Vinod Katara vs The State Of Uttar Pradesh on 12 September, 2022

Author: Dinesh Maheshwari

Bench: Dinesh Maheshwari

REPORTABL

IN THE SUPREME COURT OF INDIA

CRIMINAL ORIGINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. 121 OF 2022

VINOD KATARA .…PETITIONER(S)

Versus

STATE OF UTTAR PRADESH ….RESPONDENT(S)

JUDGMENT

J.B. PARDIWALA, J.

1. Personal liberty of a person is one of the oldest concepts to be purported by national courts. As long ago as in 1215, the English Magna Carta provided that:□"No free man shall be taken or imprisoned.... but..... by law of the land."

2. Today, the concept of personal liberty has received a far more expansive interpretation. The notion that is accepted today is that liberty encompasses these rights and privileges which have long been recognized as being essential to the orderly pursuit of happiness by a free man and not merely freedom from bodily restraint. There can be no cavil in saying that lodging juveniles in adult prisons amounts to deprivation of their personal liberty on multiple aspects.

3. This Writ Application under Article 32 of the Constitution is at the instance of a convict accused undergoing life imprisonment for the offence of murder seeking appropriate directions to the respondent State of Uttar Pradesh to verify the exact age of the convict on the date of the commission of the offence as it is the case of the convict that on the date of the commission of the

offence i.e. 10.09.1982 he was a juvenile aged around 15 years.

4. The facts giving rise to this litigation may be summarized as under:

> (a) The writ applicant along with other co□accused persons was put to trial for the offence punishable under Section 302 r/w 34 of the IPC;
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> (b) The 5th Additional Sessions Judge, Agra in the sessions trial No. 535 of 1983 arising from the case crime no. 126 of 1982 registered with the Fatehpur Sikri District, Agra held the writ applicant herein and the co□accused persons guilty of the offence of murder and sentenced them to life imprisonment;
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> (c) The writ applicant herein and the other convicts went in appeal before the Allahabad High Court by filing the Cr. Appeal No. 133 of 1986 questioning the legality and validity of the judgment & order of conviction passed by the trial court dated 06.01.1986;

(d) The appeal was heard by the High Court and vide judgment and order dated 04.03.2016 came to be dismissed thereby affirming the judgment and order of conviction passed by the trial court;

(e) The writ applicant herein dissatisfied with the order passed by the High Court dismissing his appeal, referred to above, came before this Court by filing application for Special Leave to Appeal (Crl.) No. 6048 of 2016. This Court vide order dated 16.08.2016 declined to grant leave as prayed for and dismissed the Special Leave Petition.

5. It may not be out of the place to state at this stage that till this Court dismissed the Special Leave Petition vide the order dated 16.08.2016, the writ applicant herein had not raised the question of him being a juvenile on the date of the commission of the alleged offence on 10.09.1982.

6. It appears that while the writ applicant was undergoing sentence of life imprisonment, he was subjected to medical examination by the Medical Board constituted by the respondent State in pursuance of the judgment rendered by a Division Bench of the Allahabad High Court in the Criminal Writ Public Interest Litigation No. 855 of 2012, wherein the Division Bench of the Allahabad High Court observed as under:

> “Admittedly, as per the State's earlier affidavits, it was claimed that there were 72 prisoners, who may have been below 18 years in age and who are detained in the various district or Central jails. Their break up was as follows:
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> There were 23 such prisoners in Bareilly, 1 in Lucknow, 4 in Allahabad, 2 in Etawah, 18 in Agra and 23 in Fatehgarh. One such prisoner Raju, who belonged to Faizabad, whose age was determined to be below 18 years by the Principal Magistrate, Juvenile Justice Board was sent to Special Home after having been detained for a long time in Faizabad jail.

Prima facie there appears to be some material for suggesting that such prisoners, may have been below 18 years on the date of commission of the offences. After the modification of the Juvenile Justice (Care and Protection of Children) Act, 2000, (hereafter the Act) by Act No. 33 of 2006, under section 2 (l) a juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteen years of age as on the date of commission of such offence.

Under the proviso to section 7A (1) of the Act, it is mentioned that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after the final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter the Rules).

We, therefore, direct the District Judges, who are Chairpersons of their respective Legal Services Authorities to directly oversee that efficient lawyers are appointed for the purpose of providing legal aid to the prisoners, (who are unable to engage private lawyers) who have been mentioned in the list furnished by the State Government and described to be below 18 years in age on the date of commission of offence. The said legal aid lawyers should get the ages of the prisoners ascertained by obtaining documents and carrying out the other measures provided under Rule 12 of the Juvenile Justice Act and Rules and also on the lines suggested by the Delhi High Court in WP (C) No. 8889 of 2011 (Court on its own motion vs. Department of Women and Child Development and others) in its order dated 11.5.2012. Obtaining information about the probable date of birth of other siblings can also be taken into account for ascertaining the true age of these prisoners. The legal aid lawyers may also find out whether there are other prisoners in jail, who may be below 18 years of age on the date of commission of the offence and who appear to be wrongly lodged in the regular prisons for adults and the bases for their conclusions.

Thereafter the matter may be placed before the Principal Judge, Juvenile Justice Board for determining of the ages as per the criteria set out above.

The prosecution and the complainant will also of course be given an opportunity to examine their own witnesses and to cross□examine the witnesses, who have been got examined on behalf of the accused and for that purpose notices of the proceedings before the JJ Board shall be served on the complainant/ prosecution. As it is possible that in some cases the prisoners mentioned in the State's list may indeed be below 18 years in age on the date of offence, but as the basis for arrival at the conclusion in the State's list were usually some preliminary medical examinations and no detailed steps for ascertaining ages had been taken after hearing both parties, and it cannot be ruled out that in certain cases extraneous measures may have been used for reducing the ages, we think that such an exercise as detailed above wherein the ages are ascertained after hearing both parties was needed. The said exercise is to be competed within a period of two months and the reports submitted to this Court on its next listing.

The District Judges/District Legal Services Authorities shall take strict measures in future for ensuring that prisoners below 18 years of age on the date of offence are not lodged in adults prisons in violation of the Juvenile Justice Act and Rules.

So far as district Allahabad is concerned, we direct the District Judge, Allahabad to permit Sister Sheeba Jose, Advocate and Shri Rohan Gupta, Advocate to visit and interview the concerned prisoners for the purpose of ascertaining their ages and for submitting the report to the Court on the next date of listing.

It was further submitted by the learned counsel for the petitioner that so far as the prisoner Raju is concerned, whose age was determined to be below 18 years, he was earlier lodged in Faizabad jail and was subsequently sent to the Special Home. As he was convicted as far back as in the year 2001 in a case under section 302 IPC. The respondents should inform this Court about the total period spent in jail by this prisoner and in case it exceeds 3 years (which was the maximum permissible sentence in view of section 15 of the Act) the basis for his being presently detained in the Special Home." Thus, vide the order dated 24.05.2012 referred to above passed in a Public Interest Litigation being Criminal (PIL) Misc. W.P. No. 855 of 2012, the Allahabad High Court directed the Juvenile Justice Boards to hold an enquiry for determination of the age of prisoners languishing in jails who claimed to have been juveniles in conflict with the law.

7. The Medical Board subjected the writ applicant herein to the X□rays of the skull and sternum. Upon medical examination of the writ applicant herein, the Medical Board gave its report dated 10.12.2021 certifying that on 10.09.1982 i.e. the date of the commission of the alleged offence, the writ applicant could have been around 15 years of age as on the date of the medical examination, the convict was around 56 years of age.

