2022 INSC 1205

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1928 OF 2022
(ARISING OUT OF S.L.P. (CRIMINAL) NO. 11220 OF 2019)

THE STATE OF JAMMU & KASHMIR
(NOW U.T. OF JAMMU & KASHMIR) & Ors. …APPELLANTS

VERSUS

SHUBAM SANGRA …RESPONDENT

J U D G M E N T

J.B. PARDIWALA, J. :

> *"Rape is one of the most terrible crimes on earth and it happens every few minutes. The problem with groups who deal with rape is that they try to educate women about how to defend themselves. What really needs to be done is teaching men not to rape. Go to the source and start there."*
>
> \- Kurt Cobain

1. This appeal is at the instance of the State of Jammu & Kashmir (now U.T. of Jammu & Kashmir) and is directed against the order passed by the High Court of Jammu & Kashmir at Jammu dated 11.10.2019 by which the High Court rejected the Criminal Revision Application No. 27 of 2018 filed by the appellant State herein, thereby affirming the order passed by the

Chief Judicial Magistrate, Kathua dated 27.03.2018 holding the respondent accused herein to be a juvenile on the date of the commission of the alleged offence.

2. This litigation originates from the most unfortunate Kathua rape case. The Kathua rape case involved the abduction, gang rape and murder of an eight year-old Muslim girl by name ‘X’ by six Hindu men and the respondent herein (claiming to be a juvenile) in January, 2018 in the Rasana village near Kathua in Jammu & Kashmir. The victim belonged to the nomadic Bakarwal community. She disappeared for a week before her body was recovered by the villagers a kilometer away from the village. In all eight individuals were arrested in connection with the ghastly crime which includes the respondent herein. Since the respondent herein claimed to be a juvenile, his trial was separated. The other six co-accused were put to trial and vide the Judgment and Order dated 10.06.2019 passed by the trial court, six of the seven accused stood convicted and one accused was acquitted. Three of those convicted were sentenced to life imprisonment and remaining three to five years rigorous imprisonment. The Special Investigation Team (SIT) was constituted to probe into the entire matter and ultimately chargesheet came to be filed against all the accused persons.

The father of the victim namely ‘Y’ lodged a complaint in the Hira Nagar Police Station stating that his daughter had gone missing.

3. On 17.01.2018, the body of the victim was found and taken into custody by the police. The body was sent for autopsy. The post-mortem was conducted by a team of doctors at the District Hospital, Kathua on the same day. On 22.01.2018, investigation of the case was transferred to the Crime Branch and Crime Headquarters.

4. The post-mortem revealed the presence of clonazepam in the body of the deceased girl. The examination by the doctors found that the deceased had been drugged which was sedative, before she was raped and murdered. The forensic evidence suggested that she had been held on several dates by Sanji Ram, one of the accused persons of the crime. The strands of hair recovered from the temple matched those taken from the deceased. The forensic examination stated that the deceased had been raped multiple times by different men and that she had been strangulated to death as well as hit on the head by a heavy stone.

5. The Delhi Forensic Science Laboratory analysed fourteen packets of evidence containing vaginal swabs, hair strands, blood samples of four accused, viscera of the deceased girl, the girl’s frock and salwar, simple clay and blood-stained clay. The vaginal swabs matched with the DNA of

the accused as did some other samples. The hair strands found in the temple, where the deceased was raped, matched that of the girl and the accused.

6. One of the accused persons namely Sanji Ram along with the respondent herein was found to be the main accused in the case. He at the relevant point of time was the priest of the family temple where the incident allegedly took place. The respondent herein happens to be the nephew of the Sanji Ram.

7. On 10.06.2019, six of the seven accused persons were found to be guilty and one was acquitted. Sanji Ram, Deepak Khajuria and Parvesh Kumar were sentenced to life imprisonment for 25 years with a fine of Rs. One lakh each. The other three accused persons namely Tilak Raj, Anand Dutta and Surinder Kumar were sentenced to five years in jail for destroying crucial evidence in the case. Vishal Jangotra S/o Sanji Ram came to be acquitted due to lack of evidence. The eighth accused, who is yet to be tried claiming to be a juvenile at the time of commission of the offence, is the respondent herein.

