

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.336 of 2025

Arising Out of PS. Case No.-40 Year-2024 Thana- DULHIN BAZAR District- Patna

Rajeev Kumar S/o Bhuneshwar Singh @ Ghamandi Singh R/o Village -Mahabalipur, P.S.- Dulhin Bazar, Dist- Patna, Through his mother, Basanti Devi, W/o Bhuvneshwar Singh, @ Ghamandi Singh, R/o Mahabalipur, P.S.- Dulhin Bazar, Dist- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Niraj Kumar, Advocate
For the Respondent/s	:	Ms. Asha Kumar, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

- 2 31-07-2025 1. The instant revision under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015, challenges an order, dated 5th of March, 2025, passed by the learned Special Judge, (Rape and POCSO Act), Patna, in Special (POCSO) Case No. 167 of 2024, arising out of Dulhin Bazar P. S. Case No. 40 of 2024, registered under Sections 363/365 of the Indian Penal Code, whereby the learned Trial Court rejected the petitioner's claim for juvenility at the time of commission of the alleged offence.
2. It is the case of the prosecution that when the informant and her minor daughter (victim) went out of the



house on 18th of February, 2024, at around 07.30 pm to meet the call of nature, the petitioner alleged to have made vulgar comments on them. When the informant protested, the petitioner allegedly abused them and thereafter pushed the informant to the ground and forcibly took away her minor daughter. The informant tried to chase the petitioner but failed. Thereafter, the informant and her parents tried to search the victim but could not find her.

3. After investigation, the police submitted charge-sheet. Cognizance was taken against the petitioner on 15th of July, 2024 for offences punishable under Sections 363, 366A and 376 of the Indian Penal Code and Sections 4 and 6 of the POCSO Act, 2012. The matter was committed to the Exclusive Special Court (POCSO), which gave rise to Special (POCSO) Case No. 167 of 2024. The Exclusive Special Court (POCSO Act) *vide* order dated 16th of December, 2024 framed charges against the petitioner for committing offences punishable under Sections 363, 366A, 376 and 504 of the Indian Penal Code and Sections 4/6 of the POCSO Act, 2012.

4. Immediately thereafter, the petitioner filed an



application, dated 5th of February, 2025, under Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 before the Trial Court, claiming his juvenility at the time of the alleged offence. He stated in the application that his date of birth is 20th of March, 2008 and, as such, on the date of the alleged occurrence, he was 15 years, 10 months and 29 days old and, hence, he was below 18 years and was a juvenile on the date of alleged occurrence. The petitioner also produced a letter no. 501, dated 18th of February, 2025, issued by the Member of Zila Parishad, certifying that he knows the petitioner and his date of birth is 20th of March, 2008.

5. I have heard the learned counsels for the petitioner as well as the learned APP.

6. Sub-section (2) of Section 9 states: -

“(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.”

7. In ***Rishipal Singh Solanki v. State of U.P.***, reported in **(2022) 8 SCC 602**, the Hon'ble Supreme Court laid down the guidelines relating to the procedure followed by a Court when a person claims juvenility at any stage of procedure. The Hon'ble Supreme Court in paragraph no. 33 of the aforesaid judgement held as hereunder: -

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

33.1. 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.

33.2. *An application claiming juvenility could be made either before the court or the JJ Board.*

33.2.1. *When the issue of juvenility arises before a court, it would be under sub-sections (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.*

33.2.2. *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.*

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.*

33.11. *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.”*

8. Section 94 of the said Act lays down the procedure regarding presumption and determination of age.

The 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.”

9. The Board is under obligation to 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.

10. The Juvenile Justice (Care and Protection of Children) Act, 2015 empowers the exclusive power to the Board to determine the age of a person if at any stage of trial, he / she claims juvenility on the date of commission of offence.

11. In a subsequent decision, in the case of ***Thirumoorthy v. State represented by the Inspector of Police***, reported in **2024 INSC 247**, the same principle has been laid down by the Hon'ble Supreme Court

12. The learned Advocate appearing on behalf of the petitioner also refers to another decision in the case of ***Rahul Kumar Yadav v. The State of Bihar***, reported in **2024 SCC OnLine 723**, where the appellant filed an application raising the claim of juvenility based on a horoscope before the learned Chief Judicial Magistrate. The said application was rejected. Further, before the Trial Court, the birth certificate was presented and the plea of determination of age was raised. The learned Trial Court rejected the said prayer by observing that the said certificate



was not presented along with the application filed earlier before the learned Chief Judicial Magistrate.

13. On the above factual circumstances, it is held by the Hon'ble Supreme Court that proper enquiry in accordance with the provisions of the JJ Act, 2000 or the JJ Act, 2015 was not carried out so to consider the prayer made by the appellant to be treated as juvenile on the date of the incident even though the plea was raised at the earliest opportunity. It can be said without a cavil of doubt that the plea of juvenility raised by the appellant could not have been thrown out without conducting proper inquiry.

14. In the instant case, the learned Special Judge, (Rape and POCSO Act), Patna committed the same error. He ought to have sent the application filed by the petitioner to the J. J. Board for conducting enquiry under Section 9(2) read with Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

15. The Trial Court failed to follow the direction of the Statute.

16. Therefore, the impugned order, dated 5th of March, 2025, passed by the learned Special Judge, (Rape



and POCSO Act), Patna, is incorrect, illegal and invalid.

17. The impugned order is, accordingly, set aside.

18. The instant revision is allowed.

19. The Trial Court is directed to send the copy of application filed by the petitioner on dated 5th of February, 2025 to the Juvenile Justice Board for conducting proper enquiry as to the age of the petitioner in accordance with the provisions contained in Section 9(2) read with Section 94 of the J. J. Act, 2015.

(Bibek Chaudhuri, J)

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