8. It appears that sometime later, the writ applicant was in a position to obtain a document in the form of Family Register dated 02.03.2021 issued under the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970. In the Family Register certificate, the year of birth of the writ applicant herein is shown as 1968. If 1968 is the correct birth year of the writ applicant herein, then in 1982 he was about 14 years of age.

9. In such circumstances referred to above, the writ applicant is here before this Court. He claims that as he was a juvenile on the date of the commission of the alleged offence sometime in the year 1982, he could not have been put to trial along with other co□accused and should have been dealt with under the provisions of the Juvenile Justice Act as prevailing at the relevant point of time.

It is the prayer of the writ applicant that the respondent State be directed to get the claim of the writ applicant in regard to the juvenility verified through the concerned Sessions Court or the Juvenile Justice Board.

Submissions on behalf of the writ applicant convict:

10. Mr. Rishi Malhotra, the learned counsel appearing for the writ applicant vehemently submitted that although till the dismissal of the Special Leave Petition (Criminal) No. 6048 od 2016 by this Court vide order dated 16.08.2016, the convict had not raised the plea of juvenility, yet the law permits him to raise such a plea even at this point of time having regard to the provisions of the Juvenile Justice (Care and Protection of Children) Amendment Act, 2011. It is submitted that there

is clinching evidence on record as on date in the form of certificate issued by the Medical Board as well as the Family Register to indicate that in the year 1982 the writ applicant could be around 15 years of age. The learned counsel would vehemently submit that there is no good ground to discard the certificate issued by the Medical Board as well as the extract of the Family Register.

11. To fortify the aforesaid submissions, the learned counsel seeks to rely upon a three□Judge Bench decision of this Court in the case of Abuzar Hossain ALIAS Gulam Hossain v. State of West Bengal reported in (2012) 10 SCC 489.

12. In such circumstances referred to above, the learned counsel prays that there being merit in his writ petition, the same may be allowed and appropriate directions may be issued to do complete justice in the matter.

Submissions on behalf of the State

13. Mr. Ardhendhumauli Kr. Prasad, the learned Additional Advocate General appearing for the State, on the other hand, has vehemently opposed the present writ application. The learned counsel would submit that the Family Register is not admissible in evidence and the entries made therein are not decisive to determine the age. It is argued that the writ applicant has not placed on record any document of any educational institution. It is also argued that no ossification test was undertaken or no modern recognized method was adopted for the purpose of determination of age.

14. The learned counsel appearing for the State invited the attention of this Court towards the order passed by a Coordinate Bench of this Court in the case of Ashok v. State of Madhya Pradesh, Special Leave to Appeal (Criminal) No. 643 of 2020 dated 29.11.2021. The order passed by the Coordinate Bench referred to above reads thus:□"By a judgment and order dated 29.07.1999, the Additional Sessions Judge, Gohad, District Bhind, Madhya Pradesh, convicted the petitioner inter alia for offence under Section 302 of the Indian Penal Code and sentenced him inter alia to life imprisonment in Sessions Trial No. 260 of 1997. In the cause title of the said judgment and order, the petitioner has been described as Ashok, S/o Balram Jatab age 16 yrs 9 months and 19 days, R/o Village Anjani Pura, District Bhind.

The petitioner filed an appeal being Criminal Appeal No. 455 of 1999 challenging his conviction and sentence. The said criminal appeal has been dismissed by the High Court by an order dated 14.11.2017, which is impugned in the Special Leave Petition (Crl.) No. 643 of 2020, filed by the petitioner. The incident which led to the conviction of the petitioner, took place on 26.07.1997.

The petitioner claims that the petitioner was born on 05.01.1981. The petitioner was, therefore, approximately 16 years and 7 months old on the date of the incident. In this Court, the petitioner has for the first time contended that he was a juvenile on the date of the incident. His conviction and sentence are, therefore, liable to be set□aside. The claim of juvenility was not raised in the High Court. The learned Additional Advocate General, appearing on behalf of the State argued that the claim of juvenility has been raised for the first time in this special leave petition. The Juvenile Justice Act, 1986, which was in force on the date of commission of the offence as also the date of the

judgment and order of conviction and sentence by the Sessions Court was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. The Act of 2000 received the assent of the President of India on 30.12.2000 and came into force on 01.04.2001. The Act of 2000 defined juvenile in conflict with the law to mean a juvenile, who was alleged to have committed an offence and had not completed 18th year of age as on the date of commission of such an offence.

Under the 1986 Act, the age of juvenility was up to the 16th year. Section 7A of the 2000 Act as inserted by Act 33 of 2006 with effect from 22.08.2006 provided as follows: "7A. Procedure to be followed when claim of juvenility is raised before any Court. (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

> Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act. (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section(1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect." The claim of juvenility can thus be raised before any Court, at any stage, even after final disposal of the case and if the Court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a Court, shall be deemed to have no effect. Even though the offence in this case may have been committed before the enactment of the Act of 2000, the petitioner is entitled to the benefit of juvenility under Section 7A of the Act of 2000, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence.
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> It is true as pointed out by the learned Additional Advocate General appearing on behalf of the State that the certificate of Akikrit Shash, High School School Endouri, District Bhind, Madhya Pradesh relied upon by the petitioner is stated to have been issued on 17.07.2021. The said certificate does not specifically mention that the date of birth 01.01.1982 had been entered at the time of first admission of the petitioner at the primary school level.
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> Furthermore, there is a birth certificate issued by the Gram Panchayat, Endouri, District Bhind, Madhya Pradesh which indicates the date of birth of the petitioner as 05.01.1982 and not 01.01.1982 as recorded in the school certificate referred to above.

The entry in the records of the Gram Panchayat, Endouri, District Bhind, Madhya Pradesh, also do not appear to be contemporaneous and the certificate has been issued in the year 2017.

However, as pointed out by Mr. M.P. Parthiban, learned counsel appearing on behalf of the petitioner that the Sessions Court has recorded the age of the petitioner as 16 years, 9 months and 19 days. The petitioner has been in actual custody for over three years.

The 2000 Act has been repealed and replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 21 of the 2015 Act provides as follows:

> "21. Order that may not be passed against a child in conflict with law. – No child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of this Act or under the provisions of the Indian Penal Code or any other law for the time being in force." Considering that the Trial Court has recorded the age of the petitioner as 16 years and odd, and has been in actual custody in excess of three years, which is the maximum for a juvenile, we deem it appropriate to grant the petitioner interim bail on such terms and conditions as may be imposed by the Sessions Court. We further direct the Sessions Court to examine the claim of the petitioner to juvenility in accordance with law, and submit a report to this Court within one month from the date of communication of this order.
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> The concerned Sessions Court shall be entitled to examine the authenticity and genuineness of the documents sought to be relied upon by the petitioner, considering that the documents do not appear to be contemporaneous.
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> In the event the documents are found to be questionable/unreliable, it will be open to the Sessions Court to have the petitioner medically examined by taking an ossification test or any other modern recognized method of age determination."
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> 15. The aforesaid order passed by the Coordinate Bench has been relied upon by the learned counsel appearing for the State to fortify his submission that if at all the issue in regard to the juvenility of the writ applicant requires consideration, the same should be by the Sessions Court i.e. the Court which had originally tried the writ applicant for the alleged offence.
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> 16. In such circumstances referred to above, the learned counsel appearing for the State prays that let the Sessions Court look into the certificate issued by the Medical Board including the Family Register more particularly its authenticity and genuineness.