8. The specific case put up by the prosecution against the respondent herein is contained in the chargesheet reads thus:

> *" ... He immediately rushed down stairs, took 3 Manars and keys to Devisthan and told 'X ' that he had seen her horses.*

He led her to jungle and also called accused Mannu who was already waiting for his signal. Sensing some trouble the victim tried to flee away. The JD stopped her by catching hold of her neck and covered her mouth with one of his hands and pushed her and she fell on the ground. Accused Mannu held her legs and the JCL (respondent) administered Manars one by one forcibly to the victim. The victim fell unconscious and was raped by JCL...Later on, they took the girl and kept her inside Devisthan under the table over two Chatayees (plastic mats) and then covered her two Darees (cotton thread Mats) ...

At about 8.30 a.m. the JCL again went to Devisthan and administered 3 sedatives tablets to the girl while she was unconscious with empty stomach ....

... The accused Vishal Jangotra @Shamma raped 'X'. Thereafter, JCL also raped the girl in presence of the accused Mannu. The investigation also revealed that after committing the rape, JCL directed accused Vishal Jangotra @ Shmma and accused Mannu to leave Devisthan. JCL again took out 03 tablets out of the strip which he had kept under a heap of garbage near an electric pole outside the Devisthan and gave the same to the girl and again covered here with mats and dropped the utensil container in front of her in order to hide her ...

During investigation it has been found that after distributing Lohri to relatives in the evening JCL informed accused Sanji Ram that he and accused Vishal Jangotra had committed gang rape with 'X' inside Dev!sthan .... On the spot accused Deepak Khajuria @Deepu told JCL to wait as he wanted to rape the girl before she is killed. As such once again the little girl 'X' was gang raped firstly by accused Deepal Khajuria @Deepu and then by JCL. After committing the barbaric act of rape on his left thigh and started applying force with his hands on her neck in order to kill her. As accused Deepak Khajuria @Deepu was unsuccessful in killing her another accused JCK killed her by pressing his knees against her back and strangulated the girl by applying force on both the

ends of Chunni. Thereafter, accused JCL, in order to make sure that the victim is dead, hit her twice on head with stone ...

... As per plan JCL along with accused Vishal Jangotra @Shamma went to Devisthan. Accused Vishal Jangotra @Shamma opened the door while JCL lifted the dead body on his shoulder. The accused Vishal Jangotra @Shamma locked the door and JCL disposed the dead body by throwing it inside the jungle while accused Vishal Jangotra @Sham ma was guarding outside bushes ... "

Further, in the Supplementary Charge Sheet dated 09-08-2018 it has been observed as under:-

> *... "During the course of investigation, it has already been established that victim was administered sedatives by accused during her captivity. Two tablets recovered on the disclosure of Juvenile in conflict with law near Devsthan Rasana were sent to forensic lab for analysis. The chemical analysis report obtained thereof, revealed the present of Clonazepam salt in the said tablets. To ascertain the effect of sedatives 'Mannar' as well as Clonazepam on the victim with empty stomach, the concerned expert (Professor and Head, Pharmacology, GMC Jammu) has opined that the sedative Clonazepam (Epitril 0.Smg) has the following effects:- (1) Drowsiness, (2) Confusion, (3) Impaired, (4) Coordination, (5) Slow reflexes, (6) Slowed or stopped breathing, (7) Coma (loss of consciousness) and Death. As per the final opinion of the expert "the peak concentration of Clonazepam is achieved in the blood after one hour to 1.5. hours of oral administration. Clonazepam absorption from the enteral route is complete irrespective of administered either with or without food". ..."*

9. The crime that the respondent accused herein has been charged with is heinous; its execution was vicious and cruel, by any stretch of

imagination. The entire crime was calculated and ruthless. This case captured the attention and indignation of the society across the country, more particularly, in the State of Jammu and Kashmir, as a cruel crime that raised alarm regarding safety within the community.

10. Our adjudication in the present litigation is restricted to the question whether the respondent was a juvenile on the date of commission of the offence? It all started with the order dated 21.02.2018 passed by the High Court of Jammu & Kashmir in the OWP No. 259 of 2018 with M.P. No. 1 of 2018. The order reads thus:

