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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 14th November, 2024

+ **W.P.(CRL) 3426/2024**

PHALUTA BAI

.....Petitioner

Through: Mr. S.K. Aggarwal, Mr. Zahid Hanief
and Ms. Sonu Lohia, Advocates along
with Petitioner and her son in person.

versus

GOVERNMENT NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel
(Crl.) for the State with Ms. Priyam
Agarwal & Mr. Abhinav Kumar Arya,
Advocates.

SI Sonika, P.S. New Friends Colony.
The Girl and the Boy, Mr. Shivank
Mishra in person.

Mr. Sushil Raja, SPC for UIDAI (M:
9212717171)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed on behalf of the Petitioner-Phaluta Bai under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2024 ('BNSS') seeking issuance of a writ of habeas corpus for production of her daughter, Ms X, who is stated to be aged about 17 years.
3. It is the case of the Petitioner that her daughter went missing on 4th



October, 2024. The Petitioner is stated to have approached the Police Station New Friends Colony on 18th and 19th October, 2024. However as per the Petitioner, no action was taken. Consequently, the Petitioner approached to the DCP, South-East District, with a written complaint dated 20th October, 2024. On the basis of the said written complaint, an **FIR No. 0279/2024**, under Section 137(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS') was registered on 22nd October, 2024 at P.S. New Friends Colony.

4. According to the Petitioner, the girl-Ms. 'X' is accompanied by one Mr. Shivank Mishra/Respondent No. 6 and the Petitioner had contacted the father of the said Mr. Shivank Mishra. In the complaint, it was alleged that even earlier she had left with Mr. Mishra in Surat itself but had returned 6-7 days later.

5. On 29th October, 2024 notice was issued in this petition. The father of the Petitioner was impleaded as Respondent No. 7. Further, the Court was informed that Respondent No. 7 has informed the Petitioner that the girl, Ms. X and his son had gone to Calcutta. In view thereof, the Court directed that the missing girl as also the boy, Mr. Shivank be produced before the Court on the next date of hearing.

6. On 11th November, 2024, the girl-Ms. 'X' was produced. Her mother and brother were also produced. The Court interacted with the parties in the Chamber. The girl states that she has studied till 5th Standard.

7. During the in-Chamber interaction, the girl, Ms. 'X' clearly stated that her family wanted to marry her off to someone, though she had developed friendship with Mr. Shivank Mishra. However, since there was a compulsion in the family to marry someone else she left on her own free will with her friend. She further stated that she was unwilling to go back to her family as



she is apprehensive that they may forcibly marry her off.

8. Further, on the said date, a school document issued by the MCD Central Zone, Nigam Primary School was produced before the Court. On the basis of the same, it was argued that the date of birth of the girl is 12th July, 2007 and therefore she is a minor. The girl-Ms. 'X' however, claimed that the aforesaid date of birth is incorrect as the mother had given a lower age as she wanted to get her admitted in Standard III. She further submitted that in her Aadhar card, a different date of birth had been given by her mother itself. However, the same was in the possession of her family and they were not producing it as it would have revealed that she is a major. She also stated that her phone, which was seized by the UP Police, has a copy of the Aadhar Card.

9. In view of the categorical stand of the girl that she does not wish to go back to her mother, the Court on 11th November, 2024 directed that the girl be placed in Prayas Juvenile Aid Home, Tughlaqabad, from where she had been produced. The Court then directed the Police to retrieve the phone which was in the possession of the UP Police so that the Aadhar card of Ms. 'X' could be perused. In addition, the Petitioner as also her son as also the boy Mr. Shivank Mishra/Respondent No. 6 was directed to be present. The relevant portion of the order dated 11th November, 2024 reads:

"5. During the in chamber interaction, it is stated by the girl that she got married to one, Mr. Shivank Mishra on her own free will and she is unwilling to go back to her parents currently.

6. There is a doubt expressed as to the date of birth of the girl.

7. Let Mr. Shivank Mishra and his parents be produced before the Court on the next date of hearing.

8. The phone of the girl is stated to be in the possession of the U.P. Police. Let the phone be retrieved and



produced before the Court on the next date of hearing.

9. The girl is not willing to accompany her mother and brother as she is apprehensive of the fact that they may compel her to marry to someone else. 10.

Accordingly, she is directed to be kept in Prayas Juvenile Aid Home, Tughlaqabad, where she is already placed.

11. The concerned Investigating Officer is present and has been apprised of the order.

12. On the next date of hearing, the Petitioner and his son shall also remain present. The girl, Ms. X shall also be produced before this Court on the next date of hearing.”

