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

% ***Date of decision: 22nd September, 2025***

+ **CRL.REV.P. 377/2025**

NIHAL KHAN

S/o Yusuf Ali

R/o: 30A G F Kh. No.-56/2 Block -2,

Nangloi West Delhi-110041

.....Petitioner

Through: Ms. Geeta Oberoi, Advocate.

versus

STATE (NCT OF DELHI)

Through SHO

PS: Aman Vihar

Email: dhcprosecutiondelhipolice@gmail.com

.....Respondent

Through: Mr. Utkarsh, APP for the State.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T(oral)

CRL.M.A. 28415/2025

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

CRL.REV.P. 377/2025:

3. Petition under Section 438(2) read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) [previously read ASR Section 397(2) read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*)], has been



filed on behalf of the **Petitioner/Nihal Khan**, to challenge the **Order dated 12.02.2025** of learned ASJ-03, Delhi whereby the Application of the Petitioner for determination of his age through Ossification Test, has been rejected.

4. The Petitioner in his Revision Petition, submits that he is in Judicial Custody since 13.03.2023 in FIR No. 129/2023 under Sections 302/307/120B/323/34 of the Indian Penal Code, 1860 (*hereinafter referred to as 'IPC'*) and under Sections 25/27 of the Arms Act.

5. The offence allegedly took place on 11.03.2023 and he is in Judicial Custody since 13.03.2023.

6. The Petitioner claims that he had been asserting since beginning, that he was below 18 years of age on the date of the alleged incident and was entitled to protection and benefits of the Juvenile Justice (Care and Protection of Children) Act, 2015 (*hereinafter referred to as 'JJ Act'*).

7. The Petitioner was a student of Class IX at the time of the alleged incident, which allegedly took place on 11.03.2023. He was treated as an adult, solely on the basis of his Matriculation Certificate/School records. The family of the Petitioner is illiterate and from Lower Economic Strata. His parents do not have any documentary proof of his actual Date of Birth (*DoB*). They had furnished the Affidavits giving his actual Date of Birth, which has not been considered.

8. It is further submitted that the admission of the Petitioner in the year 2013, to the MCD Government School in Class 1, was on the basis of information furnished by his illiterate mother, who inadvertently or under mistaken belief, gave his wrong Date of Birth. The Date of Birth has subsequently been continued throughout his schooling and has been adopted



in Matriculation Certificate, as well even though it is not based on independent birth proof or the medical records.

9. The certified copies of the educational and birth- related documents of *his four siblings* are as under:-

- (i) Secondary School Certificate of Sister Farha (DOB: 18.02.1999)
- (ii) Secondary School Certificate of Sister Farin (DOB: 03.06.2001)
- (iii) Secondary School Certificate of Sister Saba (DOB: 08.01.2004)
- (iv) Secondary School Certificate of the Petitioner (DOB: 01.08.2004)

10. All these documents when read together, bring forth the genuine doubt and discrepancy, which is further amplified by the fact that the Petitioner's sister/Saba, as per her Class X CBSE Marksheet/Certificate, has a date of birth as 08.01.2004. The Petitioner's School record reflects his Date of Birth as 01.08.2004, making him younger to her, by merely 06 months and 23 days, which is biologically improbable and raises a serious doubt.

11. The photographs of the Petitioner, further leaves no doubt that he is appreciably younger than his sister. The family photographs clearly show the considerable age gap between the Petitioner and his siblings, thus, creating a doubt about the correctness of the School record. These photographs fully corroborate that the Petitioner could not have been 18 years or more, as reflected from the impugned School documentation. The Petitioner, therefore, had pressed for his Ossification Test or an appropriate Medical Test, to determine his real age on the date of offence.

12. From the date of his arrest in the year 2023, he has been lodged in the prisons along with the adult population and has not been granted Bail, which has jeopardized his career as he was studying in Class IX and has not been



able to take the final examination of Class IX.

13. His poor parents who are without means, applied for his Bail under Section 439 Cr.PC, before the learned Trial Court but his Bail was rejected on 29.11.2023 for the reasons that he was accompanying the main accused who had fired from the gun and that the Prosecution witnesses had not been examined.

14. The Petitioner submits that the documents collected by the Investigating Officer during the investigations, reflect that the Petitioner was admitted in the aforesaid School on 26.07.2013 *vide* Admission No. 11043.

15. The learned ASJ summoned the Principal of his School along with the Record pertaining to his Date of Birth. The concerned Principal produced the School records wherein his Date of Birth was stated to be 01.08.2004, making him major on the date of the commission of the offence.

