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**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

Cril.Rev.P. No.8 of 2023

Thoudam Michael Singh, aged about 23 years, S/O
(L) Th. Brajamani Singh & Th. Ibeyaima of
Langthabal Lap Awang Leikai, P.O. & P.S.
Singjamei, District- Imphal West, PIN Code –
795008.

..... *Petitioner/s*

– Versus –

The State of Manipur represented by the
Principal Secretary/ Commissioner (Home),
Government of Manipur, at South Block, Manipur
Secretariat, Imphal West, P.O. & P.S. Imphal,
District – Imphal West, Manipur, PIN Code –
795001.

.... *Respondent/s*

BEFORE
HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Petitioner : Mr. Y. Devadutta, Advocate
Mr. Borish Laishram, Advocate

For the Respondent :Mr. Y. Ashang, PP

Date of Hearing : 04.07.2023

Date of Judgment &
Order : **27.09.2023**

JUDGMENT & ORDER
(CAV)

(A. Guneshwar Sharma, J)

[1] The present Cril.Rev.Petition is filed by the petitioner/accused under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (in short JJ Act) for setting aside the impugned order dated 31.03.2023 passed by the Ld. Fast Track Special Court No.1, Manipur in Cril. Misc. Case No.39 of 2021. By the impugned order, the learned Special Court FTSC No.1, Manipur held that the petitioner/accused was not below the age of 18 years at the relevant time of the incident. The petitioner filed Cril. Misc. Case No.39 of 2021 before the FTSC No.1, Manipur under Section 9 of the Juvenile Justice (Care and Protection of Children) (JJ Act), 2015 for remitting the Spl. Trial Case No.04/17/93/2020 in C/W FIR No.89(04)2013 Singjamei Police Station U/S 354-A/376 IPC and Section 8 of POCSO Act, 2012 where the petitioner who was accused in the present case prayed for declaring him as a juvenile at the time

of occurrence of the alleged incident and to remit the case to the Juvenile Justice Board, Imphal West for inquiry as per law.

[2] Heard Mr. Y. Devadutta, learned counsel assisted by Mr. Borish Laishram, learned counsel for the petitioner and Mr. Y. Ashang, learned PP for the State.

[3] The brief fact of the case is that the petitioner was accused in FIR No.89(04)2013 SJM PS U/s 354-A/376 IPC and Section 8 of POCSO Act, 2012. As per the FIR, the petitioner was accused of sexually assaulting a minor girl.

[3.1] Vide order dated 29.5.2017 in Spl. Trial (POCSO) Case No.4 of 2017, the Ld. Spl. Judge (POCSO), Imphal West, Manipur framed charge against the petitioner for offence punishable under Sections 4 and 12 of the POCSO Act. The petitioner/accused did not plead guilty and prayed for trial. The case was later on, transferred to the Court of FTSC No.1, Manipur and registered as Spl. Trial Case No.04/2017/93/2020.

[3.2] The petitioner filed an application being Cril. Misc. Case No.39 of 2021 under Section 9 of Juvenile Justice Act, 2015 praying for remitting the trial to Juvenile Justice Board, Imphal West as he was a minor at the time of alleged commission of the offence in the above referred FIR, i.e., on 05.04.2013.

[3.3] Along with the application, the petitioner/accused filed copy of the reading certificate issued by the Principal of the Little Master English Higher Secondary School, Samurou on 21-12-2021, copy of the provisional certificate of ThoudamSobita Devi, elder sister of the accused issued by the Headmaster of LangthabalNambulmapal High School, Imphal for passing high school examination in the year, 2011 and copy of admit card of his elder sister.

[3.4] Vide order dated 9.8.2022, the Ld. FTSC No.1, Manipur rejected the reading certificate issued by the school as it was not on the basis of the date of birth.