10. The matter was then taken up on 13th November, 2024. Pursuant to the directions passed on 11th November, 2024, all the parties were present namely, the Petitioner, her son, the girl-Ms. X, Mr. Shivank Mishra/Respondent No.6 and her mother. The Court again had an in-chamber interaction with the parties present.

11. As per the facts informed to the Court, the boy-Mr. Shivank Mishra works in Surat in a diamond manufacturing unit and stated that he is earning a monthly salary of Rs. 60,000/-. The boy's mother was also comfortable in accepting the girl-Ms. 'X'.

12. The copy of the Aadhar card which was retrieved from the phone was also seen which recorded the date of birth of Ms. 'X' as 1st January, 2004. However, some doubts were expressed by the Petitioner and her family as to the genuinity of the Aadhar card. Accordingly, the following directions were issued on 13th November, 2024:

“5. The Court is informed that the mobile phone of the girl, Ms. X was retrieved which contained a copy of the Aadhaar card. The said copy of the Aadhar card shows



that her date of birth is recorded as 1st January, 2004.

6. Since the original copy of the Aadhar Card is not presently traceable, as per the concerned Investigating Officer, Mr. Sushil Raja, Id. Counsel for the Unique Identification Authority of India ('UIDAI') is directed to ascertain the following:-

(i) The genuinity of the copy of the Aadhar Card of the girl, Ms, X produced before the Court.

(ii) The date of issuance of the said Aadhar Card of the girl, Ms. X.

(iii) Whether the date of birth in the Aadhar Card of Ms. X was modified at any point of time.

(iv) If there was any document given at the time of issuance of Aadhar for recording the date of birth of Ms. X.”

13. Today, the Id. Counsel for the Unique Identification Authority of India ('UIDAI') has produced a communication dated 14th November, 2024 by Deputy Director, UIDAI, RO-Delhi, wherein the queries of the Court have been answered as under:

“(i) The genuinity of the copy of the Aadhar Card of the girl, Ms, X produced before the Court.

Answer: The Aadhar in question belongs to Ms. X.

(ii) The date of issuance of the said Aadhar Card of the girl, Ms. X.

Answer: The date of issuance of the said Aadhaar card is 02/05/2015

(iii) Whether the date of birth in the Aadhar Card of Ms. X was modified at any point of time.

Answer: The date of birth in the Aadhaar Card of Ms. X has never been modified.

(iv) If there was any document given at the time of issuance of Aadhar for recording the date of birth of Ms. X.”

Answer: The date of birth as recorded in the enrolment details is 01/01/2004 (Approximate). The date of birth is recorded as approximate when there is no documents



provided for date of birth by the applicant (copy of first enrolment detail is annexed with this letter)."

14. At this stage, the Counsel for the Petitioner relies upon the decision of the Supreme Court passed recently in ***Saroj and Others vs. IFFCO-Tokio General Insurance Co. and Others (2024 INSC 816)*** to argue that the Aadhar card cannot be taken as a proof of date of birth. It is further submitted that under Section 94 of the Juvenile Justice (Care and Protection of the Children) Act, 2015 (hereinafter, 'JJ Act') the birth certificate from the school or from the corporation would have greater credence over other documents/forms of proof of age.

15. The Hon'ble Supreme Court in ***P. Yuvaprakash vs. State Rep. By Inspector of Police 2023 SCC OnLine SC 846***, has laid down the manner in which the age of a minor is to be determined under the POCSO Act. The Court clearly held that recourse may be made to Section 94 of the JJ Act as well for determination of age. Further, the Supreme Court categorically observed that the burden is always on the Prosecution to establish what it alleges i.e., the date of birth of the survivor. The observations in the said judgment are set out below:

*"13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, **the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:***

"(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"

*14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. **In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon.** Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence."*



Thus, the Supreme Court held above that a mere transfer certificate issued by the school cannot be considered for determining the age, in the absence of more credible documents.

16. Further, in a judgement by the Coordinate Bench of this Court in *State vs. Shailesh Kumar (2019) SCC Online Del 8318*, wherein the Court following the decision of *Jarnail Singh vs. State of Haryana (2013) 7 SCC 263*, the Court held that no probative value can be attached to a record unless and until the parents or guardians are examined or the person on whose information the entry may have been made, is examined. The relevant portion of the said decision reads as follows:

“18. It is well settled that an entry of the date of birth made in the school admission register would have evidentiary value only if there is material available based on which the age was so recorded. In the case of Brij Mohan Singh v. Priya Brat Narain Sinha reported as AIR 1965 SC 282, the Supreme Court held that an entry of birth recorded in the school register maintained by an illiterate Chowkidar, was not admissible and had no probative value within the meaning of Section 35 of the Indian Evidence Act.