Analysis:

17. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is that whether we should ask the Sessions Court to examine the authenticity and genuineness of the documents sought to be relied upon by the writ applicant in support of his plea of being a juvenile on the date of the

commission of the alleged offence in the year 1982 and also subject the convict to further ossification test?

18. The first and the foremost issue that arises for our consideration in this writ petition is in regard to the applicability of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000 (for short, "the 2000 Act").

19. In the aforesaid context, we must first look into the relevant dates as follows:☐

(a) The date of the incident is 10.09.1982. Thus, on the date of incident even the Juvenile Justice Act, 1986 was not in force. What was in force was the Children Act, 1960. The Children Act, 1960 was a beneficial legislation enacted to take care of the delinquent and neglected children. Under the said Act, a child meant a person who had not attained the age of 16 years in the case of a boy or 18 years in the case of a girl.

(b) The petitioner herein came to be convicted by the trial court vide judgment and order dated 06.01.1986. Even on the date of conviction, the Juvenile Justice Act, 1986 was not in force. The Juvenile Justice Act, 1986 came in force with effect from 01.12.1986. Thus, even on the date of conviction, the Children Act, 1960 governed the field.

(c) The appeal filed by the petitioner herein in the High Court of Allahabad against the judgment and order of conviction passed by the trial court came to be decided and was ordered to be dismissed vide judgment and order dated 04.03.2016. It is relevant to note that on the date when the appeal came to be dismissed by the High Court, the 2000 Act was in force.

(d) Special Leave to Appeal (Crl.) No. 6048 of 2016 filed by the petitioner herein in this Court came to be dismissed vide order dated 16.08.2016.

20. On and with effect from 15.01.2016, the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, "the 2015 Act") came into force which repealed the 2000 Act. While the appeal of the petitioner herein against his conviction and sentence was pending in the High Court, the 2000 Act came into force which repealed the Juvenile Justice Act, 1986. The 2000 Act inter alia raised the age of juvenility from 16 to 18 years and in terms of Section 20 of the 2000 Act, the determination of juvenility was required to be done in all pending matters in accordance with Section 2(1) of the 2000 Act.

21. The effect of Section 20 of the 2000 Act was considered in Pratap Singh v. State of Jharkhand, (2005) 3 SCC 551, and it was stated as under:☐"31. Section 20 of the Act as quoted above deals with the special provision in respect of pending cases and begins with a non obstante clause. The sentence "notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act came into force" has great significance. The proceedings in respect of a juvenile pending in any court referred to in Section 20 of the Act are relatable to proceedings initiated before the 2000 Act came into force and which are pending when the 2000 Act came into force. The term "any court" would include even ordinary

criminal courts. If the person was a "juvenile" under the 1986 Act the proceedings would not be pending in criminal courts. They would be pending in criminal courts only if the boy had crossed 16 years or the girl had crossed 18 years. This shows that Section 20 refers to cases where a person had ceased to be a juvenile under the 1986 Act but had not yet crossed the age of 18 years then the pending case shall continue in that court as if the 2000 Act has not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, shall forward the juvenile to the Board which shall pass orders in respect of that juvenile."

22. In Bijender Singh v. State of Haryana, (2005) 3 SCC 685, the legal position as regards Section 20 was stated in following words:□"8. One of the basic distinctions between the 1986 Act and the 2000 Act relates to the age of males and females. Under the 1986 Act, a juvenile means a male juvenile who has not attained the age of 16 years, and a female juvenile who has not attained the age of 18 years. In the 2000 Act, the distinction between male and female juveniles on the basis of age has not been maintained. The age□limit is 18 years for both males and females.

9. A person above 16 years in terms of the 1986 Act was not a juvenile. In that view of the matter the question whether a person above 16 years becomes "juvenile" within the purview of the 2000 Act must be answered having regard to the object and purport thereof.

10. In terms of the 1986 Act, a person who was not juvenile could be tried in any court. Section 20 of the 2000 Act takes care of such a situation stating that despite the same the trial shall continue in that court as if that Act has not been passed and in the event, he is found to be guilty of commission of an offence, a finding to that effect shall be recorded in the judgment of conviction, if any, but instead of passing any sentence in relation to the juvenile, he would be forwarded to the Juvenile Justice Board (in short "the Board") which shall pass orders in accordance with the provisions of the Act as if it has been satisfied on inquiry that a juvenile has committed the offence. A legal fiction has, thus, been created in the said provision. A legal fiction as is well known must be given its full effect although it has its limitations. .....

11. .....

12. Thus, by reason of legal fiction, a person, although not a juvenile, has to be treated to be one by the Board for the purpose of sentencing, which takes care of a situation that the person although not a juvenile in terms of the 1986 Act but still would be treated as such under the 2000 Act for the said limited purpose."

23. In Dharambir v. State (NCT of Delhi), (2010) 5 SCC 344, the determination of juvenility even after conviction was one of the issues and it was stated:□"11. It is plain from the language of the Explanation to Section 20 that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, etc., the determination of juvenility of a juvenile has to be in terms of clause (l) of Section 2, even if the juvenile ceases to be a juvenile on or before 1□4□2001, when the Act of 2000 came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged

offence was committed.

12. Clause (l) of Section 2 of the Act of 2000 provides that "juvenile in conflict with law" means a "juvenile" who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence. Section 20 also enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Act of 2000."

24. Similarly, in Kalu v. State of Haryana , (2012) 8 SCC 34, this Court summed up as under:□"21. Section 20 makes a special provision in respect of pending cases. It states that notwithstanding anything contained in the Juvenile Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which the Juvenile Act comes into force in that area shall be continued in that court as if the Juvenile Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of the Juvenile Act as if it had been satisfied on inquiry under the Juvenile Act that the juvenile has committed the offence. The Explanation to Section 20 makes it clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1□4□2001, when the Juvenile Act came into force, and the provisions of the Juvenile Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed."

25. It is thus well settled that in terms of Section 20 of the 2000 Act, in all cases where the accused was above 16 years but below 18 years of age on the date of occurrence, the proceedings pending in the Court would continue and be taken to the logical end subject to an exception that upon finding the juvenile to be guilty, the Court would not pass an order of sentence against him but the juvenile would be referred to the Board for appropriate orders under the 2000 Act.

26. Thus, in view of the aforesaid discussion, we now proceed to consider the matter further keeping in view the 2000 Act.

27. Section 7A of the 2000 Act reads as under:

"7A. Procedure to be followed when claim of juvenility is raised before any Court□(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

> Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
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> (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub□section (1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."

28. From a reading of Section 7A what becomes very obvious is that whenever a claim of juvenility is raised, an inquiry has to be made and such inquiry would take place by receiving evidence which would be necessary but not an affidavit so as to determine the age of such person.

29. Reference is also required to be made to Chapter II of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (for short "the 2007 Rules"), more particularly to Rule 3(1) and Principles II, IV, XI, XII, XIII & XIV enumerated in Rule 3(2). The said provisions and principles are extracted herein below□"3. Fundamental principles to be followed in administration of these rules.— (1) The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while (2) The following principles shall, inter alia, be fundamental to the application, interpretation and implementation of the Act and the rules made hereunder:

x x x x x II. Principle of dignity and worth

(a) Treatment that is consistent with the Child's sense of dignity and worth is a fundamental principle of juvenile justice. This principle reflects the fundamental human right enshrined in Article I of the Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights. Respect of dignity includes not being humiliated, personal identity boundaries and space being respected, not being labeled and stigmatized, being offered information and choices and not being blamed for their acts.