16. ***Learned ASJ, thus, conducted another enquiry*** and examined **CW-1, Vimal Kumar Dixit, Primary School, Teacher, Nagar Nigam Prathmik Bal Vidyalaya, Kamruddin Nagar-II, New Delhi-110041**, who produced the records, which is Ex.CW-1/A to Ex.CW-1/D. According to these School documents, the Date of Birth of the Petitioner, was 01.08.2004.

17. The parents of the Petitioner informed the learned Trial Court that before his admission to the School, he was admitted in *Aanganwadi* in December in 2009-2010. As per the records of the *Aanganwadi* School as well, his Date of Birth was 01.08.2005.

18. Thereafter, the father of the Petitioner, moved an Application on 16.08.2024, for conducting the Ossification Test of the Petitioner for determination of his true age. The Petitioner therein referred to the Date of Birth of his immediate elder sister, Saba.



19. It is claimed that the Application for Ossification Test was dismissed by the learned ASJ-03, North-West, Rohini Courts on 12.02.2025 by observing that the documentary evidence, is the best evidence. Section 94(2) of the JJ Act, placed the School Record at the highest pedestal. If documentary evidence is properly maintained, *the Ossification Test is unnecessary and inferior.*

20. It is submitted that the evidence of *Aanganwadi* Worker has to be rejected as *Aanganwadi* is not a School and its record and the Documents, cannot be considered as one under section 94(2) (1) of the JJ Act, 2015.

21. The grounds of challenge are that as per Section 94(2) of the JJ Act, the hierarchy for School records for age determination is:-

- (i) *School/Board Certificate;*
- (ii) *Municipal/Panchayat Birth Certificate; and if both are not available,*
- (iii) *Ossification/Medical Test.*

22. The Hon'ble Supreme Court of India, has clarified that for a document to be preferred, it must be credible and based on verifiable public record and not on parental Affidavits alone. Where the accuracy of Record is seriously in doubt, the Statute and established practice require the Court to seek additional clarifications or scientific evidence. The learned Trial Court erred in discrediting the *Anganwadi* Admission Register, Ex.CW-2/A, which was a public and official document reflecting an earlier and contradictory Date of Birth as 01.08.2004, simply by taking a technical view that it is not a "*school*" record.

23. Reliance has placed on *Suresh vs. State of Uttar Pradesh and Anr.*,



(Crl. Appeal 347/2018) dated 01.08.2025 wherein the Hon'ble Supreme Court of India has clarified that a School Certificate unsupported by a foundational public record, is insufficient if a credible dispute exists, and that Court must go beyond mechanical reliance on admissions made on oral Parental statements.

24. The conclusion of the learned Trial Court that the Petitioner failed to disprove his parents' Affidavit-based entry in the School Record, reverses the statutory burden and procedural rights available to a child in conflict with law. The JJ Act is a beneficial legislation, its object being to extend every possible benefit to the Accused whose status as a child is in genuine doubt. However, the impugned Order frustrates this benevolence and increases the risk of wrongful treatment of the Petitioner as an adult.

25. The Petitioner has been detained in Judicial Custody in violation of *Section 6 and Section 10 of the JJ Act* rendering his detention illegal and unlawful. He has been remanded to judicial custody after his arrest and even his Bail Application, has been rejected in a mechanical manner without due regard to the age of the Petitioner. Section 10 of the JJ Act, 2015, specifically prohibits detention of a Child in Conflict with Law (CCL) in Police custody or in Jail. It further provides that the CCL, who has not attained the age of 21 years, shall be sent to a place of safety as defined under Section 2(46) of the JJ Act. Further detention of the Petitioner, would amount to abuse of process of law.

26. Reliance has been placed on *Sunita Jain vs. Pawan Kumar Jain &Ors.*, Appeal (Crl.) 174/2008. It is further submitted that the impugned Order dated 12.02.2025 of learned ASJ, be set-aside and the Ossification Test in accordance with Section 94 (2) of the JJ Act, be directed to be conducted of



the Petitioner.

27. *It is further submitted that as an interim measure, the Accused may be granted Bail.*

28. **On advance Notice, learned APP for the State had appeared.**

Submissions heard and the record perused.

29. The father of the Petitioner had moved an Application dated 16.08.2024 for getting his Ossification Test done for determination of his age.