> *"In compliance of the order dated 09.02.2018, Mr. W S Nargal, learned Senior Additional Advocate General has produced the copy of the status report. After hearing learned counsel for the parties and from perusal of the status report, I deem it appropriate to issue the following directions to the SIT:*
>
> *1. That the SIT shall take steps for ascertaining the age of Shubam Sangra within a period of 10 days from today by Medical Board which shall be constituted by Principal, Government Medical College, Jammu;*
> *2. That the SIT shall also ascertain the whereabouts of Mannu whose name is mentioned in paragraph 6 of the status report and shall take steps for apprehending the aforesaid Mannu;*
> *3. That the SIT shall also obtain the copy of the post mortem report along with detailed questionnaire which has been supplied by it to the doctors of the Boards conducting the post mortem.*
>
> *Let a fresh status report with regard to the aforesaid points be filed within a period of two weeks from today.*

Taking into account the fact that the part of the status report dated 19.02.2018 has been published in daily newspaper, namely, Greater Kashmir, in extensor and taking into account the sensitivity of the matter as well as to ensure free and fair trial, I deem it appropriate to direct that the proceeding of the instant writ petition shall not be published in any newspaper.

List on 09.03.2018 at the bottom of the list.

11. In due compliance with the directions issued by the High Court in its order referred to above, the Special Investigation Team vide its letter dated 26.02.2018 requested the Principal, Government Medical College, Jammu to constitute a medical board for the determination of age of the respondent herein.

12. The Principal and Dean of the Government Medical College, Jammu constituted a Special Medical Board comprising the following doctors:

S. No.	***Name***	***Designation***
1	*Dr. Mritunjay*	*Professor., Department of Physiology*
2	*Dr. Ashwani*	*Assistant Professor, Department of Anatomy*
3	*Dr. Satvinder Singh*	*Lecturer, Department of Oral Diagnostic Department, IGGDC, Jammu*
4	*Dr. Shivani Mehta*	*Lecturer, Department of Forensic Medicine*
5	*Dr. Jeevitesh Khuda*	*Registrar, Department of Radio-Diagnosis*

13. The Special Medical Board constituted, as above, undertook the medical examination of the respondent herein and gave its report dated 03.3.2018 which reads thus:

AGE ESTIMATION REPORT

Name SHUBHAM SANGRA @ SHUBOO Sex: MALE
S/o. Sh. Om Parkash Sangra
Address Hiranagar, Ward No. 10, NP Rasana
Age as alleged by person/miscellaneous data 15 years
Brought by/Authority Dy SP Shwetamber Sharma
Standing Medical Board, No. GMC/2018/SMBd KPS - 125747
Court Case 12176 Dated 26/02/2016 Crime Branch Jammu.
Purpose of examination Assessment of age of Subham Sangra Sd/-
(Signature/Thumb Impression of Individual)

Marks of Identification: 1. Black mole above left angle of mouth
2. Scar mark on right eyebrow

1. PHYSICAL EXAMINATION

(i) Height 5'3"	*(ii) Weight 48 Kg*
(ii) Built Average	*(ii) Voice Masculine*
(v) Secondary Sex Characters	*Well developed*

II. DENTAL EXAMINATION

(U. Right)	*(U. Left)*
8765432	*1234567*
1	*8*

8765432 1 (L. Right)	*1234567 8 (L. Right)*

Referred to Deptt of Oral Diagnosis IGGDC Jammu for dental age estimation by Dr Satvinder Singh.

03/03/2018 -On Clinical examination, all permanent teeth erupted except 18, 28, 38 & 48 on OPG (radiographic) examination; 18 & 28 show V2 root formation approximately 38 & 48 show near complete root formation with open (illegible). On the cavity this findings, the dental of patient is of 19+ years.

III. RADIOLOGICAL EXAMINATION: Referred to Department of Radio diagnose for X-rays for age estimation. Advised (1) X-ray (Rt.) Humerus (Shoulder Jt) AP (2) X-ray Hip (Pelvis) - AP (3) X-ray (RF) Knee Jt-AP (4) X-ray (Rt) Elbow Joint AP Lat (5) X-ray (Rt) Hand & wrist-AP.

OPINION - reserved till the receipt of reports from IGGDC Jammu and the Deptt of Radio diagnosis.

Sd/- Sd/-
Dr. Mrityunjay Shivani Mehta
(Deptt of Physiology) (Deptt of Forensic Medicine)

Sd/- Sd/- Sd/-
Dr. Jeevitesh Khuda Dr. Ashwani Dr. Satvinder
(Deptt of Radio Diagnosis) (Deptt of Anatomy) (IGDDC Jammu)

3/03/2018 FINAL OPINION – Received R/8" x 10" x four (4) films reported by Dr. Jeevitesh Khoda with the opinion-keeping in view the above findings the age of the patient in my opinion is between Nineteen to Twenty Three (19-23) years of age.