(b) The juvenile's or Child's right to dignity and worth has to be respected and protected throughout the entire process of dealing with the child from the first contact with law enforcement agencies to the implementing of all measures for dealing with the child.

III. Principle of Right to be heard Every child's right to express his views freely in all matters affecting his interest shall be fully respected through every stage in the process of juvenile justice. Children's right to be heard shall include creation of developmentally appropriate tools and processes of interacting with the child, promoting Children's active involvement in decisions regarding their own lives and providing opportunities for discussion and debate.

IV. Principle of Best Interest

(a) In all decisions taken within the context of administration of juvenile justice, the principle of best interest of the juvenile or the juvenile in conflict with law or child shall be the primary consideration.

(b) The principle of best interest of the juvenile or juvenile in conflict with law or child shall mean for instance that the traditional objectives of criminal justice, retribution and repression, must give way to rehabilitative and restorative objectives of juvenile justice.

(c) This principle seeks to ensure physical, emotional, intellectual, social and moral development of a juvenile in conflict with law or child so as to ensure the safety, well being and permanence for each child and thus enable each child to survive and reach his or her full potential.

x x x x x XI. Principle of right to privacy and confidentiality The juvenile's or Child's right to privacy and confidentiality shall be protected by all means and through all the stages of the proceedings ad care and protection processes.

XII. Principle of last resort Institutionalization of a child or juvenile in conflict with law shall be a step of the last resort after reasonable inquiry and that too for the minimum possible duration. XIII. Principle of repatriation and restoration

(a) Every juvenile or child in conflict with law has the right to be re□united with his family and restored back to the same socio□economic cultural status that such juvenile or child enjoyed before coming within the purview of the Act or becoming vulnerable to any form of neglect, abuse or exploitation.

(b) Any juvenile or child, who has lost contact with his family, shall be eligible for protection under the Act and shall be repatriated and restored, at the earliest, to his family, unless such repatriation and restoration is likely to be against the best interest of the juvenile or the child.

XIV. Principle of Fresh Start

(a) The principle of fresh start promotes new beginning for the child or juvenile in conflict with law by ensuring erasure of his part records.

(b) The State shall seek to promote measures for dealing with children alleged or recognized as having impinged the penal law, without resorting to juridical proceedings.” b. It is submitted that Section 51 of the Act provides that the report of a probation officer or a social worker shall be confidential. It is further submitted that Rule 18 provides for a procedure to be followed in respect of violation of Section 21.”

30. Besides the International Convention and the provisions of the 2000 Act resply, it may be noted that the Constitutional guarantee for the protection of the child is enshrined in Article 39 of the Constitution. Article 39 reads as under:□“39. Certain principles of policy to be followed by the State□

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment."

31. The procedure to be followed for the determination of age is provided under Rule 12(3)(b) of the 2007 Rules, which reads as:

> "12. Procedure to be followed in determination of age.—(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—
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> (a)(i) the matriculation or equivalent certificates, if available; and in the absence whereof;
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> (ii) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
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> (iii) 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."

32. Sub□clause (3) of the aforesaid Rule clearly mandates that while conducting an inquiry about the juvenility of an accused, the Juvenile Justice Board would seek evidence by obtaining the matriculation or equivalent certificates and in the absence whereof the date of birth certificate from the school first attended and in absence whereof the birth certificate given by a corporation or a Municipal authority or a Panchayat. It is made clear by sub□clause

(b) that only in the absence of the aforesaid three documents, medical information would be sought from a duly constituted Medical Board which will declare the age of the juvenile or child.

Thus, it is only in the absence of the aforesaid documents that the Juvenile Justice Board could have asked for medical information/ossification test.

33. The 2000 Act stands repealed by the 2015 Act. The procedure for determining the age is now part of Section 94 of the 2015 Act which was earlier provided under the abovementioned Rule 12 of the Rules.

Family Register

34. The Family Register Rules prescribes preparation of a Family Register in the State of Uttar Pradesh which contains family-wise names and particulars of all persons ordinarily residing in the village pertaining to the Gaon Sabha. Such Rules have been framed under Section 110 of the U.P. Panchayat Raj Act, 1947. Such Rules read as under:

> "1. (1) These Rules may be called the U.P. Panchayat Raj (Maintenance of Family Registers) Rules, 1970.
>
> 2. Form and preparation of family register.—A family register in form A shall be prepared containing family-wise the names and particulars of all persons ordinarily residing in the village pertaining to the Gaon Sabha.

Ordinarily one page shall be allotted to each family in the register. There shall be a separate section in the register for families belonging to the Scheduled Castes. The register shall be prepared in Hindi in Devanagri script.

3. General conditions for registration in the register. —Every person who has been ordinarily resident within the area of the Gaon Sabha shall be entitled to be registered in the family register.

Explanation.—A person shall be deemed to be ordinarily resident in a village if he has been ordinarily residing in such village or is in possession of a dwelling house therein ready for occupation.

4. Quarterly entries in the family register.—At the beginning of each quarter commencing from April in each year, the Secretary of a Gaon Sabha shall make necessary changes in the family register consequent upon births and deaths, if any occurring in the previous quarter in each family. Such changes shall be laid before the next meeting of the Gaon Panchayat for information.

5. Correction of any existing entry.—The Assistant Development Officer (Panchayat) may on an application made to him in this behalf order the correction of any existing entry in the family register and the Secretary of the Gaon Sabha shall then correct the Register accordingly.

6. Inclusion of names in the Register.—(1) Any person whose name is not included in the family register may apply to the Assistant Development Officer (Panchayat) for the inclusion of his name therein.

(2) The Assistant Development Officer (Panchayat) shall, if satisfied, after such enquiry as he thinks fit that the applicant is entitled to be registered in the Register, direct that the name of the applicant be included therein and the Secretary of the Gaon Sabha shall include the name accordingly.

6□A. Any person aggrieved by an order made under Rule 5 or Rule 6 may, within 30 days from the date of such order prefer and appeal to the Sub□Divisional Officer whose decision shall be final.

7. Custody and preservation of the register.—(1) The Secretary of the Gaon Sabha shall be responsible for the safe custody of the family register.

(2) Every person shall have a right to inspect the Register and to get attested copy of any entry or extract therefrom in such manner and on payment of such fees, if any, as may be specified in Rule 73 of the U.P. Panchayat Raj Rules.

FORM A (See Rule 2) *** Note.—In the remarks column the number and date of the order, if any, by which any name is added or struck off should be given along with the signature of the person making the entry."

35. A perusal of the above Rules indicate that one page is allotted to each family and that any change in the family consequent upon the births and deaths is required to be incorporated on such page.

The changes are also required to be laid before the next meeting of the Gram Panchayat. Thus, it is evident that such Rules are statutorily framed in pursuance of an Act. The entries in the register are required to be made by the officials of the Gram Panchayat as part of their official duty.

