

Saurabh Rathor vs State Of U.P. And 3 Others on 4 February, 2025

Author: Saurabh Srivastava

Bench: Saurabh Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15229

Court No. - 79

Case :- MATTERS UNDER ARTICLE 227 No. - 14727 of 2024

Petitioner :- Saurabh Rathor

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Adarsh Shukla

Counsel for Respondent :- Adarsh Shukla,G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Adarsh Shukla, learned counsel for the petitioner and learned A.G.A. for the State.
2. The instant petition has been preferred for challenging the order dated 13.09.2024 passed by learned Additional Session Judge/Special Judge (POCSO Act), Basti in Session Trial No.78 of 2024 (State of U.P. Vs. Saurabh Rathor), which was rejected and while considering the application no.11 kha through which petitioner was disputing the date of birth mentioned in the High School certificate pertains to the victim and prayed for conducting medical examination of the victim.

3. Learned counsel for the petitioner submitted that at the time of adjudicating the specific application preferred at the behest of petitioner for seeking medical examination of the victim, which was although considered by learned Special Judge, POCSO Act, Basti that the date of birth as mentioned in the High School certificate pertains to the victim is 15.09.2007 and at the same time the date of birth of younger sister of the victim available in the records is 18.08.2007, which is highly impossible.

4. Learned counsel for the petitioner sought the attention of Court over a report submitted by Sub-Inspector/Investigating Officer, Crime Branch, District Basti before Circle Officer, Circle Harraiya, District Basti in which it has been mentioned that specific communication has been made with District Basic Education Officer, Basti, which reveals that when the victim sought her admission in primary school, where she studied upto class-4th, the date of birth of victim is mentioned as 30.07.2003 which is correct one, but at the time of filling up form of class- 10th examination, the date of birth of the victim was mentioned as 15.09.2007 and as such the certificate obtained by victim for class-10th is having date of birth as 15.09.2007. While contradicting the same, petitioner placed the documents pertains to younger sister of the victim, wherein the date of birth of younger sister of the victim is mentioned as 18.08.2007 and as such in pursuance to report dated 14.09.2024 submitted on the basis of information received from District Basic Education Officer, Basti along with on basis of the date of birth of younger sister of the victim, the consideration drawn by learned court concerned for initiating trial against the accused in pursuance to POCSO Act is highly illegal and as such for determining the actual date of birth of the victim, specific prayer for conduction of medical examination has been preferred, but the same has been rejected vide order dated 13.09.2024 only on the basis of recorded date of birth of the victim in the High School certification examination, which impugned the present petition.

5. For substantiating the arguments raised by learned counsel for the petitioner, he relied upon the judgement rendered by Hon'ble Apex Court in case of Suhani Vs. State of U.P., decided on 26th April, 2018 in Criminal Appeal No.4532 of 2018 @ S.L.P. (C) 8001 of 2018, wherein Hon'ble Apex Court held that in case of dispute regarding the date of birth mentioned in the certification examination pertains to the victim, it will be judicious approach to put the victim for medical examination and the same has been directed by Hon'ble Apex Court in case of Suhani (supra).

6. Per contra, learned A.G.A. vehemently opposed the prayer as made in the petition and rebutted the stand taken up by learned counsel for the petitioner by way of submitting that as per the provisions contained under section 94 of Juvenile Justice (Care and Protection for Children) Act, 2015, the specific parameter for determining the age is crystal clear and the order dated 13.09.2024 is having no infirmity once the learned Special Judge, POCSO Act, Basti determined the date of birth pertains to the victim, which is mentioned in the High School certification examination.

7. After having rival submissions extended by learned counsel for the parties, the grounds taken up by learned counsel for the petitioner seems to be justified since the judgement relied upon by learned counsel for the petitioner is strictly based upon the contradiction in the recorded date of birth mentioned in the certification examination; on the basis of statement recorded by concerned Investigating Officer in pursuance to communication received from District Basic Education Officer,

Basti, wherein the date of birth recorded at the stage of primary education was of 2003, but at the same time the date of birth recorded at the time of matriculation examination is of 2007; moreover, at the same time when the relevant documents reveals the date of birth of younger sister of the victim is one month younger to the victim itself disputed the date of birth as mentioned in the matriculation examination received by the victim and as such the adjudication made by learned Special Judge, POCSO Act, Basti while passing order dated 13.09.2024 over an application preferred at the behest of petitioner for seeking direction for conduction of medical examination of the victim, which was denied, is bad in the eye of law.

8. The reasoning recorded by learned Special Judge, POCSO Act, Basti that once the date of birth available in the matriculation examination is available, there is hardly any occasion arises in favour of the petitioner for seeking medical examination of the victim, is also not sustainable since there is a crystal clear contradiction available in pursuance to statement recorded by the victim herself, wherein she mentioned her date of birth at the time of incident was 20 years and the date of birth received from the communication made by District Basic Education Officer, Basti also disputed the date of birth mentioned over the matriculation examination certificate and as such in the light of judgement rendered by Hon'ble Apex Court in case of Suhani (supra) on the basis of discussion as made above, order dated 13.09.2024 is hereby set-aside, the matter is remitted back to learned Special Judge, POCSO Act, Basti for re-considering the application preferred at the behest of petitioner for seeking direction for conduction of medical examination of the victim as fresh.

9. However, it is made clear that the re-adjudication of the application in shape of paper no.11kha shall be expedited within a period of two months from the date of production of certified copy of this order, after giving proper opportunity of hearing to all concerns.

10. Hence, this petition stands allowed accordingly.

Order Date :- 4.2.2025 Saif