[3.4] As per the certificate (Annexure-A/5) issued by the Principal of the Little Master English Higher Secondary School, the date of birth of the petitioner/accused is 01.02.1996 and it is stated that on the date of occurrence, i.e., on 05.04.2013, the petitioner would be age of 17 years 2 months and four days and hence, he is a minor and the trial to be conducted under the provisions of the Juvenile Justice Act, 2015.

[4] Vide order dated 09.08.2022, the Ld. FTSC No.1, Manipur rejected the School Certificate dated 21.12.2021 with respect to the date of birth of the petitioner as the same was not on the basis of any authentic information relating to the date of birth of the petitioner. The Ld. Court have relied upon

the judgments of (i) State of Madhya Pradesh vs. Munna @ Shambhoo Nath reported as 2016 (1) SCC 696 and (ii) Deelip Singh vs. State of Bihar 2005 SCC (Cri) 253 to the point that age recorded in certificate would not be admissible if person who furnished the information has been examined. Accordingly, the Court ordered for a medical legal examination of accused for determination of the age of the petitioner.

[4.1] The date of birth of the elder sister of the petitioner as per matriculation admit card is 12.11.1994, i.e., her elder sister was 18 years 4 months and 23 days on the date of occurrence, i.e., on 4.5.2013. For the purpose of determination of juvenility of the petitioner, the trial Court has examined 6 (six) witnesses.

[5] The petitioner/accused was examined as PW No.1 and stated that he has 3(three) elder sisters and he studied in Maipakpi Memorial New Age Public School at Langthabal from Nursery to KG and studied in Meera Public School, Mongsangei from class 1 to 7 and studied in Little Master English Higher Secondary School, Samurou from class 8 to 9. But, he could not appear the final examination of class 9 due to poverty. He was born on 1.2.1996, but he did not know the date of birth of the 3(three) elder sisters. As narrated by his mother, there is a gap of 2 years in between the petitioner and the 3rd elder sister.

Exhibit P-1 is the reading certificate issued by the Principal, Little Master English Higher Secondary School, Samurou dated 21.12.2021 certifying that the petitioner was reading in class 9 in the year 2009 and his date of birth was shown as 1.2.1996. Exhibit P-2 is the provisional certificate of her third sister passing HSLC examination in 2011 and Exhibit P-3 is the admit card of her third elder sister issued by the Board of Secondary Education, Manipur for appearing in the matriculation examination, 2021. Both Exhibits P-2 and P-3 indicate the date of birth of the third sister of the petitioner as 12.11.1994.

[6] PW No.2 is the third sister of the petitioner. She stated that the petitioner was born in the year 1996, but she could not remember the exact date and month on which, he was born. She stated that she was born on 12.11.1994 and as stated by her mother there is a gap of 2 years in between her and the accused. In the cross-examination, PW No.2 admitted that there is a gap of 2 years in between her and the petitioner.

[6.1] PW No.3 is the mother of the petitioner and she stated that she has 3(three) daughters and one son and the petitioner is her last son. She stated that the petitioner was born on 1.2.1996, the first daughter was born in the year 1990 and the second daughter was born in the year 1992 and the third daughter was born in the year 1994. It is also stated that there is a gap of 2

years between her children. She stated that the petitioner could not appear in the class 9 examination due to poverty and the petitioner studied from nursery in Maipakpi Memorial New Age Public School, Langthabal and studied from class 1 to 7 in Meera Public School and both the schools are now closed.

[6.2] PW No.4 is the Principal-in-Charge of the Little Master English Higher Secondary School and stated that Exhibit P-1 was the reading certificate of the accused issued under his signature and the petitioner was reading in class 9 under Roll No.338 in the academic session of 2019 and his date of birth was 1.2.1996 as shown in the certificate and that the details were copied from the broad-sheet maintained by the school and the witness also submitted a copy of the broad-sheet maintained by the school. The broad-sheet is compared with the original and the same was found tallied. The broad-sheet was issued by the Board of Secondary Education, Manipur after the School had submitted the list of students of class 9 to the Board of Secondary Education, Manipur.