FINAL OPINION - On the basis of Physical Dental & Radiological Examination the approximate age of above individual is above nineteen years (19 +)

Sd/-	*Sd/-*	*Sd/-*
Dr. Mrityunjay	*Dr. Ashwani*	*Dr. Satvinder*
(Deptt of Physiology)	*(Deptt of Anatomy)*	*(Deptt of Oral Diagnosis)*

Sd/-	*Sd/-*
Dr. Shivani Mehta	*Dr. Jeevitesh Khuda*
(Deptt of Forensic Medicine)	*(Deptt of Radio Diagnosis)"*

14. The High Court thereafter passed an order dated 14.03.2018 in the OWP No. 259 of 2018 with M.P. No. 1 of 2018 which reads thus:

"When the matter was taken up today, learned Senior Additional Advocate General submitted that despite request being made to the Medical Superintendent, District Hospital Kathua, till today, the post-mortem report has not been handed over to the Investigating Officer. In view of the aforesaid submission, the Medical Superintendent, District Hospital, Kathua is directed to hand over the copy of the post-mortem report as well as reply to the questionnaire to the officer heading the Special Investigating Team within a period of three days from the date of receipt of certified copy of the order passed today.

With regard to the averments in para 7 of the status report which has been filed on behalf of respondents 1 to 3, it is submitted that the Special Investigating Team shall obtain the warrant of arrest in respect of absconding accused, namely, Sanjhi Ram and shall take all effective steps to arrest him and shall interrogate him as well as other persons who are related to the offences in question whose names have been mentioned in para 7 of the status report. Let the aforesaid exercise be carried out with three weeks from today.

Mr. Nargal, learned Sr. AAG further submitted that since the matter is pending before this Court, the Chief Judicial

Magistrate, Kathua is not ascertaining the age of the accused, namely, Shubam Sangra. In view of the aforesaid submissions and taking into account the provisions contained under Section 8 of the J and K Juvenile Justice (Care and Protection of Children) Act, 2013 as well as Rule 74 of the Rules framed under the Act, the Chief Judicial Magistrate, Kathua is directed to ascertain the age of the accused, namely, Shubam Sangra within a period of ten days from the date of receipt of certified copy of the order passed today, without being influenced by the report submitted to the District Medical Board.

List on 09.04.2018.

Let a copy of this Order be supplied to learned counsel for the parties under the seal and signatures of the bench secretary of this Court."

15. The Tehsildar of Hira Nagar vide his communication dated 14.03.2018 informed the Superintendent of Police, In-charge SIT Crime Branch that the original record in respect of date of birth of the respondent herein was not traceable. The letter of the Tehsildar dated 14.03.2018 reads thus:

"Government of Jammu & Kashmir Revenue Department
"OFFICE OF THE TEHSILDAR, EXECLJTIVE
MAGISTRATE
1st CLASS, HIRANAGAR (Kathua)

The Dy. Superintendent of Police
SIT Member Crime Branch, J&K,
Jammu.
No. JC/232 Dated: 14.03.2018

Sub:- Investigation of Case Fir No. 10/2018 u/s 363/302/343/376/201/120- B RPC of P/S Hiranagar.

Ref:- CB/FIR/10-2018/127 dated 13.03.2018

R/Sir,

In reference to your office letter No.CB/FIR/10-2018/127 dated 13.03.2018 regarding the subject cited above.

In this context if is hereby submitted that original, record pertaining to the order No. 22/JC dated 15.04.2004 issued from this office in respect of date of birth of Shubam Sangra S/o Om Parkash R/o Hiranagar is not traceable in this office. Moreover, the old miscellaneous record has been dilapidated for which undersigned is not in position to submit the original record of the same.

Yours faithfully,
Sd/-
Gourav Sharma,
Tehsildar, Hiranagar"

16. The Block Medical Officer, Health & Family Welfare, Hira Nagar by his communication dated 15.03.2018 informed the Superintendent of Police, In-Charge SIT Crime Branch, Jammu & Kashmir that the verification of the records available in the institution reveals that no delivery in the name of Smt. Tripta Devi W/o Om Prakash, mother of the respondent herein, had taken place on 23.10.2002. The date of 23.02.2002 assumes

significance as it is the case of the respondent that he was born on 23.10.2002.

