

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.564 of 2023

Arising Out of PS. Case No.-84 Year-2019 Thana- KOPA District- Saran

Naushad Ali @ Naushad Sah, Son of Rustam Shah, Under Guardian of Mother Namely Imaman Bibi, Resident of Village - Anwal, P.S. - Kopa, District - Saran at Chapra.

... .. Petitioner

Versus

1. The State of Bihar
2. Nagendra Sharma, Son of Late Kapildev Sharma, Resident of Village - Anwal, P.S. - Kopa, District - Saran at Chapra

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Mukesh Kumar, Advocate Mr. Jay Prakash Sharma, Advocate
For the State	:	Mr. Ajay Kumar Jha, APP
For the O.P. No. 2	:	Mr. Anil Kumar Singh, Advocate Mr. Sanjay Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 23-01-2024

Heard Mr. Mukesh Kumar, learned counsel for the petitioner and Mr. Anil Kumar Singh, learned counsel for the Opposite Party No. 2 as also Mr. Ajay Kumar Jha, learned APP for the State.

2. This revision application has been preferred for setting aside the judgment dated 10.07.2023 passed by learned 1st Additional Sessions Judge-cum-Children Court, Saran at Chapra in Criminal (Juvenile) Appeal No. 09 of 2023 arising out of Kopa P.S. Case No. 84 of 2019 registered under Sections 147, 148, 149, 323, 324, 307, 302 and 504 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') whereby and whereunder the



learned Appellate Court has been pleased to dismiss the appeal and affirm the order dated 26.04.2023 passed by learned Juvenile Justice Board, Saran at Chapra (hereinafter referred to as the 'Board') in Enquiry No. 2655 of 2022. The learned Board has assessed the age of the petitioner to determine the plea of juvenility. By the impugned order, it has been held that the petitioner was major on the alleged date of occurrence.

Submissions on behalf of the Petitioner

3. Learned counsel for the petitioner submits that the petitioner had appeared in his matriculation examination from the Central Board of Secondary Education, New Delhi (hereinafter referred to as the 'CBSE') from Children Delight School, DB Road, Saran at Chapra and as per his matriculation certificate, his date of birth is 01.08.2003. The alleged occurrence has taken place on 10.06.2019, therefore, the petitioner would be below 16 years of age on the date of occurrence. Reliance in this regard has been placed on Annexure '2' which is the certificate of the matriculation issued by the CBSE.

4. Learned counsel for the petitioner submits that earlier the petitioner had moved this Court in Cr. Revision No. 268 of 2020 against the order dated 27.08.2019 passed by the learned Board declaring the petitioner major. The said revision application



was withdrawn vide order dated 05.07.2021 with liberty to the petitioner to seek his remedy before appropriate court in appropriate jurisdiction. The petitioner, thereafter availed remedy of appeal before the learned 1st Additional District and Sessions Judge-cum-Children Court, Saran at Chapra in Criminal (Juvenile) Appeal No. 20 of 2021. The learned Appellate Court affirmed the order of the Board. Thereafter, the petitioner once again moved this Court in Cr. Revision No. 624 of 2021. This time the order of the learned Appellate Court was set aside and the matter was remitted to the Board to consider the plea of juvenility afresh.

5. It is submitted that in course of inquiry, the petitioner relied upon Exhibit 'B' which is the admission register of Indian Public School, Kopa, Chapra. In the admission register, the name of the petitioner has been entered vide Admission No. 162 of 2011 dated 21.01.2011 and in the date of birth column, his date of birth has been shown as 01.08.2003. It is submitted that the entry made in the admission register of the private school is not reliable. It is submitted that Exhibit 'B' has been proved by EW-2 who is the Principal of Indian Public School. The Board has recorded a finding that it is not known as to when the admission register was prepared and in this regard EW-3, who is the Administrator of



Children Delight School, is unable to explain. The admission register has not been signed by any person.

6. Learned counsel further submits that the Board has failed to appreciate the scheme of Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the Act of 2015'). It is also submitted that the Board has though placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki versus the State of Uttar Pradesh and Others** reported in (2022) 8 SCC 602, it would appear that the ratio of the said judgment would not apply in the facts of the present case.