[7] In the course examination, PW No.4 admitted that the date of birth of the petitioner, being 1.2.1996 as reflected at Sl. No.335 of Exhibit-P/4, was by virtue of the certificate of passing Class - VIII issued by his previous school and the certificate of passing class 8 by the petitioner issued by previous school is untraceable due to frequent siftings of place of school.

[7.1] PW No.5 is the Clerk of the Little Master English Higher Secondary School which issued the reading certificate for the petitioner. PW No.5 stated that the date of birth of the petitioner, exhibited as Exhibit-P/1, i.e., 1.2.1996, was copied from the previous record of passing Class VIII and in the cross-examination, it is stated that the date of birth of the petitioner was based on the alleged Class VIII certificate submitted by the petitioner and only on his statement.

[7.2] PW No.6 is the Doctor serving as Sr. Resident in the Department of Forensic Medicine and Toxicology, RIMS, Imphal who examined the petitioner on 17.8.2022 with general physical examination, secondary sexual characters and dental examination. The Doctor opined that the age of the petitioner is above 21 years at the time of the examination, i.e., as on 17.8.2022. However, upper age of the petitioner could not be ascertained. In the cross-examination, PW No.6 admitted that the upper age limit of the petitioner could not be determined, but it could be 25 years, 30 years or 40 years, but it cannot be more than 50 years.

[8] Vide impugned order dated 31.3.2023, the trial Court considered only the evidence of deposition of PW No.6 (Doctor who examined the petitioner). The Ld. Court is of the view that the age of the accused as on date of his

medical examination on 17.08.2022 to be 21+/- 2 years, age of the petitioner cannot be 19 years or 23 years as on the date of examination, i.e., on 7.8.2022. Accordingly, the age of accused on the date of the incident, i.e., on 5.4.2013 would be between 10 to 14 years. The Ld. Trial Court is of the view that this calculation could not be accepted. It would be quite absurd in the facts of the present case. It is held in Para 6 of the impugned order that when the education certificate and age determination medical report of the accused person are found to be not conclusive, the age of the accused person may be considered based on all the information available on record of the case. Ld. FTSC No.1, Manipur observed that the petitioner was a married person with children at the time of the incident and hence, he was not below the age of 18 years at the time of incident and held that the petitioner was not a juvenile at the time of the incident. Being aggrieved by the impugned order, the petitioner approached this Court by way of the present petition under Section 102 of the Juvenile Justice Act, 2015 on the following grounds inter-alia:

- (i)** For that, the Ld. Trial Court below failed to apply his judicial mind in passing the impugned order.
- (ii)** For that, the Ld. Trial Court below failed to see that the petitioner can never be older than his immediate elder sister Sobita Devi who is born on 12/11/1994.

- (iii)** For that, the Ld. Trial Court failed to observe the evidence of the PW-6 (Dr. Soibam Neha) that the age of the petitioner on the date of his OSSIFICATION TEST, is/would be 25 years, or 30 years, or 40 years but not more than 50 years. If that is so, the petitioner can never be 30 years, or 40 years. If the petitioner is 30 years of age on the date of his ossification test, he (petitioner) is older than his immediate elder sister Sobita Devi (PW-2).
- (iv)** For That, the Ld. Trial Court below had failed to discharge his bounden duties that should have been rendered as per law and his finding against the prayer of the petitioner is not based on any authority of law and the same is based on mere assumption as such the impugned order cannot be acted upon.
- (v)** For that, the impugned order is bad in law and not fair as such cannot be acted upon.
- (vi)** For that, there are also other grounds and the same may kindly be submitted during final hearing of the case.