17. On 20.03.2018, the respondent herein preferred an application in the Court of the CJM, Kathua under Section 8 of the Jammu and Kashmir Juvenile Justice (Care and Protection of Children) Act, 2013 (for short, 'the Act, 2013') for determination of his claim as a juvenile.

18. The appellant State filed detailed objections to the aforesaid application filed by the respondent herein under Section 8. The objections read thus:

> *"a. On 12.01.2018 one Mohd. Yousuf S/o Sahib Din caste Bakarwal R/o Rasana Mohara Plakh Phawara Tehsil Hiranagar produced an application in Urdu before the P/S Hiranagar stating therein that his daughter Miss Asifa Age 8 years had gone for grazing horses in the nearby forest on 10.01.2018. She was seen with the horses at about 14:00 hrs. At about 16:00 hrs, the horses returned back in the dera but Asifa did not return. On this Mohd. Yousuf along with others started search in the forest but Asifa could not be traced out. He has the suspicion that some miscreants have kidnapped his daughter. Consequently, Case FIR No. 10/2018 u/s 363 RPC was registered in P/S Hiranagar and section 302 and 343 RPC were added after recovery of the dead body of the prosecutrix. The investigating officer of P/s Hiranagar, on the basis of a secret information had apprehended a Juvenile delinquent namely Shubam Sangra @ Chuboo on 19.01.2018 and was produced before the Ld. Chief Judicial Magistrate Kathua on 20.01.2018 for seeking remand. The investigation of the case was subsequently transferred to Crime Branch Jammu vide PHQ order No. 374/2018 dated 22.01.2018 for further investigation. The case was formally handed over to Crime Branch on 27.01.2018.*

During the course of the investigation the offences u/s, 376, 201· and 120-B RPC came to be included.

b. The Ld. Chief Judicial Magistrate, Kathua has granted remand for lodgment of Shubam Sangra @ Chuboo in observation home R.S Pura, the details of which is as under:-

i. 20.01.2018 to 29.01.2018 = 10 days
11. 29.01.2018 to 03.02.2018 = 6 days
ill. 03.02.2018 tol2.03.2018= 10 days
iv. 12.02.2018 to 26.02.2018 = 15 days
v. 26.02.2018 to 12.03.2018 = 15 days
vi. 12.03.2018 to 22.03.2018 = 11 days
Total - 67 days, (62 days as per the calendar entries)

Apart from this, the Ld. Court of Chief Judicial Magistrate Kathua vide order dated 30.01.2018, 05.02.2018, 19.02.2018 and 26.02.2018 has granted the custody of juvenile delinquent Shubam Sangra for 3 days + 3 days + 3 days + 1day respectively. This way, the juvenile was granted a total of 10 days police custody for the purpose of investigation. The juvenile delinquent during the course of sustained questioning also admitted to have committed the offences of kidnapping, rape and murder of deceased Asifa. Even as in the chain of events, on the basis of statement of witnesses u/s 161 and 164-A Cr. PC and circumstantial evidence the offences u/s 363, 343, 302, 376, 120-B/RPC have been prima facie made out against Shubam Sangra@ chuboo.

c. Moreover, during investigation it also transpired that the Date of Birth Certificate of the Juvenile obtained from Municipal Committee Hiranagar and the one obtained from Modem Public Higher Secondary School Hiranagar were at variance. In the mean time. the Hon'ble High Court on 21.02.2018 in OHP No. 259 of 2018 titled Mohd. Akhter Vs. State had interallia passed the following direction:-

> *"SIT shall take steps for ascertaining the age of Shubam Sangra within a period of 10 days from today by a*

Medical Board to be which shall be constituted by Principal GMC Jammu".

In compliance to the above direction of Hon'ble High Court J&K Jammu, the Principal GMC Jammu was requested vide this office letter No. CBJ/FIR/l0 2018/56 dated 26.02.2018 to constitute a Medical Board for determination of age in respect of juvenile delinquent Shubam Sangra @ Chuboo. In response to which, the Principal GMC Jammu constituted board of doctors comprising of (i). Dr. Mrityinjay, department of physiology (ii). Dr. Shivani Mehta, department of Forensic Medicine (iii). Dr. Jeevitesh Khtida, department of Radio Diagnosis (iv). Dr. Ashawani, department of Anatamy and (v). Dr. Satvinder Singh, department of Indira Gandhi Govt. Dental College Jammu (IGGDC). The board of doctors so constituted examined the juvenile delinquent Shubam Sangra on 28.02.2018 and accordingly Principal GMC Jammu submitted the opinion of the board vide letter No. GMC/2017 /SMVC/court case/2209 dated 05.03.2018.