Submissions on behalf of O.P. No. 2 and the State

7. On the other hand, learned counsel for the Opposite Party No. 2 and the State have jointly opposed this application. It is submitted that in course of enquiry, one Mukesh Yadav, the Incharge Principal of Utkramit (Middle) School, Arwal, Kopa appeared as EW-1. He produced the admission register and marksheet register of the school. In the admission register, the name of this petitioner is mentioned at serial no. 258 showing his father's name and date of birth as 05.04.1998. The date of admission is 01.06.2004 and the entries made therein have been counter-signed by the former Principal Ram Ayodhya Prasad. In



the marksheet of class V, entered in the marks register at serial no. 51 the name of the petitioner is mentioned at serial no. 51 and the marks allotted to him in different papers are also mentioned. The admission register of Class III was also produced in which the name of the petitioner is mentioned at serial no. 25 which has been marked as Exhibit '1'.

8. Learned counsel submits that EW-1 has proved the attendance register of class IV, V, VI, VII and VIII and in all these registers, the name of the petitioner has been duly entered which have been exhibited. The EW-1 has stated in his examination-in-chief that the date of birth was entered at the instance of the guardian of the petitioner and the admission register is duly certified by the Headmaster of the school.

9. Learned counsel for the Opposite Party No. 2 submits that EW-2 who is the Principal of Indian Public School, Kopa produced an admission register of the year 2010-11 in which the name of the petitioner has been mentioned at serial no. 162 and his date of birth is mentioned as 01.08.2003 in UKG. According to EW-2, this date of birth has been mentioned in the register at the instance of the brother of the petitioner and there is no declaration letter in this regard. This witness was suggested in course of his cross-examination that the date of birth entered in the said column



has been recorded in the handwriting of somebody else and it was suggested that the admission register of the school has been interpolated and the column showing the signature of the guardian has some stain mark.

10. Learned counsel for the Opposite Party No. 2 further submits that so far as the scheme of Section 94 of the Act of 2015 is concerned, it may be found that Section 94 raises a presumption with regard to the determination of age and 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/Board, as the case may be, shall undertake the process of age determination by seeking evidence by obtaining the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination board, if available. In absence of availability of the above, the birth certificate given by a Corporation or a Municipal Authority or a Panchayat may be obtained but in absence of both the above requirements, the Board shall determine the age of a Juvenile by an ossification test or any other latest medical age determination test. According to Sub-Section (3) of Section 94, the age recorded by the Committee or the Board to be the age of person so brought before it for the



purpose of this act and it will be deemed to be the true age of that person.

11. Learned counsel has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sanjeev Kumar Gupta versus the State of Uttar Pradesh and Anr.** reported in **(2019) 12 SCC 370** and **Rishipal Singh Solanki** (supra).

Consideration

12. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the order of the learned Board determining the age of the petitioner and then the judgment of the learned Appellate Court passed in Criminal (Juvenile) Appeal No. 09 of 2023 are well discussed reasoned order and judgment respectively. The Board has accepted the credibility of the evidences adduced by EW-1 and has refused to accept the case of the petitioner based on Exhibit 'B'. The reasons provided in the impugned order of the Board are convincing one. There is a finding in the order of the Board that on perusal of Exhibit 'B', it appears that the date of birth has been interpolated. The Administrator of the school, who appeared as EW-3, stated before the Board that she was not aware as to when Exhibit 'B' was prepared. Exhibit 'B' did not contain any signature of a Clerk or



the Headmaster of the school and in fact, there is no signature of anyone in the whole admission register.

13. A threadbare discussion has been done by the Board on the quality of evidence adduced by the petitioner and it has been found that Exhibit 'B' is not a reliable piece of evidence. On the contrary, Exhibit 'A' and the attendance sheets which were produced by EW-1 inspired confidence of the Board. In order to examine the correctness of the observations made by the Board in its order, this Court has carefully perused Exhibit 'A' and Exhibit 'X' to 'X-26' produced by EW-1. On perusal, it appears that the Exhibit 'A' is the admission register of a Government school and it has been recorded in one pen. The name of the petitioner appears at serial no. 258 with his father's name and other details. His date of birth has been mentioned as 05.04.1998 and the date of admission in the school is 01.06.2004. In the cross-examination of EW-1, the veracity of Exhibit 'A' and Exhibit 'X' to Exhibit 'X-26' could not be demolished.