...

20. The probative value of the entry regarding the date of birth made in a school register has come up for consideration by the Supreme Court and the High Courts in several other cases and the common view expressed is that no probative value can be attached to such a record unless and until the parents are examined or the person on whose information the entry may have been made, is examined.

23. In the present case, the father of the victim, PW-5 deposed that he did not know the date of birth of his daughter as he was illiterate, nor was he in a position to state her current age. He stated that he got the victim



admitted in the school in class-I in the village and at that time, she was about 3-4 years old. In his cross-examination, PW-5 admitted that he did not have any proof regarding his daughter's date of birth. It is therefore clear that the father of the victim had not submitted any document to the school at the time of getting his daughter admitted in class-I, on 12.08.2005, to establish her date of birth as 10.01.2000, as recorded by the school. He was candid enough to state that being illiterate, he did not know the date of birth of the victim and that she was between 3-4 years old when she was admitted in class-I.

24. In the absence of any primary material based on which the age of the victim was recorded in the school register, it is not possible to accept her date of birth as 10.01.2000. Moreover, even the teacher from the school in question, who had appeared as PW-3, had stated that he had given a handwritten document to the police on 17.12.2014 (Ex.PW3/C), wherein he had recorded that when a child attains the age of 5+ years, the parents approach the school for their admission. If one goes by the said statement, then the testimony of the victim's father to the effect that he had got her admitted in class-I when she was about 3 -4 years, cannot be accepted, as it is premised on mere guess work.

The Court thus laid emphasis on the primary material and held that merely on the basis of a school register, the date of birth cannot be accepted.

17. Relying on the aforesaid decisions, this Court in ***State vs. Tofil Ahmad @ Sonu Singh (2024: DHC: 5823-DB)***, while dealing with an appeal under POCSO Act observed that the date of birth of the survivor mentioned in the School Admission and Withdrawal Register cannot be taken in evidence, as the same could not be established by the parties therein. The relevant portion of the judgment is extracted hereinunder:



“36. Perusal of Section 94 of the JJ Act shows that any of the following documents are required for establishing the age of the minor: i) Date of birth certificate from school; ii) Matriculation or equivalent i.e., Class 10th certificate issued by an Examination Board; iii) Date of birth certificate from the Corporation or Municipal Authorities; iv) In the absence of any of the above, by an ossification test or any advanced test as may be ordered.

37. In the present case, the only document that is available is the Shapath patra signed by DW 1 at the time of admission of the child in the school. The said guardian, who appeared as DW-1, and DW-2, another uncle of the survivor, could neither justify nor confirm the stated date of birth i.e., 2nd April, 1997. There is no other document as contemplated under Section 94 of the JJ Act to establish the date of birth of the survivor.

38. Further, the Prosecution did not conduct any ossification test or any other similar test to establish the date of birth of the survivor.

39. This Court agrees with the view taken by the Trial Court that the date of birth of the survivor mentioned in the School Admission and Withdrawal Register cannot be taken in evidence, and hence the Prosecution has not been able to establish beyond reasonable doubt that the survivor was under the age of 18 years when the incident took place.”

18. The judgement *Saroj (supra)* relied upon by the Petitioner is distinguishable on facts as the same related to a MACT case where, the Supreme Court clearly observed that the school leaving certificate can be given primacy if the genuineness of the same is not under challenge. However, the Supreme Court in the said decision has not held that Aadhar card would be of no relevance at all. In fact in the said case the difference in the year of birth was between 1969 in the School certificate and 1970 in the Aadhar card.



The school leaving certificate was obviously issued several years even before the Aadhar card was made. The position is different in the present case wherein the age difference between the School admission register and the Aadhar card is 3.5 years. Both these documents are dated only 25 days apart and both were got issued by the Petitioner who is the mother of the girl. The girl is also disputing the age given in the school, with valid reasons.

19. A perusal of the above decisions shows that primacy is given to the birth certificate and not to a School Register or a Transfer Certificate issued by the school. In the absence of the primary evidence of birth, i.e., a birth certificate, the date of birth is merely by way of guess-work.

20. From the answers given by the UIDAI, the facts which emerge are that the Aadhar card was issued way back in 2015 i.e. approximately nine years ago. At that time, Ms. 'X' was extremely young and on a query from the Court, the Counsel for the Petitioner submitted that the mother had accompanied Ms. 'X' then to get the Aadhar card issued.