Final Opinion :-

On the basis of Physical, Dental and Radiological examination the approximate age of above mentioned individual is above Nineteen years (19+). (The copy of the Medical report is appended as Annexure A for reference).

d. On the basis of questioning from Juvenile delinquent Shubam Sangra, statement of witnesses u/s 161 and 164-A CrPC and circumstantial evidence accused persons namely (i). Deepak Khajuria @ Deepu S/o Updesh Khajuria (ii). Surinder Kumar S/o Sain Dass R/o Dhamiyal Hiranagar and (iii). Parvesh Kumar @ Mannu S/o Ashok Kumar R/o Rasana Hiranagar, (iv). VishalJangotra@ Shamma and (v). Sanji Ram were arrested and put to sustained interrogation. The investigation conducted so far reveals that the accused De'epak Kumar Khajuria and the juvenile delinquent hatched a criminal conspiracy with Sanji Ram S/o Des Raj R/o Rasana for kidnapping, rape and murder of deceased Asifa, d/o Mohd. Yousuf of village Rasana and in furtherance of this

criminal conspiracy the accused persons namely Surinder Kumar S/o Sain Dass R/o Dhamiyal Hiranagar, Parvesh Kumar @ Mannu S/o Ashok Kumar R/o Rasana Hiranagar and Vishal jangotra @ Shamma became a part of the conspiracy as well as the execution plan.

e. Further, during investigation it has also transpired that the officers and officials of P/s Hiranagar were a part of the criminal conspiracy as the clothes of deceased Asifa were washed up in the premises of Police Station Hiranagar on 17.01.2018 before being sent to FSL for forensic examination. On the basis confessional statements of accused persons, and statement of witnesses uls 161 Cr. PC as well as other circumstances HC Tilak Raj of P/S Hiranagar and S.I Anand Dutta, the erstwhile I/O of instant case of P/s Hiranagar have been arrested for disappearance of evidence, done with the intention of screening out the offender from legal punishment. Both the police officials are on police remand and lodged in P/s Crime Branch Jammu.

f. That as per the opinion of Board of Doctors Shubam Sangra @ Chuboo is above nineteen years of age and thus he is an adult. Further it is submitted that in the writ petition titled Mohd. Akhter Vs. State OWP No. 259 of 2018, pending adjudication before the Hon'ble High Court of J&K, Jammu a detail status report reflecting the opinion of board of doctors of GMC Jammu was filed before the Hon'ble court on 09.03.2018 in sealed cover for the perusal of the Hon'ble High Court.

2. It is also relevant to submit before this Hon'ble Court that, Tehsildar Hiranagar was requested vide office letter no. CB/FIR/10-20181127 dated 13.03.2018 to provide the file regarding issuance of order to executive officer Municipal Committee Hiranagar for making the entry of date of birth in respect of said Shubam Sangra in the record of Municipal Committee. In response to the above communication, Tehsildar Hiranagar vide letter no. JC/232 dated 14.03.2018 has intimated that the file in question is not traceable in his

office. (The reply of Tehsildar is annexed for reference and marked as Annexure -B).

3. Further it is also submitted that Executive officer of Municipal Committee Hiranagar has made an entry in the date of birth register of Municipal Committee in respect of juvenile Shubam Sangra mentioning there in that the said individual was born in Hiranagar Hospital. However, contrary to this, in response to this office letter no. CB/FIR/10-2018/135 dated 14.03.2018 the Block Medical Officer Health and Family Welfare Hiranagar vide office letter No. BMO/CHC/HGR/ Acctts/2214 dated 15.03.2018 has intimated that on verification of records available in the institution it is found that no delivery in the name of Smt. Tripata Devi w/o Sh. Om Parkash R/o Hiranagar has taken place on 23.10.2002, which clearly indicates that the entry made by Executing officer Municipal Committee Hiranagar is not based on facts and even the order of the Tehsildar Hiranagar for making the said entry has become doubtful. (Photocopy of letter of BMO Hiranagar is annexed for reference and marked as Annexure-C}.