[9] It is the case of the petitioner that the upper age limit of the petitioner cannot be more than 25 years on the date of medical examination because he cannot be older than his sister PW No.2 who was born on 12.11.1992 as per matriculation certificate of the date of examination, i.e., 17.8.2022, the age of PW No.2 would be 26 years 8 months and as per the deposition of the PW Nos.1, 2 & 3, there is a gap of 2 years between the

petitioner and PW No.2 and hence upper age of the petitioner would be 24 years 8 months.

[10] This Court issued notice on 17.4.2023 and the Ld. PP accepted notice on behalf of the respondent and sought 2 weeks. At the time of issuance of notice, this Court framed the issue involved in the present case on 17.4.2023. The same is reproduced as below:

"When the Court/Competent Authority does not accept 3 (three) documents mentioned in Section 94 of Juvenile Justice Act, 2015, ie, (1) School of Matriculate Certificate, (2) Birth Certificate issued by the Birth and Death Registrar, and (3) Medical Examination Report, what will be the procedure to be adopted by the Court in such situation?"

[11] The State respondent has failed to file counter affidavit and vide order dated 08.06.2023, this Court observed that extensive counter affidavit is not required and the question of law regarding the document to be relied while deciding juvenility of a person within the meaning of Section 94 of the Juvenile Justice Act is required. As no counter affidavit was filed, the matter was heard

on 04.07.2023 on the basis of the available record and the matter was reserved for orders.

[12] Mr. Y. Devadutta, learned counsel for the petitioner has assailed the impugned order mainly on the ground that learned Trial Court committed error in rejecting all the documents stipulated in Section 94 of JJ Act, 2015. When the documents as mentioned in Section 94 are rejected by the court, it is incumbent to rely upon the medical opinion. It is pointed out that the statute does not provide any other documents except for the three methods as contemplated in Section 94 of the Act. Assuming for the sake of argument that the court rely on other sources, the finding that the petitioner was not a juvenile at the time of occurrence cannot be sustained on the simple logic that he cannot be older than his immediate elder sister. As per the uncontroverted depositions of witnesses examined for this purpose, it is established that the immediate elder sister was 18 years 4 months and 23 days old on the date of offence and there is a gap of 2 years between them. Learned counsel vehemently submits that the petitioner ought to be treated as 16+ years on the date of the offence. It is pointed out that learned Trial Court failed to consider this important document. If the same is considered, the petitioner is a juvenile on the date of the occurrence.

[13] Mr. Y. Devadutta, learned counsel for the petitioner relies upon the recent decision of **P. Yuvaprakash vs. State Rep. by Inspector of Police (18.07.2023 - SC) : MANU/SC/0777/2023**. Hon'ble Supreme Court has considered the procedure for determining juvenility and had held that in absence of certificates as mentioned in Section 94 of JJ Act, medical report authenticated by the examining doctor can be reliable. It is observed that transfer certificate is not a document as mentioned in Section 94 of the Act.

13. It is evident from conjoint reading of the above provisions that wherever the dispute with respect to the age of a person arises in the context of her or him being a victim under the POCSO Act, the courts have to take recourse to the steps indicated in Section 94 of the JJ Act. The three documents in order of which the Juvenile Justice Act requires consideration is that the concerned court has to determine the age by considering the following documents:

- (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.

14. Section 94(2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer

certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of birth of the victim as 11.07.1997. Significantly, the transfer certificate was produced not by the prosecution but instead by the court summoned witness, i.e., CW-1. The burden is always upon the prosecution to establish what it alleges; therefore, the prosecution could not have been fallen back upon a document which it had never relied upon. Furthermore, DW-3, the concerned Revenue Official (Deputy Tahsildar) had stated on oath that the records for the year 1997 in respect to the births and deaths were missing. Since it did not answer to the description of any class of documents mentioned in Section 94(2)(i) as it was a mere transfer certificate, Ex C-1 could not have been relied upon to hold that M was below 18 years at the time of commission of the offence.