21. The Court has perused the documents handed over by the IO, including the Status Report dated 14th, November, 2024 and the same are taken on record. A perusal of the same would show that the admission of Ms. 'X' in school was on 10th April, 2015, and the date of birth is recorded as 12th July, 2007. The same is clearly strikingly different from the date of birth recorded in the Aadhar card of Ms. X i.e. 1st January, 2004. The Aadhar card was issued way back on 2nd May, 2015.

22. The difference between the date of birth in the Aadhar card and in the school record is approximately more than 3.5 years. Within a span of few days i.e., between 10th April 2015 and 2nd May 2015, therefore, the mother has clearly given two different dates of birth and different years to two different



authorities – one date/year to the school and another date/year to the UIDAI. It is the case of Ms. 'X' that her mother, i.e., the Petitioner had reduced her age in order to get her admitted in the school in 3rd standard in 2015.

23. The Court is of the opinion that the date of birth provided in the school record does not inspire confidence as the same has a huge gap of 3.5 years (approximately) with the date of birth recorded in the Aadhar card.

24. The Court has queried the Counsel for the Petitioner as to whether there is any other document apart from the school document, to prove the date of birth of Ms. 'X', to which the answer is clearly in the negative. The school records have been perused which show that no supporting document was given to the school to show that the girl-Ms. X's date of birth is 12th July, 2007. From the answer of the UIDAI, no document was given to support the date of birth of 01/01/2004. Thus, neither of the documents is based on a primary document.

25. After interacting with the girl- Ms. 'X' and perusing the communication dated 14th November, 2024 provided by the UIDAI as also the school records, it becomes clear that the date of birth of Ms. X even if it is approximate, in her Aadhar card is 1st January, 2004. Under these circumstances, in the absence of any backing to the school document, the approximate date as stated by UIDAI cannot be discarded. Thus, even if the year of birth for the present petition is taken as 2004, the girl has attained majority. Going by the said year of birth, Ms. 'X' is approximately twenty years of age at present. Even during the interaction with Ms. 'X' the Court observes that the girl is mature enough and does not appear to be a minor.

26. At this stage, it would be apposite to refer to a judgement of a coordinate Bench of this Court in (*Jabbar vs. State 2018:DHC:3596-DB*),



wherein the Id. division Bench was dealing with an appeal from the Appellant therein who was convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter 'POCSO Act'), had to deal with a similar issue determining the age of the survivor, wherein, the Court observed and held as under:

“37. Rule 12 of the JJ Rules, therefore, assigns, in descending order of importance, primacy, as proof of age, to (i) the matriculation, or equivalent, certificate, (ii) the date of birth as recorded by the school first attended, and (iii) the certificate of birth, given by a Corporation, municipal authority, or panchayat. No specified format, for these certificates, is prescribed in the said Rules. The Aadhar Card, being a document issued by the Government of India is, in our view, equivalent – in fact, superior – to a certificate given by a Corporation, municipal authority, or panchayat. The entry, in the said Aadhar card (Ex. PW-11/H), of the age of ‘S’ as 6 years, must be taken, therefore, as proof of the fact that, on the date of issuance of the said card (2nd March, 2013), ‘S’ was, in fact, 6 years of age. We may mention, here, that a Division Bench of the High Court of Madras, in *Panneerselvam vs. Inspector of Police, MANU/TN/1054/2014*, opined that the Aadhar Card could not satisfy the requisites of Rule 7 of the JJ Rules, as proof of age of the holder thereof, as it did not mention the date of birth, and mentioned, instead, the age in years. This, in our view, is a distinction without a difference. After all, the determination of the date of birth is only for the sake of ascertaining the age of the person concerned. That apart, Rule 7 (3) of the JJ Rules states that —the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining one of the documents enlisted thereunder. As such, the document is only to be referred to, by way of evidence for ascertaining the age of the person concerned, and



*the Rule does not require, either expressly or by necessary implication, that the date of birth of the person should figure on the body of the said document. Indeed, when the document mentions the age itself, no better proof could be sought, for ascertaining the age of the person concerned. We, therefore, regretfully express our inability to subscribe to the view adopted by the High Court of Madras in **Paneerselvam (supra)**. ”*

27. In the above decision the Court has held that the Aadhar card is superior to other documents such as municipal authority or panchayat issued documents, especially in the absence of a date of birth certificate.