14. On the other hand, when this Court perused Exhibit 'B' which has been brought on record by EW-2, this Court agrees with the view taken by the learned Board that there is an interpolation in the column of the date of birth of this petitioner. From the naked eyes, it is found that in the date of birth and



signature column of the parents/guardian of the student, an attempt has been made to erase the earlier entry and there is an attempt of interpolation.

15. So far as the scheme of Section 94 of the Act of 2015 is concerned, it is evident on a bare perusal of the said provision that in a case where the Board has reasonable grounds for doubt regarding juvenility of a child, the Board shall undertake the process of age determination by seeking evidence. Section 94(2) lays down the kind of evidences which may be obtained by the Board. There are three kinds of evidences which are envisaged under the scheme of Section 94 which are being reproduced hereunder for a ready reference:-

“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.”

16. As per sub-Section (3) of Section 94, the age recorded by the Committee or the Board shall be the age of person so brought before it and for purpose of the Act of 2015, it will be deemed to be the true age of the person.

17. In the case of **Sanjeev Kumar Gupta** (supra), the second respondent raised a plea of juvenility saying that on the alleged date of occurrence, he was 16 years 10 months and 11 days. In support of his claim, he relied on a matriculation certificate issued by the CBSE reflecting his date of birth as 17th December, 1998. The Board declared him a juvenile but on appeal preferred against the said order, the learned Sessions Judge remanded the case to the Board for determination of age upon medical examination. Thereafter, a Medical Board was constituted and the second respondent was found about 19 years old. The Board declared that the second respondent was major. It was found that earlier while applying for a driving licence, he had filed a copy of Aadhar Card in which his date of birth was mentioned as 17th December, 1995. The second respondent filed an appeal against the order of the Board which was rejected by the learned



Sessions Judge. The order of the learned Sessions Judge was challenged in the High Court of Judicature at Allahabad in a Criminal Revision and the Revision was allowed. It was declared that on the date of alleged offence, the second respondent was a minor. In coming to this conclusion, the High Court had relied on the provisions contained in Section 7A of the Juvenile Justice (Care and Protection of Children) Act of 2000 (hereinafter referred to as 'the Act of 2000') and Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as 'the Rules of 2007'). The High Court held that the matriculation certificate issued by the CBSE would have to be given precedence over any other evidence of the date of birth having due regard to the provisions contained in Rule 12(3)(a).

In the aforementioned background, the judgment of the Hon'ble High Court came to be examined by the Hon'ble Supreme Court. The Hon'ble Supreme Court examined the aforementioned provisions of the Act of 2000 and the Rules, went through the judgment of the Hon'ble Supreme Court in the cases of **Ashwani Kumar Saxena vs. State of Madhya Pradesh** reported in (2012) 9 SCC 750, **Akbar Sheikh Vs. State of West Bengal** reported in (2009) 7 SCC 415 and **Pawan Vs. State of Uttranchal** reported in (2009) 15 SCC 259 ultimately held as under:-



“.....However, in our view, what must weigh against the second respondent’s submission is that the date of birth which has been recorded in the certificate of the Saket Vidya Sthali completely matches the date of birth which was voluntarily disclosed by the second respondent both while obtaining his driving licence as well as the Aadhaar card. In both those documents, the originals of which were seized during the course of the investigation and have been produced before this Court, the date of birth is reflected as 17 December 1995. The driving license and the Aadhaar card are not standalone documents.....”

18. The Hon’ble Supreme Court held that the date of birth which was forwarded in the roll of students of Maa Anjani Senior Secondary School, Shikohabad was the sole basis of the date of birth which was recorded in the matriculation certificate. The date of birth in the records of Maa Anjani Senior Secondary School where the second respondent was a student from Class V to Class X is without any underlying document, as stated by the Principal in the course of the enquiry before the JJB. The Hon’ble Supreme Court, therefore, set aside the impugned judgment and order of the High Court and held that the second respondent shall be dealt as per the order of the Board rejecting the claim of the juvenility.