30. The juvenility of the child has to be considered by the Juvenile Justice Board (JJB) or by the Court, *suo motu* or on an Application moved by the child. While the procedure for ascertaining the claim of juvenility before the JJB is provided under the Act, **Section 9(2) of the JJ Act** provides that in case a person alleged to have committed an offence claims before a Court other than a Board, that he was a child on the date of commission of the offence, ***the Court shall make an inquiry and take such evidence as may be necessary, and shall record a finding on the matter stating the age of the person as nearly as may be.*** It further provides that such a claim of her age shall be determined in accordance with the provisions contained in this Act and the Rules made there under.

31. **Section 94 of the JJ Act** provides for ***presumption and determination of age.*** Sub-Clause (1) of Section 94 provides that if it is obvious to the Committee or the Board based on the appearance of the person brought before it that the 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 (*Inquiry by Board regarding CCL*) or Section 36 (*Inquiry*) of the JJ Act, as the case may be, without waiting for further confirmation of the age. No evidence in regard to the age of the child, is



mandated and the assessment of age as made by the Committee or the Board, on the basis of physical appearance, is considered to be the final adjudication of the age of the child.

32. In the case of *Rajni vs. State of Uttar Pradesh*, 2025 SCC OnLine SC 1183, it has been explained that the determination of the age by the Board on the appearance of the person produced, is final in terms of Sub-Section (1) of Section 94 of the JJ Act. However, when there is a doubt then evidence is required to be taken in terms of Sub-Section (2) of Section 94 of JJ Act.

33. **Sub Clause (2) to Section 94 JJ Act, however**, provides that where there is a doubt regarding whether the person brought to the Court, it is a child or not, the Committee or 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 the Corporation or the Municipal Authority or a Panchayat;
- (iii) and only the absence of (i) and (ii) above, age shall be determined by an Ossification Test or any other medical age determination.

Sub Clause (3) further provides that the age so recorded, shall be deemed to be the true age of that person.

34. **Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007** (hereinafter referred to as '*the JJ Rules, 2007*'), lays down the



procedure and the fundamental principles to be applied in determination of the age. It reads as under:-

Sub-rule (3) of Rule 12 is relevant. Therefore, the same is extracted hereunder:-

(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;

(iv) 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.

35. As per Sub-rule (1) of Rule 12 in every case concerning a child or juvenile in conflict with law, the Court/JJB/Child Welfare Committee is required to determine the age such a child or juvenile in conflict with law within a period of 30 days from the date of making of the Application. Sub-rule (2) requires the Court/JJB/Child Welfare Committee, to decide the juvenility or otherwise, in accordance with law *prima facie* on the basis of physical appearance or documents. Sub-rule (3) provides the manner of adjudication of the age of child.

36. The process of age determination as provided under Sub-Section (3) to Rule 12, is identical to the procedure defined in Section 94 (2) of the JJ Act.

37. In the case of Rajni, (supra) in the context of Section 12(3), it was observed that:-

“23.2 Thus, sub-rule (3) of Rule 12 provided that age determination enquiry should be conducted firstly, on the basis of matriculation or equivalent certificate. If such a certificate was not available, then the date of birth certificate from the school first attended (other than a play school). In the absence of such a certificate, the birth certificate given by a corporation or a municipal authority



or a panchayat should be the basis.

Clause (b) of sub-rule (3) made it clear that only in the absence of such certificates as enumerated above, medical opinion would be sought for from a duly constituted medical board which would declare the age of a juvenile or a child. In case exact assessment of age could not be done, the court or JJB or the child welfare committee, for the reasons to be recorded, if considered necessary, had the discretion to give benefit to the child or to the juvenile by considering his/her age on the lower side within the margin of one year. While passing orders in such a case, evidence as may be available or the medical opinion as provided should be taken into consideration before recording a finding in respect of age.

38. It was further observed in Rajni, (supra) that when the claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court and to discharge the initial burden. However, in terms of Section 94(2) of the JJ Act and Rule 12(3)(a) of the JJ Rules, the documents mentioned therein, are sufficient for *prima facie* satisfaction of the Court. The presumption, however, is not conclusive proof of the age and may be rebutted by contra evidence led by the opposite side.

39. The procedure of an enquiry by the Court, is not the same as declaring the age of a person as a Juvenile before the JJB when the case is pending for trial before the concerned Criminal Court. In case of enquiry, the Court records a *prima facie* conclusion but when there is determination of age, as



per Sub-Section 2, the declaration is made on the basis of the evidence. The standard of proof in an enquiry is different from that required in a proceeding where determination and declaration of age of a person has to be made on the basis of evidence, which is scrutinized and accepted only if it is worthy of acceptance.