36. This Court in the case of Manoj v. State of Haryana, reported in (2022) 6 SCC 187, observed in regard to the Family Register referred to above as under:□"39. We are unable to approve the broad view taken by the High Court in some of the cases that family register is not relevant to determine age of the family members. It is a question of fact as to how much evidentiary value is to be attached to the family register, but to say that it is entirely not relevant would not be the correct enunciation of law. The register is being maintained in accordance with the rules framed under a statute. The entries made in the regular course of the affairs of the Panchayat would thus be relevant but the extent of such reliance would be in view of the peculiar facts and circumstances of each case." (Emphasis supplied)

37. In Abuzar Hossain (supra), this Court held as under:□"30. As a matter of fact, prior to the decisions of this Court in Hari Ram [(2009) 13 SCC 211 : (2010) 1 SCC (Cri) 987] and Akbar Sheikh [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] , a three□Judge Bench of this Court speaking through one of us (R.M. Lodha, J.) in Pawan [(2009) 15 SCC 259 :

(2010) 2 SCC (Cri) 522] had considered the question relating to admissibility of claim of juvenility for the first time in this Court with reference to Section 7□A. The contention of juvenility was raised for the first time before this Court on behalf of the two appellants, namely, A□1 and A□2. The argument on their behalf before this Court was that they were "juvenile" within the meaning of the 2000 Act on the date of incident and the trial held against them under the Code was illegal. With regard to A□1, his school leaving certificate was relied on while as regards A□2, reliance was placed on his statement recorded under Section 313 and the school leaving certificate. Dealing with the contention of juvenility, this Court stated that the claim of juvenility could be raised at any stage, even after final disposal of the case. The Court then framed the question in para 41 of the Report as to whether an inquiry should be made or report be called for from the trial court invariably where juvenility is claimed for the first time before this Court.

31. It was held in Pawan, (2009) 15 SCC 259 that where the materials placed before this Court by the accused, prima facie, suggested that he was a "juvenile" as defined in the 2000 Act on the date of incident, it was necessary to call for the report or an inquiry to be made for determination of the age on the date of incident. However, where a plea of juvenility is found unscrupulous or the materials lack credibility or do not inspire confidence and even prima facie satisfaction of the court is not made out, further exercise in this regard may not be required. It was also stated that if the plea of juvenility was not raised before the trial court or the High Court and is raised for the first time before this Court, the judicial conscience of the court must be satisfied by placing adequate material that the accused had not attained the age of 18 years on the date of commission of the offence. In the absence of adequate material, any further inquiry into juvenility would not be required.

32. Having regard to the general guidelines highlighted in para 41 of Pawan case [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] with regard to the approach of this Court where juvenility is claimed for the first time, the Court then considered the documents relied upon by A□1 and A□2 in support of the claim of juvenility on the date of incident. In respect of the two documents relied upon by A□2, namely, statement under Section 313 of the Code and the school leaving certificate, this Court observed that the statement recorded under Section 313 was a tentative observation based on physical appearance which was hardly determinative of age and insofar as school leaving certificate was concerned, it did not inspire any confidence as it was issued after A□2 had already been convicted and the primary evidence like entry from the birth register had not been produced. As regards school leaving certificate relied upon by A□1, this Court found that the same had been procured after his conviction and no entry from the birth register had been produced. The Court was, thus, not prima facie impressed or satisfied by the material placed on behalf of A□1 and A□2. Those documents were not found satisfactory and adequate to call for any report from the Board or the trial court about the age of A□1 and A□2." In Para 39, the Court summarizes the legal position as under:□"39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(a)(i) to (iii) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In Akbar Sheikh [(2009) 7 SCC 415 :

(2009) 3 SCC (Cri) 431] and Pawan [(2009) 15 SCC 259 :

(2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in Jitendra Singh [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz.

school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently improbable claim of juvenility must be rejected by the court at the threshold whenever raised."

38. Justice T.S. Thakur (as His Lordship then was), by his separate but concurring judgment, observed as under:□"43.2. The second factor which must ever remain present in the mind of the Court is that the claim of juvenility may at times be made even in cases where the accused does not have any evidence showing his date of birth by reference to any public document like the Register of Births and Deaths maintained by the municipal authorities, panchayats or hospitals nor any certificate from any school, as the accused was never admitted to any school. Even if admitted to a school no record regarding such admission may at times be available for production in the court. Again, there may be cases in which the accused may not be in a position to provide a birth certificate from the corporation, the municipality or the panchayat, for we know that the registration of births and deaths may not be maintained and if maintained may not be regular and accurate, and at times truthful.

44. Rule 12(3) of the Rules makes only three certificates relevant. These are enumerated in sub□ rules 3(a)(i) to (iii) of the Rule which reads as under:

> "(3)(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;
>
> (iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

Non□production of the above certificates or any one of them is not, however, fatal to the claim of juvenility, for sub□rule (3)(b) to Rule 12 makes a provision for determination of the question on the basis of the medical examination of the accused in the "absence" of the certificates.

45. Rule 12(3)(b) runs as under:

> "12.(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," The expression "absence" appearing in the above provision is not defined under the Act or the Rules. The word shall, therefore, be given its literal dictionary meaning which is provided by Concise Oxford Dictionary as under:
>
> "Absence.—Being away from a place or person; time of being away; non□existence or lack of; inattention due to thought of other things." Black's Law Dictionary also explains the meaning of "absence" as under:

> "Absence.—(1) The state of being away from one's usual place of residence. (2) A failure to appear, or to be available and reachable, when expected. (3) Louisiana law. The state of being an absent person.— Also termed (in sense 3) absentia."

46. It is axiomatic that the use of the expression and the context in which the same has been used strongly suggests that "absence" of the documents mentioned in Rule 12(3)(a)(i) to (iii) may be either because the same do not exist or the same cannot be produced by the person relying upon them. Mere non-production may not, therefore, disentitle the accused of the benefit of the Act nor can it tantamount to deliberate non-production, giving rise to an adverse inference unless the court is in the peculiar facts and circumstances of a case of the opinion that the non-production is deliberate or intended to either mislead the court or suppress the truth. It is in this class of cases that the court may have to exercise its powers and discretion with a certain amount of insight into the realities of life.

47. One of such realities is that illiteracy and crime have a close nexus though one may not be directly proportional to the other. Juvenile delinquency in this country as elsewhere in the world, springs from poverty and unemployment, more than it does out of other causes. A large number of those engaged in criminal activities, may never have had the opportunity to go to school. Studies conducted by the National Crime Records Bureau (NCRB), Ministry of Home Affairs, reveal that poor education and poor economic set up are generally the main attributes of juvenile delinquents. Result of the 2011 study further show that out of 33,887 juveniles arrested in 2011, 55.8% were either illiterate (6122) or educated only till the primary level (12,803). Further, 56.7% of the total juveniles arrested fell into the lowest income category. A similar study is conducted and published by B.N. Mishra in his book Juvenile Delinquency and Justice System, in which the author states as follows:

> "One of the prominent features of a delinquent is poor educational attainment. More than 63 per cent of delinquents are illiterate. Poverty is the main cause of their illiteracy. Due to poor economic condition they were compelled to enter into the labour market to supplement their family income. It is also felt that poor educational attainment is not due to the lack of intelligence but may be due to lack of opportunity. Although free education is provided to Scheduled Castes and Scheduled Tribes, even then, the delinquents had a very low level of expectations and aspirations regarding their future which in turn is due to lack of encouragement and unawareness of their parents that they play truant." (emphasis supplied) What should then be the approach in such cases, is the question. Can the advantage of a beneficial legislation be denied to such unfortunate and wayward delinquents? Can the misfortune of the accused never going to a school be followed or compounded by denial of the benefit that the legislation provides in such emphatic terms, as to permit an enquiry even after the last Court has disposed of the appeal and upheld his conviction? The answer has to be in the negative.