19. In the case of **Rishipal Singh Solanki** (supra), the mother of respondent no. 2 before the Hon’ble Supreme Court had



filed Misc. Case No. 16 of 2020 before the Board praying therein to declare respondent no. 2 as juvenile delinquent. In course of inquiry, the appellant entered appearance and he was allowed to cross-examine the mother of respondent no. 2. In the said case, an application was filed on 09.09.2020 before the Board for medical test of respondent no. 2 to ascertain his actual true age. The said application was dismissed vide order dated 14.09.2020 and the matter was ordered to be posted on 23.09.2020 for hearing on the issue of determination of age. Being aggrieved by the rejection of the application dated 09.09.2020 seeking medical test of respondent no. 2, the appellant filed a criminal revision before the learned Sessions Judge, Baghpat and an application before the High Court for the transfer of the proceeding in the Misc. Case No. 16/2020 pending before the Board at Baghpat to some other Board of the State. During pendency of the transfer case, the Board allowed Misc. Case No. 16/2020 filed by mother of respondent no. 2 and declared respondent no. 2 a juvenile delinquent. Assailing the said order, the appellant filed an appeal before the learned District and Sessions Judge, Baghpat, the same was dismissed against which the appellant filed a criminal revision before the High Court. The said criminal revision was also rejected by the High Court. Being aggrieved by the same, the appellant



filed an appeal which came to be considered by the Hon'ble Supreme Court.

20. The Hon'ble Supreme Court has in the case of **Rishipal Singh Solanki** (supra) examined the scheme of Section 94 and Rule 12 of the Rules of 2007 which deals with the procedure to be followed in determination of age. The Hon'ble Supreme Court noticed that on repeal of the Act of 2000 and on enforcement of the Act of 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) and (3) which 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.



(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.”

21. As the Hon’ble Supreme Court also recorded that there is no corresponding rule to determine the juvenility akin to Rule 12 of the Rules of 2007. Section 94 of the Act of 2015 provides for presumption and determination of age. The Hon’ble Supreme Court delineated the difference in the procedure under the two enactments and held that with regard to the documents to be provided as evidence, what were provided under Rule 12 of the Rules of 2007 has been provided under Sub-Section (2) of Section 94 of the Act of 2015 as a substantive provision. Referring to the judgment of the Hon’ble Supreme Court in the case of **Ashwani Kumar Saxena** (supra), the Hon’ble Supreme Court quoted part of paragraph ‘34’ from the said judgment and the same is being reproduced hereunder for a ready reference:-

“34.There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the



correctness of those documents, kept during the normal course of business.

Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.”

22. Again, referring to the judgment of the Hon’ble Supreme Court in the case of **Abuzar Hossain @ Gulam Hossain versus State of West Bengal** reported in **(2012) 10 SCC 489**, the Hon’ble Supreme Court observed that in the said case it has been held that a claim of juvenility may be raised at any stage even after the final disposal of the case. Further as to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a) (i) to (iii) shall definitely be sufficient for prima facie satisfaction of the Court about the age of the delinquent necessitating further enquiry under Rule 12. It has been held that if such documents, prima-facie inspire the confidence of the court, the Court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.



23. In the case of **Rishipal Singh Solanki** (supra), the Hon'ble Supreme Court marked two considerations which would distinguish his case from that of **Sanjeev Kumar Gupta** (supra). In the case of **Sanjeev Kumar Gupta**, there was no underlying document corroborating the CBSE record maintained on the basis of final list of the document forwarded by the secondary school, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of the school which the second respondent therein had attended till class 4 and which was supported by voluntary disclosure made by the accused therein while obtaining both Aadhaar Card and Driving Licence.

24. In the case of **Rishipal Singh Solanki** (supra), it was found that exhibit P-11 and 12, which were relied upon to prove the date of birth of respondent no. 2, were in consonance with the date of birth indicated in the date of birth certificate.

25. In the present case, this Court finds that there is an unimpeachable record in form of admission register of the Government school (Exhibit 'A') and the attendance sheets of class I to VIII which have been marked as Exhibit 'X' to 'X-26'. As regards Exhibit 'B', this Court has already recorded why it fails to inspire the confidence of the Court. Apart from these documents, there is another corroborative document on the record



which is the Medical Board’s assessment of age. This Court has been informed that the petitioner had gone for medical examination on 16.08.2019. A panel of five Members headed by the Civil Surgeon, Saran assessed that this petitioner was aged between 21 to 23 years.

26. In view of the materials available on the record as discussed above, this Court is of the considered opinion that the order passed by the learned Board as well as the Appellate Court are fully in accordance with law and no illegality may be found in the same.

27. The revision application is dismissed.

(Rajeev Ranjan Prasad, J)

SUSHMA2/-

AFR/NAFR	AFR
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