

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No 422 of 2024**

Arising Out of PS. Case No.-26 Year-2022 Thana- MAIN P.S. District- Gaya

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Timal @ Akhilesh Kumar @ Aklesh Kumar @ Aklesh Manjhi Son of
Durgesh Manjhi @ Durga Manjhi R/o Village - Mocharim Tola Shreepur,
P.S.- Bodh Gaya, District - Gaya

... .. Petitioner/s

Versus

1. The State of Bihar
2. Akhilesh Yadav Son of Late Laxman Yadav R/o Village - Baghpur, P.S.-
Maigra, District - Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Shiva Shankar Sharma
For the Respondent/s	:	Mr.Syed Ehteshamuddin

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CORAM: HONOURABLE MR JUSTICE ARVIND SINGH CHANDEL

ORAL JUDGMENT

Date : 23-08-2024

This revision petition has been preferred by the applicant against the order dated 14.03.2024 passed by the learned Special Judge (Children Court), Gaya in Criminal Appeal (Juvenile) No 10 of 2022 whereby the order dated 15.10.2022 passed by the Principal Magistrate, Juvenile Justice Board, Gaya has been affirmed by the learned appellate Court.

2 According to the case of the prosecution, on 15.06.2022, the victim, i e, minor girl of 15 years had gone to attend the call of nature but did not return. A missing report of the said girl was lodged by her father. During the course of



investigation, the petitioner was taken in custody for the alleged offence punishable under Sections 302, 376 and 120B of the IPC and Sections 4, 6 of the POCSO Act.

3 On 23.07.2022, i.e., after arrest, the petitioner was produced before the learned Special Judge (POCSO), Gaya and as per his physical appearance, the learned Special Judge sent him to Observation Home holding his age to be 17 years and the case was sent to JJB, Gaya. As per the order dated 24.08.2022 passed by the JJB, Gaya, Medical report of the applicant was called for and the applicant was examined by the Medical Board on 07.09.2022 and his age has been assessed between 19 – 20 years by the Medical Board. On the basis of said medical report, the applicant has been declared major vide order dated 15.10.2022 by the JJB and record has been sent to the Court of Special Judge, POCSO, Gaya.

4 The order dated 15.10.2022 passed by the JJB has been challenged by the applicant before the learned Special Judge (Children Court), Gaya which has been dismissed by the learned Special Judge vide his impugned order dated 14.03.2024. Hence, this revision petition has been filed.

5 Learned counsel for the petitioner would submit that the order passed by the JJB as well as the learned Special Judge is not only illegal but also incorrect and perverse. He submits that as



per the entry in the Aadhar Card and other documents, the age of the applicant at the time of the incident was 17 years only and the learned Special Judge also assessed his age about 17 years at the time of transmitting the record to the Court of JJB. Learned counsel further submits that the Medical Board gave its opinion that at the time of incident, the applicant was between 19 to 20 years of age. If the upper age limit, i.e. 20 years, is taken as it is then also a variation of plus and minus two years is available there and, as contained in Rule 12 (3) (b) of the Juvenile Justice (Care and Protection of Children) Rule 2007, the applicant is entitled to get an additional benefit of one year. Reliance has been placed on the judgment passed by this Court in the case of son of ***Masiha Ansari @ Mosiha Ansari -Versus- The State of Bihar & Another***, reported in ***2022 (3) PCCR 331*** and the judgment of the Apex Court in the case of ***Darga Ram @ Gunga -Versus- The State of Rajasthan***, reported in ***(2015) 2 Supreme Court Cases (Criminal) 299***.

6 Heard both the counsel appearing for the parties and perused the impugned order as well as the documents annexed with the petition.



7 Perusal of the report of Medical Board clearly shows that the Medical Board assessed the age of the petitioner between 19 – 20 years.

8 Hon'ble Apex Court in the case of Darga Ram @ Gunga (supra) observed and held thus:

“17. The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i e 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by one year in terms of Rule 12 (3) (b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile.”

9 Applying the said, if the upper limit of the age, as observed by the Medical Board, i e, 20 years is considered as it is, the applicant is entitled to get the benefit of two years and as contained in Rule 12 (3) (b) of the Rules, he is also entitled to get



additional benefit of one year in terms of lowering his age then the applicant would be of 17 years. Therefore, at the time of the incident, he was a juvenile.

10 Resultantly, the impugned dated 14.03.2024 as well as the order dated 15.10.2022 passed by the JJB are liable to be and are hereby set aside.

11 The applicant is directed to be sent to the Observation Home and the learned Special Judge is also directed to immediately send the record to the concerned JJB for taking further action.

12 This order order should be communicated immediately to both the Courts below.

13 This revision petition is allowed.

(Arvind Singh Chandel, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
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