4. That it is also relevant to place on record that the aforesaid mentioned writ petition was listed before the Hon'ble court of 14.03.2018 wherein the Hon'ble court after going through the status report filed in the sealed cover was please to issue the 3 directives, out of which the one pertaining to the issue in hand was for the sake of reference is reproduced here in under:-

> *"Taking into account the provisions contained under Section 8 of the J&K]uvenile]ustice (Care and Protection of Children) Act; 2013 as well as Rule 74 of the Rules framed under the Act; the Chief Judicial Magistrate Kathua is directed to ascertain the age of the accused, namely, Shubam Sangra with in a period of ten days from the date of receipt of certified copy of the order passed today, without being influenced by the report submitted by the District Medical Board".*

The certified copy of court order has already been sent to the Ld. Court through CPO, vide letter no. CB/FIR/10-2018/154 dated 16.03.2018. However, another photocopy of the of the court order is again annexed for reference, marked as Annexure-D.

5. That in view of the aforementioned reply of the Tehsildar Hiranagar as well as the Block Medical officer Health and Family Welfare Hiranagar and coupled with the report of the Medical Board, it is submitted that the applicant Shubam Sangra @ Chuboo may not be declared as juvenile and rather in view of the role played by him in the gruesome and dastardly act as well as his conduct and behavior, forthcoming from the investigation conducted so far, he is rather mature and not a juvenile. Further it is also placed on record that the date of arrest of the Shubam Sangra as per the CD file is 19.01.2018 and not 12.01.2018 as reflected in the application.

In the light of the aforesaid submission it is humbly prayed that the aforesaid application may kindly be rejected and the applicant Shubam Sangra @ Chuboo S/o Om Parkash R/o Ward No. 10 Hiranagar Np Village Rasana, Tehsil- Hiranagar may kindly be declared as an adult or alternatively not a juvenile, so that the investigation of instant case is finalized on merits.

Superintendent of Police,
I/GSIT Crime Branch, J&K,
Jammu"

19. For the purpose of adjudicating the application filed by the respondent herein under Section 8 of the Act, 2013 referred to above, the CJM, Kathua recorded the deposition of the Executive Officer, Municipal

Committee, Hira Nagar and of the father of the respondent herein namely Om Prakash.

20. Ultimately the CJM, Kathua passed the final order dated 27.03.2018 holding the respondent herein to be a juvenile. The relevant part of the order passed by the CJM, Kathua reads thus:

> *"Having discussed legal position qua determination of juvenility in terms of rule 74 supra and section 8 of Juvenile Justice Act, let focus now be shifted to the facts of the case at hand.*
>
> *Executive Officer, Municipal Committee Hiranagar appeared on 23-03-2018 along with record pertaining to date of birth of petitioner. He was examined on the same day. According to him date of birth of petitioner is recorded as 23-10-2002 in the Birth and Death Register maintained by his office; that parentage of petitioner is : son of Om Parkash and Smt. Tripta. Further, according to this witness, date of birth entry of petitioner has been recorded on 15-04-2004 in the records of Municipal Committee; that said entry has been made by then Executive Officer whose signatures and seal is at serial no. 80 of register concerned; that this entry was recorded pursuant to order of Executive Magistrate 1st Class Hiranagar bearing no. 22/JC dated 15-04-2004; that father of petitioner had moved an application before then Executive Magistrate (Tehsildar) Hiranagar seeking direction for making entry of date of birth of petitioner; that in-terms of order no. 22/JC dated 15-04-2004 entry of three children of Om Parkash (father of petitioner) was directed to be made by Executive Magistrate 1st Class Hiranagar; that date of birth of petitioner was entered in compliance with this order of Executive Magistrate 1st Class only; that signature father of petitioner exists at serial no. 80 of register concerned; that date of birth certificate the photocopy of which is on the file of this court has been issued from his office in which date of birth of petitioner is recorded as 23-10-*

2002 and this entry is correct and true according to original record etc. etc.

In cross examination, witness deposed that incumbent Executive Officer ensures signatures of any application on the birth register in his presence; that with regard to place of birth of new born, entry is made on the basis of information given by an applicant and no verification is made in this regard because entry is made on the basis of order of Magistrate; that order no. 22/JC does not mention place of birth of petitioner and that after year 2012 orders pertaining to entry in date of birth are issued by courts and not by Executive Magistrate etc. etc.

Another witness namely Om Parkash who is father of petitioner was examined on 24-03-2018.