48. If one were to adopt a wooden approach, one could say nothing short of a certificate, whether from the school or a municipal authority would satisfy the court's conscience, before directing an

enquiry. But, then directing an enquiry is not the same thing as declaring the accused to be a juvenile. The standard of proof required is different for both. In the former, the court simply records a prima facie conclusion. In the latter, the court makes a declaration on evidence, that it scrutinises and accepts only if it is worthy of such acceptance. The approach at the stage of directing the enquiry has of necessity to be more liberal, lest, there is avoidable miscarriage of justice. Suffice it to say that while affidavits may not be generally accepted as a good enough basis for directing an enquiry, that they are not so accepted is not a rule of law but a rule of prudence. The Court would, therefore, in each case weigh the relevant factors, insist upon filing of better affidavits if the need so arises, and even direct, any additional information considered relevant including the information regarding the age of the parents, the age of siblings and the like, to be furnished before it decides on a case to case basis whether or not an enquiry under Section 7□A ought to be conducted. It will eventually depend on how the court evaluates such material for a prima facie conclusion that the court may or may not direct an enquiry." (Emphasis supplied)

39. Thus, Section 7A(1) of the 2000 Act and the proviso thereto provided that a claim of juvenility might be raised before any court and it shall be recognized at any stage, even after the final disposal of the case, and such claim shall be determined in terms of the provisions contained in the 2000 Act and the Rules made thereunder, even if the juvenile has ceased to be so, on or before the date of commencement of the 2000 Act.

40. Sub□section (2) of Section 7A mandates that if the Court finds a person to be a juvenile on the date of the commission of offence under sub□section (1), it shall forward the juvenile to the Juvenile Justice Board for passing an appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

41. Section 16 of the 2000 Act provides as hereunder:□"16. Order that may not be passed against juvenile. — (1) Notwithstanding anything to the contrary contained in any other law for the time being in force, no juvenile in conflict with law shall be sentenced to death or imprisonment for any term which may extend to imprisonment for life, or committed to prison in default of payment of fine or in default of furnishing security:

> Provided that where a juvenile who has attained the age of sixteen years has committed an offence and the Board is satisfied that the offence committed is of so serious in nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other juvenile in a special home to send him to such special home and that none of the other measures provided under this Act is suitable or sufficient, the Board may order the juvenile in conflict with law to be kept in such place of safety and in such manner as it thinks fit and shall report the case for the order of the State Government.
>
> (2) On receipt of a report from a Board under sub□section (1), the State Government may make such arrangement in respect of the juvenile as it deems proper and may order such juvenile to be kept under protective custody at such place and on such conditions as it thinks fit:

Provided that the period of detention so ordered shall not exceed in any case the maximum period provided under Section 15 of this Act."

42. The maximum period of detention in respect of a juvenile is three years as provided in Section 15(1)(g). The said Section provides that where the Juvenile Justice Board is, on inquiry, satisfied that the juvenile has committed an offence, then notwithstanding anything to the contrary contained in any other law for the time being in force, the Juvenile Justice Board may, if it thinks fit, make an order directing the juvenile to be sent to a special home for a period of three years.

43. In view of Section 7A of the 2000 Act referred to hereinabove, applicable to the writ applicant herein, the plea of juvenility could be raised in any court, at any stage even after the final disposal of the Special Leave Petition under Article 136 of the Constitution. In the case of the writ applicant herein, his Special Leave Petition had also been dismissed by this Court. However, this Court is still obliged to consider the plea of juvenility taken by the writ applicant and grant him appropriate relief. The fact that the 2000 Act has later been replaced by the 2015 Act would make no difference.

44. In regard to the nature of the inquiry to be conducted by the court in determining the age under Section 7A of the 2000 Act and Rule 12, this Court in Ashwani Kumar Saxena v. State of Mahya Pradesh, AIR 2013 SC 553, has held as follows:□"25. Section 7□A, obliges the court only to make an inquiry, not an investigation or a trial, an inquiry not under the Code of Criminal Procedure, but under the JJ Act. The criminal courts, Juvenile Justice Board, committees, etc. we have noticed, proceed as if they are conducting a trial, inquiry, enquiry or investigation as per the Code. The statute requires the court or the Board only to make an "inquiry" and in what manner that inquiry has to be conducted is provided in the JJ Rules. Few of the expressions used in Section 7□A and Rule 12 are of considerable importance and a reference to them is necessary to understand the true scope and content of those provisions. Section 7□A has used the expressions "court shall make an inquiry", "take such evidence as may be necessary" and "but not an affidavit". The Court or the Board can accept as evidence something more than an affidavit i.e. the Court or the Board can accept documents, certificates, etc. as evidence, need not be oral evidence.

26. Rule 12 which has to be read along with Section 7□A has also used certain expressions which are also to be borne in mind. Rule 12(2) uses the expression "prima facie" and "on the basis of physical appearance" or "documents, if available". Rule 12(3) uses the expression "by seeking evidence by obtaining". These expressions in our view re□emphasise the fact that what is contemplated in Section 7□A and Rule 12 is only an inquiry. Further, the age determination inquiry has to be completed and age be determined within thirty days from the date of making the application; which is also an indication of the manner in which the inquiry has to be conducted and completed. The word "inquiry" has not been defined under the JJ Act, but Section 2(y) of the JJ Act says that all words and expressions used and not defined in the JJ Act but defined in the Code of Criminal Procedure, 1973 (2 of 1974), shall have the meanings respectively assigned to them in that Code.

27. Let us now examine the meaning of the words "inquiry", "enquiry", "investigation" and "trial" as we see in the Code of Criminal Procedure and their several meanings attributed to those expressions. "Inquiry" as defined in Section 2(g) CrPC reads as follows:

> 2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court;" The word "enquiry" is not defined under the Code of Criminal Procedure which is an act of asking for information and also consideration of some evidence, may be documentary.

"Investigation" as defined in Section 2(h) CrPC reads as follows:

> 2. (h) 'investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;" The expression "trial" has not been defined in the Code of Criminal Procedure but must be understood in the light of the expressions "inquiry" or "investigation" as contained in Sections 2(g) and 2(h) of the Code of Criminal Procedure.

28. The expression "trial" has been generally understood as the examination by court of issues of fact and law in a case for the purpose of rendering the judgment relating to some offences committed. We find in very many cases that the court/the Juvenile Justice Board while determining the claim of juvenility forget that what they are expected to do is not to conduct an inquiry under Section 2(g) of the Code of Criminal Procedure, but an inquiry under the JJ Act, following the procedure laid down under Rule 12 and not following the procedure laid down under the Code.

29. The Code lays down the procedure to be followed in every investigation, inquiry or trial for every offence, whether under the Indian Penal Code or under other Penal laws. The Code makes provisions for not only investigation, inquiry into or trial for offences but also inquiries into certain specific matters. The procedure laid down for inquiring into the specific matters under the Code naturally cannot be applied in inquiring into other matters like the claim of juvenility under Section 7A read with Rule 12 of the 2007 Rules. In other words, the law regarding the procedure to be followed in such inquiry must be found in the enactment conferring jurisdiction to hold inquiry.

30. Consequently, the procedure to be followed under the J.J. Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules.

We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7A of the Act. Many of the cases, we have come across, it is seen that the Criminal Courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the Penal laws forgetting the fact that the specific procedure has been laid down in Section 7A read with Rule 12.

