



\$~54

\*

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

+

**CRL.REV.P. 55/2025**

**TUSHAR**

.....Petitioner

Through: Ms. Raveen K. Kashyap,  
Mr. Vishal Arun Mishra,  
Ms. Jyoti Kashyap and  
Ms. Rupali Pawar, Advs.

versus

**STATE (GNCT OF DELHI)**

.....Respondent

Through: Mr. Sunil Kumar Gautam,  
APP for the State with SI  
Vaishali Kaushik (Main  
IO) and SI Shweta, PS  
Tilak Nagar.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

%

**07.04.2025**

**CRL.M.A. 3822/2025** (*exemption from filing certified copies of annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**CRL.REV.P. 55/2025 & CRL.M.A. 3823/2025**

3. The present petition is filed challenging the order dated 28.08.2024 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge, Tis Hazari Courts, Delhi (hereafter '**Trial Court**') whereby charges for offences under Section 370 read with Sections 120B/376 read with Section 109/323/394/506/174A of the Indian Penal Code, 1860 ('**IPC**') along with Section 6 read with Section 17 of the Protection of Children against Sexual Offences, 2012 ('**POCSO**') and Sections 3/4/5/6/7 of the Immoral Traffic (Prevention) Act 1956 were framed against the petitioner, along with other co-accused persons.

4. The FIR was registered on a statement made by the prosecutrix, who stated that she left her home without informing



her parents on 25.12.2018 and went to her friend's residence. She stated that she lived at a place in Meera Bagh for 15 days and thereafter she went to stay with her friend namely– Payal, who lived with her mother namely– Madhu and her elder sister namely– Jyoti, however there were frequent visits by the other accused persons. It is alleged that there the prosecutrix was made to do household chores for the first 3-4 days, whereafter she was raped by two – three persons on different dates. It is alleged that she somehow escaped and reached at another acquaintance's place namely–Rani didi, where she got a call from one of the accused persons namely– Vikram, who called her near Dwarka Metro Station, on the pretext of securing a house for her, however, when the prosecutrix reached there, she was apprehended by the accused persons and beaten up, whereupon a call was made on 100 number by Rani didi.

5. During her examination, the prosecutrix claimed that while she was staying in co-accused Payal's house, she was made to indulge in sexual intercourse with different people. She stated that Payal used to stay with her mother, father and brother (applicant). She further stated that co-accused Payal and her mother used to force her into sexual activities and her father was also aware of it.

6. Against the applicant, it is alleged that he was also staying in the same residence as the co-accused Payal where the immoral activities were being carried out.

7. During the course of arguments on 24.03.2025, the learned counsel for the petitioner pointed out that at the time of commission of the alleged offence, the petitioner was a minor. The said aspect was directed to be verified by the State.

8. In compliance of the order dated 24.03.2025, the Police



has filed the Status Report dated 31.03.2025 wherein the age of the petitioner has been verified from his first attended school namely– M.L.P. Sr. Sec. School, Maheshwari (Rewari) and as per the School Records his Date of Birth is stated to be 04.02.2003. Thus, the age of the petitioner at the time of registration of the FIR, that is, on 15.04.2019, was 16 years and 2 months.

9. Undisputedly, in terms of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act'), in case a heinous offence is alleged to have been committed by a child who has completed or is above the age of 16 years, the board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, and may pass an order in accordance with the provisions of Section 18(3) of the JJ Act.

10. Section 18(3) of the JJ Act provides that after the assessment under Section 15, if the Board is of the opinion that the trial against the said child needs to be conducted as an adult, then the Board may order transfer of the trial of the case to the Court having jurisdiction to try such offences.