15. In a recent decision, in *Rishipal Singh Solanki v. State of Uttar Pradesh and Ors.*, MANU/SC/1081/2021 : 2021 (12) SCR 502 this Court outlined the procedure to be followed in cases where age determination is required. The court was dealing with Rule 12 of the erstwhile Juvenile Justice Rules (which is in parimateria) with Section 94 of the JJ Act, and held as follows:

20. Rule 12 of the JJ Rules, 2007 deals with the procedure to be followed in determination of age. The juvenility of a person in conflict with law had to be decided *prima facie* on the basis of physical appearance, or documents, if available. But an inquiry into the determination of age by the Court or the JJ Board was by seeking evidence by obtaining: (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; (iii) the birth certificate given by a corporation or a municipal authority or a panchayat. Only in the absence of either (i), (ii) and (iii) above, the medical opinion could be sought from a duly constituted Medical Board to declare the age of the juvenile or child. It was also provided that while determination was being made, benefit could be given to the child or juvenile by considering the age on lower side within the margin of one year.

17. In *Abuzar Hossain @ Gulam Hossain v. State of West Bengal* [2012] 9 SCR 224, this Court, through a three-judge bench, held that the burden of proving that someone is a juvenile (or below the prescribed

age) is upon the person claiming it. Further, in that decision, the court indicated the hierarchy of documents that would be accepted in order of preference.

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of "the date of birth certificate from the school" or "the matriculation or equivalent certificate" from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed that in terms of the examination of M, a certificate was issued stating "that the age of the said girl would be more than 18 years and less than 20 years". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor". This finding is, in this Court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94(2) (i) mandates; nor are they in accord with Section 94(2) (ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical ossification test, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this Court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9.

[14] Learned counsel further draws the attention of this Court to the leading case of **Rishipal Singh Solanki v. State of U.P.: (2022) 8 SCC 602**,

where Hon'ble Supreme Court has laid down the principles to be followed while deciding juvenility of a person as below:

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.

[15] In view of the clear mandate of Rishipal Singh case (supra), Mr. Y. Devadutta, learned counsel for the petitioner has submitted that the court ought to consider the documents on record while considering the juvenility of the petitioner. It is stated that learned Trial Court has failed to do so in ignoring the vital document, ie, age certificate of immediate elder sister of the petitioner. If the same is relied, the petitioner is 16+ years old on the date of occurrence. It is pointed out that the learned Trial Court drew the conclusion that the petitioner could not be a juvenile on the relevant date as he was married man with children.

[16] Mr. Y. Ashang, learned PP has submitted that there is no manifest error in the impugned order, as the Trial Court has considered the materials on record including the important factum that the petitioner was a married person with children at the relevant time. He relies on the judgment of **Manoj v. State of Haryana: (2022) 6 SCC 187**, where Hon'ble Supreme Court excluded the

family register for considering as a document for considering juvenility as the same is not contemplated by the statute.

40. In terms of Rule 12(3)(iii) of the Rules, birth certificate issued by corporation or municipal authority or a panchayat is a relevant document to prove the juvenility. The family register is not a birth certificate. Therefore, it would not strictly fall within clause (iii) of Rule 12(3) of the Rules. Even Section 94(2)(ii) of the 2015 Act contemplates a birth certificate issued by a panchayat to determine the age.

41. The appellant sought to rely upon juvenility only on the basis of school leaving record in his application filed under Section 7-A of the 2000 Act. Such school record is not reliable and seems to be procured only to support the plea of juvenility. The appellant has not referred to date of birth certificate in his application as it was obtained subsequently. Needless to say, the plea of juvenility has to be raised in a bonafide and truthful manner. If the reliance is on a document to seek juvenility which is not reliable or dubious in nature, the appellant cannot be treated to be juvenile keeping in view that the Act is a beneficial legislation. As also held in *Babloo Pasi*⁹, the provisions of the statute are to be interpreted liberally but the benefit cannot be granted to the appellant who has approached the Court with untruthful statement.

