learned court below is directed to pass a fresh order by taking note of school certificate and the earlier decision of the J.J.B. as discussed above, at the earliest.

(Chandra Shekhar Jha, J)

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