11. At this juncture, this Court also deems it apposite to refer to Section 15 of the JJ Act. The same reads as under:

**"15. Preliminary assessment into heinous offences by Board.**—(1) *In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 18:*  
*Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.*  
*Explanation.—For the purposes of this section, it is clarified*



*that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.*

*(2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):*

*Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of Section 101:*

*Provided further that the assessment under this section shall be completed within the period specified in Section 14.”*

*(emphasis supplied)*

12. In the case of ***Barun Chandra Thakur v. Bholu* : 2022 SCC OnLine SC 870**, the Hon’ble Apex Court underscored the procedure to be adopted by the Trial Court, where the child, who has completed or is above the age of 16 years, is allegedly involved in heinous offences. The relevant portion of the said judgment is reproduced hereunder:

*“19. Section 15 provides for preliminary assessment where the alleged offence is heinous and where the child has completed or is above the age of 16 years, the Board is required to conduct the preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence and after such assessment, pass an order in accordance with sub-section (3) of section 18. If the Board is of the opinion that the child needs to be tried as an adult then the case be transferred to the Children's Court having jurisdiction to try such offence. Otherwise, the Board itself will proceed to try the matter as a summons case under the Criminal Procedure Code, 1973.*

xxx

xxxx

xxxx

**23. Section 19 deals with the powers conferred on the Children's Court. The Children's Court upon receipt of the preliminary assessment from the Board will decide whether there is need for trial of a child as an adult in accordance with the Cr.P.C. and pass appropriate orders after trial subject to the provisions of this section as also section 21. However, if the Children's Court feels that there is no need for trial of child as an adult, then, it may conduct an inquiry as a Board and pass appropriate orders in accordance with provisions of Section 18...**

xxx

xxxx

xxxx

**45. The order of preliminary assessment decides whether the child in conflict with law, falling in the age bracket of 16-18 years and having committed heinous offence, is to be**



*Another consequence, which may also have serious repercussions, is that as per section 24(2), where the Board or the Children's Court, after the case is over, may direct the police or the registry that relevant records of such conviction may be destroyed after the period of expiry of appeal or a reasonable period as may be prescribed. Whereas, when a child is tried as an adult, the relevant records shall be retained by the relevant Court, as per the proviso to section 24(2).*

xxxx

xxxx

xxxx

62. *The obligation of the Board in making the preliminary assessment on the four counts mentioned in section 15 of the Act is largely dependent upon the wisdom of the Board without there being any guidelines as to how the Board would conduct such preliminary assessment. In the absence of any such framework or guidelines, the Board has to use its discretion in taking into consideration whatever material it deems fit for assessing the four attributes.*

xxx xxxxx xxxxx

68. *The language used in section 15 is “the ability to understand the consequences of the offence”. The expression used is in plurality i.e., “consequences” of the offence and, therefore, would not just be confined to the immediate consequence of the offence or that the occurrence of the offence would only have its consequence upon the victim but it would also take within its ambit the consequences which may fall upon not only the victim as a result of the assault, but also on the family of the victim, on the child, his family, and that too not only immediate consequences but also the far-reaching consequences in future. **Consequences could be in material/physical form but also affecting the mind and***



*the psychology of the child for all times to come. The consequences of the offence could be numerous and manifold which cannot be just linked to a framework; and, for this purpose, the overall picture as also future consequences with reference to the facts of the case are required to be consciously analysed by the Board.”*

(emphasis supplied)

13. In the present case, considering the Status Report filed by the State, *prima facie* it appears that the age of the petitioner was 16 years and 2 months at the time of commission of the alleged offence.

14. When a doubt is created on the age of the accused, Section 9 of the JJ Act prescribes the procedure to be followed by the concerned Court. When a claim is made before a Court, in terms of Section 9 (2) of the JJ Act, and the Court is of the view that sufficient doubt has been created on the age of the accused at the time of commission of the offence, the Court shall make an inquiry and take such evidence as may be necessary to determine the age of such person.

15. As noted above, since doubt has been created on the age of the petitioner at the time of commission of the offence in the present case, appropriate inquiry is required to be conducted by the learned Trial Court before proceeding further with the matter.

16. In view of the above, the impugned order is set aside and the matter is remanded back to the learned Trial Court for hearing the case afresh and pass an appropriate order in accordance with law.

17. The present petition is allowed in the aforesaid terms.

18. A copy of this order be sent to the concerned Trial Court for necessary compliance.

**AMIT MAHAJAN, J**

**APRIL 7, 2025**