⁹*Babloo Pasi v. State of Jharkhand*, (2008) 13 SCC 133 : (2009) 3 SCC (Cri) 266

[17] This Court has considered the rival submissions of the parties, materials on record and relevant law in this regard. It is settled proposition of law that the provisions of Section 94 of Juvenile Justice Act, 2015 contemplates three types of documents to be relied while considering juvenility. First is the date of birth certificate from school or matriculation certificate; second is birth certificate issued by a municipal or panchayat; third is the age determined by medical test. The document mentioned at first is to be preferred to others and

only in absence of certificate, medical test is to be resorted. However, the statute does not provide any other method for determination of age. In the present case, learned Trial Court rejected all the documents as prescribed in Section 94 of JJ Act and considered the factum of marriage of the petitioner at the relevant time and held that the petitioner could not be a juvenile at the relevant time based on this factum of marriage. However, other available documents on record such as age of the immediate sister which was not disputed by the prosecution was not considered. As per the document Ext.P-3 (Admit Card for appearing in matriculation), the immediate elder sister of the petitioner was 18+ years at the relevant time and there is a gap of 2 years between the petitioner and his immediate elder sister.

[18] In the case of **Jyoti Prakash Rai v. State of Bihar: (2008) 15 SCC 223**, Hon'ble Supreme Court held that juvenility has to be determined on the basis of materials brought on record by the parties and observed in Para 12 as below:

12. The 2000 Act is indisputably a beneficial legislation. Principles of beneficial legislation, however, are to be applied only for the purpose of interpretation of the statute and not for arriving at a conclusion as to whether a person is juvenile or not. Whether an offender was a juvenile on the date of commission of the offence or not is essentially a question of fact which is required to be determined on the basis of the materials brought on record by the parties. In the absence of any evidence which is relevant for the said purpose as envisaged under Section 35 of the Evidence Act, the same must be determined keeping in view the factual

matrix involved in each case. For the said purpose, not only relevant materials are required to be considered, the orders passed by the court on earlier occasions would also be relevant.

[19] In the case of **Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133**, Hon'ble Apex Court has held that juvenility has to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. Para 12 is reproduced below:

22. It is well settled that it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. The date of birth is to be determined on the basis of material on record and on appreciation of evidence adduced by the parties. The medical evidence as to the age of a person, though a very useful guiding factor, is not conclusive and has to be considered along with other cogent evidence.

[20] In the leading case of **Ashwani Kumar Saxena v. State of M.P., (2012) 9 SCC 750** for determination of juvenility, Hon'ble Supreme Court laid down the principles to be followed while considering juvenility and held that admission register is also a relevant piece of evidence of date of birth.

34. Age determination inquiry contemplated under the JJ Act and the 2007 Rules has nothing to do with an enquiry under other legislations, like entry in service, retirement, promotion, etc. There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated

or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination.

43. We are of the view that admission register in the school in which the candidate first attended is a relevant piece of evidence of the date of birth. The reasoning that the parents could have entered a wrong date of birth in the admission register hence not a correct date of birth is equal to thinking that parents would do so in anticipation that child would commit a crime in future and, in that situation, they could successfully raise a claim of juvenility.

[21] From the above case laws, it is clear that the materials available on record have to be considered while determining juvenility. However, in the present case Ext.P-3 was not considered. This Court is of the opinion that non-consideration of the Ext.P-3 is fatal and the same cannot be overridden by the factum of marriage of the petitioner. Accordingly, it is held that the petitioner was 16+ years old on the date of occurrence, ie, 05.04.2013 and hence was a juvenile on the relevant date. The impugned order is set aside. In compliance with the provisions of Section 9 of Juvenile Justice Act, 2015, the present case is transmitted to the Juvenile Justice Board, Imphal West for further proceedings as per law.

[22] With these observations and directions, the present petition is allowed. No cost. Send a copy of this order to learned FTSC No.1, Manipur for information.

JUDGE

FR/NFR

-Larson