

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/CRIMINAL REVISION APPLICATION (AGAINST ORDER PASSED BY
SUBORDINATE COURT) NO. 126 of 2024**

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MOHAMMED FARHAN SHAHIDBHAI VOHRA THROUGH SHAHIDBHAI
GANIBHAI VOHRA & ANR.

Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1,2
MRS YOGINI V PARIKH(2163) for the Respondent(s) No. 2
MR HARDIK MEHTA APP for the Respondent(s) No. 1

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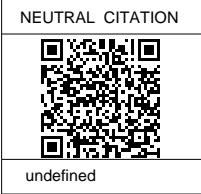
CORAM:HONOURABLE MS. JUSTICE GITA GOPI**Date : 19/06/2024****ORAL ORDER**

1. The prayer is made against the order of Children Court as POCSO Court below Exh.25 in POCSO Case No.45 of 2023 passed on 03.01.2024 by moving Exh.25, to transfer the accused to Juvenile Board considering the age of the accused at the time of offence. The prayer was for both the apprehended persons, where it was stated by the applicants that they were juveniles at the time of offence.



1.1 The date of birth of one of the applicant is 19.12.2003, while that of another applicant is shown as 15.07.2005. The FIR came to be registered on 26.07.2023. The Children's Court has rejected the application considering the application under section 472, recognizing it as continuous offence, observing that till the time, four days earlier to the complaint, she was physically abused and becomes the fact *prima facie* clear. The Children's Court came to the conclusion that four days prior to the FIR i.e. till 22.07.2023, the offence continued and, therefore, till that date, it was noted by the Children's Court that the applicants were 19 years 7 month 3 days and another applicant was 18 years 7 days respectively, hence, would not fall under the criteria to send them to the Juvenile Board.

2. Mr. Ashish M.Dagli, learned advocate for the applicants referring to the facts of the case



stated that actual offence, as alleged was of 15.07.2005 and the last offence was of February, 2023.

2.1 Advocate Mr. Dagli relied on the judgment of **Pratap Singh Vs. State of Jharkhand & Anr.**, decided by the Supreme Court of India, reported in **2005 (1) Supreme 775**, where it was held that the reckoning date of the juvenile is a date of the offence and not the date of production. The relevant date for applicability of the Act is the date on which the offence takes place.

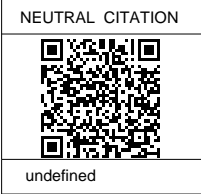
3. This Court does find any case for the applicant, who was born on 19.12.2003, but for the applicant whose date of birth is shown as 15.07.2005, as per the facts of the case, the actual offence was alleged against him, at the last, was in February, 2023, where it is alleged that he forcibly took the victim to PVR at



Vidhyanagar Road Anand and had committed the heinous offence. If the last date of February, 2023 is considered, then he was 17 years 7 months 13 days. Now, the allegation is against him that he had harassed the victim till 22.07.2023 through social media.

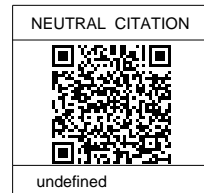
4. This Court on 11.06.2024, had asked learned advocate Mrs. Yogini V.Parikh to take instructions about the facts of Instagram from the victim, and it was submitted that mobile of the victim is with the police.

5. Learned APP producing the report of the Circle Police Inspector, Anand Circle submitted that, mobiles of the accused and the victim have been seized, and before the Special Court, Anand, a prayer has been made to handover them the mobiles for examination through the F.S.L., and it was urged that thereafter it would again be given in the Court custody.



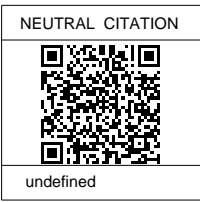
5.1 Learned APP relies on the judgment of **Vimal Chadha Vs. Vikas Choudhary**, rendered by the Hon'ble Supreme Court in Criminal Appeal No.966 of 2008 on 27.05.2008, to submit that, relevant date for determination is the date of the age of the accused, would be the date on which the occurrence took place, and if the offence is continued, then the age of the juvenile in delinquency should be determined with reference to the date on which the offence is said to have been committed by the person. Learned APP submitted that giving a threat would also be considered as a continuous offence.

6. It is required to be noted that section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as "the J.J.Act") makes provision for presumption of determination of age. The J.J. Board is required to follow the said provision, and



required to record its own observation based on the appearance of the person brought before it, stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the age, and subsection (2) of section 94 of the J.J. Act, list down the documents which are necessary for conducting the test.

7. Here, the matter to be examined would be whether the offence as alleged against concluded in February, 2023 or continued till 22.07.2023. The report of the F.S.L. would be necessary to find out the facts, hence, let the matter be reported back to the J.J. Board, Anand for determination of the age of the said applicant whose date of birth is noted as 15.07.2005. Let this exercise be concluded within a period of 15 days, and the J.J. Board, with the assistance, decide the age of the applicant on the final date



of commission of offence.

8. Hence, the present application stands disposed of. The report be sent back by the registry to J.J. Board, Anand for compliance of the order of this Court.

Pankaj

(GITA GOPI,J)