

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRMP No. 289 of 2023**

- Bholu Vasudev S/o Sakhiram Vasudev Aged About 19 Years R/o Navagaon, Muswadih, Police Station Simga, District : Balodabazar-Bhathapara, Chhattisgarh --- **Petitioner**

Versus

- State Of Chhattisgarh Through Station House Officer Police Station-Simga, District : Balodabazar-Bhathapara, Chhattisgarh

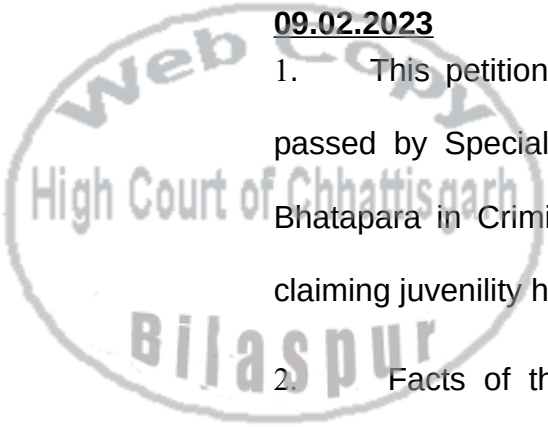
--- Respondent*CAUSE TITLE TAKEN FROM CIS PERIPHERY*

For Applicant : Mr. Vijay Shankar Mishra, Adv.
For Respondent/State : Mr. Vimlesh Bajpai, Dy. GA.

Hon'ble Shri Justice Deepak Kumar Tiwari
Order On Board**09.02.2023**

1. This petition has been filed challenging the order dated 07.04.2022 passed by Special Judge (POCSO Act), Bhatapara, District Balodabazar-Bhatapara in Criminal Case No.H-10/2022 whereby petitioner's application claiming juvenility has been rejected.

2. Facts of the case in brief are that on 07.08.2021 mother of the prosecutrix, aged about 14 years, has lodged a missing report of her daughter before the Police Station Simga, Balodabazar therefore, offence under Section 363 IPC vide FIR No.353/2021 was registered. After recovery of the minor victim, she disclosed that present petitioner has abducted her and also committed rape with her. On the basis of such allegations, offence under Sections 363, 366 & 376 of IPC and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act, 2012") has been registered against the applicant. After completion of investigation, charge-sheet has been filed before the Special Court and during proceedings the petitioner has filed an application claiming his juvenility stating that in the Adhar Card, his date of birth is recorded as 01.01.2004 and he is below 18





years of age. However, learned Special Judge by observing that no other relevant document has been filed with regard to proof of age of the applicant, has rejected the application.

3. Learned counsel for the petitioner would submit that the trial Court has not adopted the proper procedure as envisaged in Section 34 of the POCSO Act, 2012 and no enquiry was done for determination of the juvenility of the petitioner as per Section 94 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'Act of 2015'), therefore, considering the aforesaid facts and circumstances of the case, the matter may be remitted back before the trial Court for proper determination of age of the petitioner.

4. On the other hand, learned State counsel would support the contention of the petitioner to the extent that in the process of age determination the trial Court is required to obtain evidence which has categorically mentioned in the Section 94 (2) of the Act of 2015.

5. Heard learned counsel for the parties and perused the documents annexed with the petition.

6. Section 34 of the Act, 2012 prescribes the procedure in case of commission of offence by child and determination of age by Special Court, which reads as under:-

34.Procedure in case of commission of offence by child and determination of age by Special Court. - (1) Where any offence under this Act is committed by a child, such child shall be dealt with under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

(2) If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person and it shall record in writing its reasons for such determination.

(3) No order made by the Special Court shall be deemed to be invalid merely by any subsequent proof that the age of a person as determined by it under sub-section (2) was not the correct age of that person."



7. In the matter of **Siddu Vs. State**, {2016 SCC OnLine Kar 8347}, the following was observed:

“Section 34 of the POCSO Act is the substantive provision which empowers the Special Judge to determine the age of the person whether he is a Juvenile or an adult person and that particular person has to be tried before the Juvenile Justice Board or before the Special Court. Sub-clause (2) of Section 34 clearly indicates that if any question arises in a proceeding before the Special Court, whether the person is a child or not, such question shall be determined by the Special Court after satisfying itself about the age of such person. In this provision stress has to be given to the words - “for satisfying itself” and how this satisfaction can be arrived at by the court has to be tested by other surrounding circumstances like oral and documentary evidence placed before the court and also the relevant rules under the law for the time being in force.”

8. The Hon'ble Supreme Court in its recent judgment in the matter of **Rishipal Singh Solanki Vs. State of UP** reported in **2021 SCC Online SC 1079** has considered the relevant judgments on the question of determination of age and broadly laid down the principles in para-29 of the judgment. The relevant clauses are as under:—

“(iii) 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 Rule 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 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.

(iv) 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.

(vi) 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.

(ix) 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 Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would



have greater credibility than private documents.”

(Emphasis Supplied)

9. Considering the submission of learned counsel for the parties and considering the aforesaid principles, this Court is of the view that in the present case no enquiry has been made with regard to age determination of the petitioner and no evidence has been collected as per provisions stipulated in the Act of 2015 and POCSO Act, 2012, therefore, the impugned order appears to be not sustainable.

10. Thus, the impugned order dated 07.04.2022 is hereby set aside. The concerned Court is directed to decide the issue of age of the petitioner strictly in accordance with law within a period of one month.

Learned counsel for the petitioner also submits that the petitioner is on bail, therefore, no order in this regard is required to be passed.

11. The CRMP is accordingly allowed.

12. Registry is directed to send a copy of this order to the concerned Court to ensure immediate compliance.

Sd/-
(Deepak Kumar Tiwari)
Judge

Ajay