40. It was further noted that where 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 Indian Evidence Act* in as much as any public or official document maintained in the discharge of official duty would have greater credibility than the private documents. It was further noted that any document, which is in consonance with public document such as Matriculation Certificate, could be accepted by the Court as credible and authentic, in terms of Section 35 of the Indian Evidence Act.

41. The *Ossification Test* cannot be the sole criteria 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 useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act.

42. In the case of Union of Territory of J&K vs. Shubham Sangra, 2022 (INSC) 1205 while considering the authenticity of the documents relied upon to ascertain the juvenility, it was held that the Birth Certificate though produced had no corresponding hospital record to show that the delivery of the Respondent by his mother had taken place on the said date in the Medical Hospital. The Birth Certificate, therefore, was held to be not inspiring confidence and it was held that there is no option but to fall back upon the Report of the Medical Board.



43. *In the light of the aforesaid principles, Sections and the observations of the Apex Court, the facts of the present case may be considered.*

44. As per Rule 12(3)(a), as well as, Section 94 of the JJ Act, the consequence of the documents to be relied upon are as under:-

- (i) *the date of birth certificate from the school, or the matriculation certificate 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.*

45. In the present case, **CW-1, Vimal Kumar Dixit** had been examined from MCD School, *Kamruddin Nagar-II, New Delhi*, who produced the School Record wherein the Date of Birth of the Petitioner was recorded on the basis of Affidavits given by both the parents. However, no document was produced to show on the basis of which the Date of Birth had been disclosed by the parents at the time of his admission in the School.

46. *First and foremost*, the School record produced by CW-1, was not the Matriculation Certificate and the School also did not have the Birth Certificate as none was submitted by the parents. The documents as per Clause A of Section 94 (2) of the JJ Act were, therefore, not produced. *The only basis for entry of the Date of Birth in the School record was the Affidavits of the parents but there was no basis for affirming and confirming the date of*



birth as stated in the Affidavits of the parents. The Date of Birth had been given as 01.08.2004.

47. The next witness examined by the learned ASJ was **CW-2, Ms. Kavita, Aanganwadi Worker** working at Rajendra Park, Nangloi Aanganwadi, who produced the Register, Ex.CW-2/A. As per the Register, the Date of Birth of the Petitioner, was 01.08.2005.

48. Pertinently, there are two School records, though none are of Matriculation or of the Education Board wherein the date of birth has been recorded differently. While in the *Aanganwadi* record though it is not a formal School. There is only a School Register giving the Date of Birth as 01.08.2005. However, the MCD School record gives the Date of Birth as 01.08.2004, purely on the basis of the Affidavits of the parents, which has no corresponding authenticity or the basis on which the Date of Birth has been given.

49. It is pertinent to observe that the Petitioner has filed the Class X CBSE Certificate of Ms. Saba, his elder sister whose Date of Birth has been stated in the Matriculation Certificate as 08.01.2004. If so, the elder sister's date of birth definitely the date of Applicant, could not have been 01.08.2004 i.e. the after about six months.

50. Therefore, in the light of the documents produced by the Petitioner, there ***cannot be any reliance placed on the two School records***. More so, because they do not fall in the category of documents specified in Clause 2 (Section 94 of the JJ Act).

51. The second document on which reliance may be placed as per Section 94(2)(ii) of the JJ Act is the Birth Certificate given by a Corporation or a Municipal Authority or a Panchayat, however, there is no such Birth



Certificate also available of the Petitioner.

52. Section 94(2)(iii) of the JJ Act, categorically provides that if the aforesaid two set of documents, are not available then the age may be determine by Ossification Test or latest medical age determination test.

53. *In the present case*,no authentic document in terms of Section 94(2)(i) and (ii) of the JJ Act, have been produced. However, the Applicant has been relying on the Birth Certificate and the Matriculation Certificate of his elder sister to refute her date as recorded in the MCD School.

54. *In the light of these contradictory documents, it cannot be held that the MCD School record establishes the Date of Birth as 01.08.2004, as has been held by learned ASJ.*

Conclusion:-

55. In the light of the aforesaid discussion, the **Impugned Order dated 12.02.2025, is hereby set-aside** with the directions that the additional evidence of the parents may be taken for making the correct assessment of the age, in addition to referring the Petitioner for his Ossification Test.

56. With these directions, for determination of his age in accordance with Section 94 of the JJ Act read with Rule 12 of the JJ Rules, the endeavor be made by the learned ASJ to conclude this enquiry from the date of communication of the Order, in terms of Section 94(2) of the JJ Act.

57. The Petition is accordingly disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

SEPTEMBER 22, 2025/RS