31. We also remind all Courts/J.J. Board and the Committees functioning under the Act that a duty is cast on them to seek evidence by obtaining the certificate etc. mentioned in Rule 12 (3) (a) (i) to (iii). The courts in such situations act as a parens patriae because they have a kind of guardianship over minors who from their legal disability stand in need of protection.

32. “Age determination inquiry" contemplated under Section 7A of the Act r/w Rule 12 of the 2007 Rules enables the court to seek evidence and, in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court need obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court need obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the above mentioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

33. Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with law. It has been made clear in sub□section (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub□rule (3) of the Rule 12. Further, Section 49 of the J.J. Act also draws a presumption of the age of the juvenility on its determination.

34. Age determination inquiry contemplated under the JJ Act and 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, J.J. Board or a Committee functioning under the J.J. 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 J.J. Board or the Committee need to go for medical report for age determination”.

45. What is discernible from the dictum laid down in Ashwani Kumar Saxena (supra) is that, in deciding whether an accused is juvenile or not, a hyper technical approach should not be adopted.

While appreciating the evidence adduced on behalf of the accused in support of the plea that he is a juvenile, if two views are possible on the same evidence, the Court should lean in favour of holding the accused to be juvenile in borderline cases. The inquiry contemplated is not a roving inquiry. The Court can accept as evidence something more than an affidavit i.e. documents, certificates etc. as evidence in proof of age. A mere opinion by a person as to the accused looking one or two years older than the age claimed by him (as the opinion of the head master in the present case) or the fact that the accused told his age to be more than what he alleges in the case while being arrested by the police officer would not hold much water. It is the documentary evidence placed on record that plays a major role in determining the age of a juvenile in conflict of law. And, it is only in the cases where the documents or certificates placed on record by the accused in support of his claim of juvenility are found to be fabricated or manipulated, that the Court, the Juvenile Justice Board or the

Committee need to go for medical test for age determination.

46. Clause (a) of Rule 12(3) of the 2007 Rules contains a hierarchical ordering, evident from the use of the language "in the absence whereof". This indicates that where a matriculation or equivalent certificate is available, the documents adverted to in (ii) and (iii) cannot be relied upon. The matriculation certificate, in other words, is given precedence. It is in the absence of a matriculation certificate that the date of birth certificate of the school first attended, can be relied upon. It is in the absence of both the matriculation and the birth certificates of the first school attended that a birth certificate issued by the corporation, municipal authority or panchayat could be obtained.

47. In Shah Nawaz v. State of Uttar Pradesh, (2011) 13 SCC 751, this Court, while examining the scope of Rule 12 of the 2007 Rules, has reiterated that medical opinion from the Medical Board should be sought only when the matriculation certificate or equivalent certificate or the date of birth certificate from the school first attended or any birth certificate issued by a corporation or a municipal authority or a panchayat or municipality is not available.

This Court had held that the entry related to the date of birth entered in the marksheet is a valid evidence for determining the age of the accused person so also the school leaving certificate for determining the age of the appellant.

48. In the instant case, the accused has not produced any matriculation certificate or equivalent certificate to prove his age.

What is produced by him is only the Family Register issued under the U.P. Panchayat Raj Act, 1947. The document cannot be accepted as equivalent to matriculation certificate to prove the age of the accused. However, the evidentiary value of the Family Register will have to be looked into in the course of the inquiry that we may order.

Determination of plea of juvenility at a belated stage

49. Ideally, there should not be any dispute as to the age of a person if the birth is registered in accordance with law and date of birth is entered in the school records on the basis of genuine record of birth. However, in India, the factors like poverty, illiteracy, ignorance, indifference and inadequacy of the system often lead to there being no documentary proof of a person's age. Therefore, in those cases where the plea of juvenility is raised at a belated stage, often certain medical tests are resorted to forage determination in absence of the documents enumerated in Section 94 of the Act 2015. The rule allowing plea of juvenility to be raised at a considerably belated stage has its rationale in the contemporary child rights jurisprudence which requires the stakeholders to act in the best interest of the child.

50. In Court On Its Own Motion v. Dept. of Women and Child Development, reported in 2012 SCC OnLine Del 2774, the petitioners therein highlighted that how several hundred children were languishing in the Tihar Jail because the police mentioned them as adults in the arrest memo.

51. The same is the story in the State of Uttar Pradesh which led the High Court of Allahabad to pass the order in Writ Petition Public Interest Litigation referred to above in para 6.

52. Awareness about the rights of the child and correlated duties remain low among the functionaries of the juvenile justice system.

Once a child is caught in the web of adult criminal justice system, it is difficult for the child to get out of it unscathed. The bitter truth is that even the legal aid programmes are mired in systemic bottlenecks and often it is only at a considerably belated stage of the proceeding that the person becomes aware of the rights, including the right to be differently treated on the ground of juvenility.

53. What needs to be kept in mind is the main object and purpose of the Juvenile Justice Act. The focus of this legislation is on the juvenile's reformation and rehabilitation so that he also may have an opportunity to enjoy as other children. In Pratap Singh (supra), this Court, elaborating on the objects and purpose of the Juvenile Justice Act, made the following observations: □"...The said Act is not only a beneficent legislation, but also a remedial one. The Act aims at grant of care, protection and rehabilitation of a juvenile vis□a□vis the adult criminals. Having regard to Rule 4 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, it must also be borne in mind that the moral and psychological components of criminal responsibility were also one of the factors in defining a juvenile. The first objective, therefore, is the promotion of the well□being of the juvenile and the second objective to bring about the principle of proportionality whereby and whereunder the proportionality of the reaction to the circumstances of both the offender and the offence including the victim should be safeguarded..."

What is bone ossification test?

54. The famous American philosopher Mark Twain once said, "Age is an issue of Mind over matter. If you don't mind, it doesn't matter." But the above is not the case in criminal jurisprudence when it comes to age. Here, age matters because law is mindful to it.

55. The bone ossification test (hereinafter "ossification test") is a test that determines age based on the "degree of fusion of bone" by taking the x□ray of a few bones. In simple words, the ossification test or osteogenesis is the process of the bone formation based on the fusion of joints between the birth and age of twenty□five years in an individual. Bone age is an indicator of the skeletal and biological maturity of an individual which assists in the determination of age. The most common method used for the calculation of the bone age is radiography of the hand and wrist until the age of 18 years beyond which the medial age of clavicle is used for bone age calculation till the age of 22 years as the hand and wrist bone radiographs cannot be computed beyond 18 years of age as the elongation of the bone is complete after adolescence. However, it must be noted that the ossification test varies slightly based on individual characteristics, therefore the ossification test though is relevant however it cannot be called solely conclusive.

56. The 2015 Act under Section 94(2)(iii) read with Rule 12(3) of the 2007 Rules provides the legislative sanction for the conduct of ossification test or other medical age determination test

available in the absence of other documentary proof of age i.e. matriculation certificate or birth certificate, which has to be given within 15 days from the date of such order. The test is to be conducted by the Child Welfare Committee (CWC). The provision mentioned herein is the basis for determining the age of a child under the 2000 Act which even includes a child who is a victim of crime in addition to a child in conflict with the law.

