

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.191 of 2024**

Arising Out of PS. Case No.-112 Year-2022 Thana- BASOPATTI District- Madhubani

Shivlal Yadav, son of Bisheshwar Yadav, R/O Vill-Madhiya, Ps-Basopatti,
Dist-Madhubani

... .. Petitioner/s

Versus

1. The State of Bihar
2. Naresh Yadav, son of Jay Narayan Yadav Village- Madhiya Ps- Basopatti
Dist- Madhubani

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sudhir Kumar Mishra
For the Respondent/s	:	Mr. Nand Kumar, APP
For the O.P. No. 2	:	Mr. Shubham Kumar, Advocate Mr. Nishant Choudhary, Advocate

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT**

Date : 01-05-2025

1. The informant of Basopatti P. S. Case No. 112 of 2022, dated 31st of May, 2022, corresponding to G.R. No. 845 of 2022 (E.N. - 1014 of 2023), registered for the offences punishable under Sections 302, 201 and 120(B) of the Indian Penal Code and Section 27 of the Arms Act, has challenged the legality, validity and correctness of the order, dated, 20th of September, 2023, passed by the learned Additional Sessions Judge 1st cum Juvenile Justice, Madhubani in Juvenile Appeal No. 39 of 2023, holding, inter alia, that the Opposite Party No. 2



was a juvenile on the date of alleged occurrence on the basis of his matriculation certificate where his date of birth was recorded.

2. It is held by the learned Court of Appeal that when a juvenile files certificate, issued by the Bihar School Examination Board, the Juvenile Justice Board (hereinafter referred to as “JJB” for short) is under an obligation to accept the same and no enquiry is to be undertaken by the Board to ascertain his age.

3. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 speaks of circumstances to be considered by the Board for presumption and determination of age of CICL. Provision runs thus: -

“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 -

(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.

(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.”

4. Sub-section (1) of Section 94 states that the JJB is authorized to proceed with the enquiry under Section 14 or Section 36, as the case may be, without waiting for further confirmation of the age, when it appears to the Board, based on the appearance of the person, that the said person is a child. Sub-section (1) of Section 94 does not state any requirement for filing any document in support of the proof of date of birth. Sub-section (2) of Section 94, on the other hand, states that when the Board has reasonable ground 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 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.

5. Section 94 provides a provision relating to “Presumption and Determination of Age”. Thus, the above provision never states that the date of birth certificate from the school or matriculation or equivalent certificate from the concerned Examination Board shall be a conclusive proof of the date of birth of the CICL. Section 94 provides that Court shall presume the correctness of the date of birth recorded in the birth certificate of the school or matriculation or equivalent certificate unless rebutted.

6. Therefore, in a case where statutory presumption can be taken, there is always a provision for rebuttal by the opposite party.

7. Thus, Section 94 does not mandate the Board to accept the matriculation certificate of the CICL as the



date of birth where there is reasonable ground for doubt regarding whether the person brought before it is a child or not.

8. In the instant case, the Board had reasonable doubt regarding the age of CICL on the basis of matriculation certificate. Therefore, the Board summoned the Principal of the concerned school from where the said certificate was issued. The Principal stated that the school authority recorded the date of birth of the Opposite Party No. 2 on the basis of the transfer certificate issued by the Middle School. Then, the Board summoned the concerned authority of the Middle School. The Middle School authority stated before the Board that the CICL was never a student of the said Middle School and no such transfer certificate was issued by the said Middle School. Therefore, the Board found that the transfer certificate on the basis of which the date of birth of the CICL was recorded was a false and forged document. Therefore, the JJB rightly did not accept the matriculation certificate of the CICL and directed him to appear before the Medical Board for ossification test.



9. In ***Court On Its Own Motion V. State Of NCT Of Delhi (CRL. REF. 2/2024)***, a Co-ordinate Bench of the High Court of Delhi, vide judgment, dated 2nd of July, 2024, held that as per Section 94 of JJ Act, whenever any person is brought before the Child Welfare Committee or Juvenile Justice Board and there are reasonable grounds for doubt regarding the age of such person, the Committee or the Board shall undertake the process of age determination by seeking evidence. As per the above Section, the first preference has to be given to a date of birth certificate from the school and in absence thereof a birth certificate given by the concerned Municipal Authority and it is only in the absence of the aforesaid two documents that the age would be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

10. The High Court of Delhi in the above-mentioned judgment relied upon the decision of the Hon'ble Supreme Court in in ***Jarnail Singh v. State of Haryana***, reported in ***2013 SCC OnLine SC 507***.



Paragraph Nos. 22 and 23 of ***Jarnail Singh*** (supra) read as hereunder:-

“22. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as “the 2007 Rules”). The aforestated 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under:

“12.Procedure to be followed in determination of age.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis



of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, 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—

(a)(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;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered



necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year, and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the



Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.

(6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law.”

23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the



prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a



birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.”

11. Thus, the JJB found during enquiry as to the authenticity of the matriculation certificate that the date of birth mentioned in the matriculation certificate was not based on genuine document produced by the CICL. Therefore, the Board refused to accept the certificate issued by Bihar School Examination Board and conducted enquiry.

12. The learned Court of Appeal misplaced the scope and purport of Section 94 of the said Act and came to a wrong finding that whatever may be written as regards date of birth in the matriculation certificate as to the age of CICL, that is to be accepted as gospel truth.



The above finding is absolutely wrong and the learned Additional Sessions Judge 1st cum Juvenile Justice, Madhubani committed patent illegality and material irregularity by passing the impugned order.

13. Accordingly, the impugned order, dated 20th of September, 2023, passed by the learned Additional Sessions Judge 1st cum Juvenile Justice, Madhubani in Juvenile Appeal No. 39 of 2023, is set aside.

14. The learned Additional Sessions Judge 1st cum Juvenile Justice, Madhubani is directed to dispose of the Appeal No. 39 of 2023 on the basis of observation made by this Court within two months from the date of communication of the order.

15. The instant revision application stands allowed, on contest, however, without costs.

(Bibek Chaudhuri, J)

skm/-

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