

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL REVISION No.324 of 2020**

Arising Out of PS. Case No.-45 Year-2017 Thana- MATIYARIA District- West Champaran

XXX S/o Masiha Ansari @ Mosiha Ansari R/o Village- Haudadamra, P.O.- Belsandi, P.S.- Matiyaria, West Champaran, through his father being legal guardian namely- Masiha Ansari @ Mosiha Ansari, Male, aged about 49 years, S/o Md. Dhani Ansari, R/o- Village- Haudadamra, P.O.- Belsandi, P.S.- Matiyaria, West Champaran.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Aras Ansari S/o Late Akbar Ansari R/o Village- Haudadamra, P.O.- Belsandi, P.S.- Matiyaria, West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate
For the Respondent/s : Mr. Akhileshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

7 11-11-2022 Heard learned counsel for the petitioner and Mr. Akhileshwar Dayal, learned APP for the State.

Petitioner in the present case has challenged the order dated 14.11.2019 passed by learned Addl. Sessions Judge Ist cum Special Judge, West Champaran at Bettiah (hereinafter referred to as the “court below”) in Matiyaria P.S. Case No. 45 of 2017 whereby and whereunder the petitioner was refused to be declared as juvenile.

Learned Counsel for the petitioner submits that in this case the petitioner has been made an accused in Matiyaria P.S. Case No. 45 of 2017 registered under Sections 341, 354A(i)(ii) (iii),C,D(i)(ii), 506 of the Indian Penal Code and Section 8 of



POCSO Act, 2012. Allegation is that he had been involved in eve teasing and using filthy language against the daughter of the informant.

Learned counsel submits that the date of birth of the petitioner is 14.02.2003. Subsequent to the alleged date of occurrence, he had appeared in the matriculation examination conducted by Bihar School Examination Board, Patna and had passed the same in first division. The certificate issued by the Board showing the petitioner passed in Secondary School Examination in the year 2019 would indicate his date of birth as 14.02.2003.

Learned counsel further submits that prior to issuance of the matriculation certificate, the petitioner was subjected to medical examination for assessment of his age. A medical examination was conducted at the instance of learned court below. As per the medical report prepared on 15.05.2019, the age of the petitioner has been found to be 19-20 years. Learned counsel submits that the date of occurrence is 09.08.2017, therefore, if the age as disclosed in the medical report is duly calculated with reference to the alleged date of occurrence and the provision of Rule 12(3)(b) of the Juvenile Justice Rules, 2007 (hereinafter referred to as the "Rules of 2007") is duly



applied, the petitioner would be adjudged juvenile.

Learned counsel relies upon the judgment of the Hon'ble Supreme Court in the case of **Darga Ram @ Gunga vs. State of Rajasthan** reported in **(2015) 2 SCC 775**. It is submitted that this Court has followed the said judgment in the case of **Karanvir Singh Vs. The State of Bihar** reported in **2020 (2) PLJR 279**.

Learned APP for the State has opposed this application. It is submitted that the matriculation examination was taken by the petitioner much after the alleged date of occurrence and at the time the petitioner claimed his juvenility, he did not produce the school admission register of the first school where he was admitted. It is for this reason that he was subjected to medical examination and the age disclosed in the medical report has been taken into consideration. It is submitted that subsequent attempt of the petitioner to get a declaration from the appellate court on the basis of the matriculation certificated has rightly been rejected.

Having heard learned counsel for the petitioner and the State as also on perusal of the record, this Court is of the considered opinion that so far as the steps taken by the learned court below for adjudging the age of the petitioner at the



relevant time is concerned, no fault may be found with the same. It is not the case of the petitioner that he had produced any cogent material showing his date of birth either from school admission register or a date of birth certificate issued by the Municipal Corporation/Nagar Parishad/Panchayat. Admittedly, petitioner has taken his matriculation examination after about one and a half year of the alleged occurrence.

In such circumstances, if the learned court below proceeded to rely upon the medical report disclosing the age of the petitioner, the same cannot be found fault with.

The only question which remains for consideration is as to whether the learned court below has erred by not applying the procedure as envisaged under Rule 12(3)(b) of the Rules of 2007. The said rule is quoted hereunder for a ready reference:

“12. Procedure to be followed in determination of age. - (1)-(2) ***
—(3) ... (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.”

This Court had occasion to discuss the impact of the rule and the judgment of the Hon’ble Supreme Court in the case of **Darga Ram @ Gunga** (Supra) and in the case of **Karanvir Singh** (Supra). The relevant paragraph ‘7’ from the judgment of **Karanvir Singh** (Supra) is quoted hereunder for a ready reference:-

“7. Apparently, in the aforesaid case the Hon'ble Apex Court took into consideration the upper extremity limit i.e. 36 years and then subject to variation of plus minus 2 years the age of the appellant was taken as 34 years on the date of the examination and then it was found that he would have been 18 years 2 months and 7 days on the alleged date of occurrence whereupon he would be entitled to additional benefit of one year in terms of lowering his age by one year under Rule 12(3)(b).”

In the present case, the age of the petitioner as per medical report is between 19-20 years. If the benefit of two years is given from the upper extremity i.e. 20 years, it will come down to 18 years whereafter on the principal of Rule 12(3)(b) of the Rules of 2007, the petitioner would be entitled



for benefit of one year, therefore, upon giving the benefit of the said rule, the age of the petitioner would come down to 17 years and he will be within the category of a juvenile.

This Court, therefore, finds that the learned court below has erred in not applying the principle of Rule 12(3)(b) of Rules of 2007. The impugned order is, therefore, set aside and the application of the petitioner seeking juvenility is allowed. The enquiry/trial, as the case may be, shall proceed taking the petitioner a juvenile within the meaning of the J.J. Act, 2015.

Application is allowed.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