57. In Vishnu v. State of Maharashtra, (2006) 1 SCC 283, this Court clarified that the ossification test by the medical officer is to assist the court which falls under the ambit of medical expert opinion i.e., advisory in nature and not binding. However, such an opinion cannot override ocular or documentary evidence, which has been proved to be true and admissible as they constitute "statement of facts". This Court in Vishnu (supra) placed reliance on Madan Gopal Kakkad v. Naval Dubey, (1992) 3 SCC 204, to hold that a medical witness is not a witness of fact therefore the opinion rendered by such a medical expert is merely advisory until accepted by the Court, however, once accepted, they become the opinion of the Court.

Margin of error principle

58. The bone ossification test is not an exact science that can provide us with the exact age of the person. As discussed above, the individual characteristics such as the growth rate of bones and skeletal structures can affect the accuracy of this method. This Court has observed in Ram Suresh Singh v. Prabhat Singh, (2009) 6 SCC 681: (2010) 2 SCC (Cri) 1194, and Jyoti Prakash Rai v. State of Bihar, (2008) 15 SCC 223: (2009) 3 SCC (Cri) 796, that the ossification test is not conclusive for age determination because it does not reveal the exact age of the person, but the radiological examination leaves a margin of two years on either side of the age range as prescribed by the test irrespective of whether the ossification test of multiple joints is conducted. The courts in India have accepted the fact that after the age of thirty years the ossification test cannot be relied upon for age determination. It is trite that the standard of proof for the determination of age is the degree of probability and not proof beyond reasonable doubt.

59. In the aforesaid context, we may also refer to a decision of this Court in the case of Mukarrab v. State of Uttar Pradesh, reported in (2017) 2 SCC 210, wherein this Court has observed in para 27 as under:□"... Following Babloo Pasi v. State of Jharkhand, (2008) 13 SCC 133 and State of M.P. v. Anoop Singh, (2015) 7 SCC 773, we hold that ossification test cannot be regarded as conclusive when it comes to ascertaining the age of a person. More so, the appellants herein have certainly crossed the age of thirty years which is an important factor to be taken into account as age cannot be determined with precision. ..."

60. In Arnit Das v. State of Bihar, (2000) 5 SCC 488, it was observed that the Court should not take a hyper□technical approach while appreciating evidence for determination of age of the accused.

If two views are possible, the Court should lean in favour of holding the accused to be a juvenile in border line cases. This approach was further reiterated by this Court in Rajendra Chandra v. State of Chhattisgarh, (2002) 2 SCC 287, in which it laid down that the standard of proof of age determination is the degree of probability and not proof beyond reasonable doubt.

61. In Rishipal Singh Solanki v. State of Uttar Pradesh, (2021) SCC OnLine SC 1079, this Court observed explicitly that Section 94 of the 2015 Act does not give precedence to the matriculation and other certificates, to determine the age of person, since the said section only deals with the matter of procedure. This Court held that lex non cogit ad impossibilia (law does not demand the impossible) and when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person and other available certificates may be taken into consideration.

62. Similarly, in the case of Ram Vijay Singh v. State of U.P., (2021) SCC Online SC 142, this Court, while negativing the contention canvassed on behalf of the appellant convict therein that the procedure as contained in Rule 12(3)(b) of the 2007 Rules now being part of Section 94 of the 2015 Act and once the statute has provided the ossification test as the basis for determining juvenility, the findings of such ossification test cannot be ignored, held in paras 15 and 16 resply as under: □"15. We find that the procedure prescribed in Rule 12 is not materially different than the provisions of Section 94 of the Act to determine the age of the person. There are minor variations as the Rule 12(3)(a)(i) and (ii) have been clubbed together with slight change in the language. Section 94 of the Act does not contain the provisions regarding benefit of margin of age to be given to the child or juvenile as was provided in Rule 12(3)(b) of the Rules. The importance of ossification test has not undergone change with the enactment of Section 94 of the Act. The reliability of the ossification test remains vulnerable as was under Rule 12 of the Rules.

16. As per the Scheme of the Act, when it is obvious to the Committee or the Board, based on the appearance of the person, that the said person is a child, the Board or Committee shall record observations stating the age of the Child as nearly as may be without waiting for further confirmation of the age. Therefore, the first attempt to determine the age is by assessing the physical appearance of the person when brought before the Board or the Committee. It is only in case of doubt, the process of age determination by seeking evidence becomes necessary. At that stage, when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law. However, when the person is around 40□55 years of age, the structure of bones cannot be helpful in determining the age. This Court in Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors. held, in the context of certificate required under Section 65B of the Evidence Act, 1872, that as per the Latin maxim, lex non cogit ad impossibilia, law does not demand the impossible. Thus, when the ossification test cannot yield trustworthy and reliable results, such test cannot be made a basis to determine the age of the person concerned on the date of incident. Therefore, in the absence of any reliable trustworthy medical evidence to find out age of the appellant, the ossification test conducted in year 2020 when the appellant was 55 years of age cannot be conclusive to declare him as a juvenile on the date of the incident."

63. We are conscious of the fact that in the case on hand the convict was subjected to medical examination after being referred to the Medical Board. However, the report on record does not inspire much confidence. Over and above the same, the decision in the case of Ram Vijay Singh (supra) makes it very clear that in the absence of a reliable and trustworthy medical evidence to find out the age of the appellant herein, the ossification test conducted in the year 2021 when the

appellant was above 50 years of age cannot be conclusive to declare him as a juvenile on the date of the incident. This Court observed that when a person is around 18 years of age, the ossification test can be said to be relevant for determining the approximate age of a person in conflict with law.

However, when the person is around 40□55 years of age, the structure of bones cannot be helpful in determining the age. In such circumstances, it will be a matter of debate as to what extent the new ossification test report that may come on record can be relied upon and to what extent the same would be helpful to the appellant herein.

64. Despite all the odds against the writ applicant, we would still like to look into the matter in the larger interest of justice. It will be in fitness of things if the writ applicant convict is once again subjected to the ossification test at the Civil Hospital, Allahabad or any other latest medical age determination test and such test shall be carried out by a team of three doctors, one of whom should be the head of the Department of Radiology.

65. In view of the aforesaid, we issue the following directions:

> (i) We direct the Sessions Court, Agra to examine the claim of the writ applicant to juvenility in regard with law within one month from the date of communication of this order;
>
> (ii) The concerned Sessions Court shall also examine the authenticity and genuineness of the Family Register sought to be relied upon by writ applicant convict considering that the document does not appear to be contemporaneous. This document assumes importance, more particularly in the light of the fact that the ossification test report may not be absolutely helpful in determining the exact age of the writ applicant on the date of incident. If the Family Register on record is ultimately found to be authentic and genuine, then we may not have to fall upon the ossification test report. In such circumstances, the Presiding Officer concerned shall pay adequate attention towards this document and try to ascertain the authenticity and genuineness of the same. If need be, the statements of the persons concerned i.e. from the concerned government department may also be recorded;
>
> (iii) The Sessions Court shall ensure that the writ applicant convict is medically examined by taking an ossification test or any other modern recognized method of age determination;
>
> (iv) The Sessions Court concerned shall submit its report as regards the aforesaid to this Court within one month from the date of communication of this order;
>
> (v) The Registry is directed to forward one copy of this order to Sessions Court, Agra;
>
> (vi) We request the learned counsel appearing for the State to take appropriate steps to facilitate the Sessions Court to complete the enquiry.

66. Notify this matter after a period of four weeks along with the report that may be received from the Sessions Court, Agra. The final order shall be passed after perusal of the report upon receipt from the Sessions Court, Agra.

……J. (DINESH MAHESHWARI) ……J. (J.B. PARDIWALA) NEW DELHI;

SEPTEMBER 12, 2022