28. As per the status report placed on 14th November 2024, by the Police, the girl's statement under Section 180 BNSS was recorded wherein she stated that her family had forcibly fixed her marriage somewhere and upon refusal by her, she was beaten due to which she ran away from her house and reached Village Dheeguparwar Distt Bhadoi, UP. The statement of the girl under Section 180 BNSS reads as under:

“07/10/24 को मेरे परिवार वाले मेरा रिश्ता जबरदस्ती कर रहे थे और Diwali पर शादी करने वाले थे। तो मैं घर से चली गई थी और footpath पर रहने लगी थी। फिर आज सुबह मुझे पुलिस लेकर आई। मेरे घरवाले मुझे मारते हैं। मैं अपनी मर्जी से गई थी। मेरे साथ किसी ने किसी भी प्रकार का शोषण या उत्पीड़न नहीं किया। मैं घर नहीं जाना चाहती।”

29. It is clear to the Court that the plea that the family was attempting to forcibly marry off the girl has not been controverted before the Court either during oral submissions or in the Chamber interaction. Under these extraordinary circumstances, this Court is of the considered opinion that the directions cannot be given to direct the girl-Ms. 'X' to accompany the parents.



30. Above all, the girl-Ms. 'X' has clearly and categorically expressed that she would not wish to accompany the mother, *i.e.*, the Petitioner and the family. Thus, the choice before the Court is between sending the girl to the Prayas Aid Home or to permit her to accompany Mr. Mishra, with whom she is friendly and states that she has married him.

31. Ld. Counsel for the Petitioner submits that the verification of the date of birth ought to be done in the hospital in the village Jaitpura, Tehsil Garmi Block, District Bhind, Madhya Pradesh. This plea is untenable as the family of the girl had sufficient opportunity to produce such a document if any existed. Moreover, if the mother and brother themselves were trying to forcibly marry her off, then the stand that she is a minor is also approbation and reprobation. Since the last four hearings, no credible document has been submitted confirming the date of birth of the girl as 12th July, 2007.

32. It is the settled position in law that when a plea of juvenility is raised, it is the prerogative of the person raising such a claim to discharge the burden of satisfying the Court that the person is a juvenile. The same has been held in the judgment of ***Rishipal Singh Solanki v. State of Uttar Pradesh and others.*** (2022) 8 SCC 602, wherein the Court observed as under:

“33.2.3. 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 criminal court concerned, 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).

“33.3. 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 Rules 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 the 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.

33.4. 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.

33.5. 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 criminal court concerned. 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 the 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.



33.6. *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.*

33.7. *This Court has observed that a hypertechnical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.*

33.8. *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.*

33.9. *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 Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.*

33.10. *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 Evidence Act viz. Section 35 and other provisions."*

33. For the purpose of this petition, *prima facie* any further enquiry to verify the age of the girl would not be required inasmuch as the Aadhar card has been verified to be the genuine Aadhar card by the UIDAI. It is also noted that the Aadhar card actually got issued at the instance of the mother, i.e.,



Petitioner herself.

34. The Counsel for the petitioner at this stage also submits that the boy-Shivank Mishra/Respondent no. 6 may have a criminal record, a fact which, the IO has denied. Such unfounded allegations being made at this stage, as a last resort, clearly appear to be ill-founded and lacking any basis.

35. In view of the fact that the parents of the girl have been unable to satisfy the Court with regard to the juvenility of the girl, Ms. X, this Court is of the opinion, that the girl is a major, as per the year of birth mentioned in the Aadhar card, combined with the assessment that the Court has been able to make in the last few hearings after holding interactions with the girl.

36. The present petition is one for seeking a writ of *Habeas Corpus*. The girl clearly does not wish to accompany her mother or brother. The choice for the Court is between sending her forcibly with the Petitioner or placing her in the Tughlakabad Care home where she is currently stationed. The Court is not inclined to place her in the Care home, especially because in the opinion of this Court, the Petitioner and the brother do not appear *bonafide*. Firstly, they wanted to marry off the girl forcibly. Secondly during the course of submissions they repeatedly stated that they have no objection if the girl marries Mr. Shivank Mishra, provided the girl is sent with the Petitioner and the family of Mr. Mishra comes to the Petitioner with a proposal after she attains majority. The Petitioner's family thus does not appear to have serious objection to the girl marrying Mr. Mishra Both the families hail from Surat. The boy Shivank Mishra is also known to the girl's family. Under these circumstances, the girl-Ms. 'X' ought to be free to accompany Mr. Shivank Mishra/Respondent no. 6 whom she submits she has got married to. Ordered accordingly.



2024:DHC:8845-DB



37. The petition is, disposed of in the above terms, along with pending application(s), if any.

38. The present order be uploaded forthwith.

PRATHIBA M. SINGH
JUDGE

AMIT SHARMA
JUDGE

NOVEMBER 14, 2024/bsr/gs/rks