According to this witness, petitioner is his real son; that date of birth of petitioner is 23-10-2002; that this date of birth of petitioner is also entered in the record of Municipal Committee Hiranagar and same was made on 15-04-2004; that prior to this he moved an application for making entry of date of birth of petitioner before Executive Magistrate 1st Class Hiranagar and also led evidence and finally Tehsildar Hiranagar issued order in the name of Municipal Committee Hiranagar pursuant to which date of birth of petitioner was recorded as 23-10-2002; that name of his wife is Tripta Devi. Petitioner was admitted in Modern Public Higher Secondary School Hiranagar in the first class; that there also he disclosed date of birth of petitioner as 23-102-2002; that petitioner was admitted in said school 10 years back; that however a wrong entry of date of birth of petitioner has been made in school records; that date of birth of petitioner shown in school is 23-10-2003; that he came to know about this wrong entry of date of birth of petitioner in school only when FIR was registered against him (petitioner) pursuant to which he went to school to get date of birth certificate of petitioner etc. etc.

On cross examination, witness deposed that he has three children; that the youngest one is petitioner. Because of

ignorance he moved application for making entry of date of birth of his children as late as in year 2004 even though his eldest issue was born in the year 1996; that he cannot say the age at which Shubam Sangra was admitted in the school and that he is 4th class employee in the education department etc etc.

Be it noted that evidence of Executive Officer, Municipal Committee Hiranagar puts in perspective the process which ultimately culminated in recording date of birth of petitioner in the record of Municipal Committee Hiranagar way back in the year 2004. As a matter of record, it stands established that date of birth of petitioner was recorded in the birth register of Municipal Committee Hiranagar vide registration no.80 on 15-04-2004 right in line with the order no.22/JC dated 15-04-2004 passed by then Executive Magistrate 1st Class (Tehisildar) Hiranagar. The fact that birth certificate issued by Municipal committee supra on 17-03-2018 is in accord with and conforms to original record, have been vividly demonstrated, both, by records of Municipal Committee supra as also by the testimony of its Executive Officer. Date of birth certificate issued by Municipal Committee Hiranagar in favour of petitioner on 17-03-2018 depicting his date of birth as 23-10-2002, in the obtaining circumstances as outlined here-in-above - therefore cannot be said to have been manufactured, engineered or fabricated. Also, once it (Date of birth certificates of petitioner) does not give a prima facie sense of concoction or trickery, then to mull over an idea of over scrutiny of same, if I say so, would indeed be a fallacy directed at the very ambit and scope of section 8 of Juvenile Justice (Care and protection of Children) Act and rule 74 framed thereunder. Notably also, the narrative un-wound by father of petitioner is in sync with account given by Executive Officer, Municipal Committee Hiranagar and relevant official record.

There is another crucial aspect of the matter which cannot be afforded to be over looked or side tracked. That is this: Date of birth of petitioner was recorded in the birth register maintained in the course of official business by Municipal Committee Hiranagar way back on 15-04-2004. Committee did not record

this entry suomoto but in compliance with order issued in that end by Executive Magistrate 1st Class Hiranagar. Occurrence in which involvement of petitioner is alleged is of January 2018. To insinuate therefore that date of birth entry was so caused to be made in favour of petitioner as if he knew that after more than thirteen years later he would seek to derive benefit in a criminal indictment would not only be an over-statement but also an erroneous and in-substantial assumption to say the least.

No sooner as birth certificate issued by Municipal Committee concerned in favour of petitioner is found to be prima facie legitimate than recourse to other modes of age determination is not allowable. This essentially is the mandate of rule 74 framed under Juvenile Justice (Care and Protection of Children) Act.

For all what is discussed hereinabove, and in deference to the standard of proof required for the purpose of section 8 of the Act supra and Rule 74 and in light of proof offered, it is held that birth certificate issued by Municipal Committee Hiranagar in favour of petitioner Shubam Sangra depicting his date of birth as 23-10-2002 is legitimate, un-tainted and fair and therefore credence needs to be given to it for the purpose of Juvenile Justice Act supra. Reckoning date of birth of petitioner as 23- 10-2002, it is held that age of petitioner as on date of passing of this order is less than sixteen years. Age of petitioner is accordingly ascertained in compliance with directive of Hon'ble High Court dated 14-03-2018 in OWP no. 259/2018.”

21. The appellant State being dissatisfied and aggrieved with the aforesaid order passed by the CJM, Kathua dated 27.03.2018 challenged the same by filing the Criminal Revision Application before the High Court. The High Court rejected the Revision Application affirming the order passed by the CJM, Kathua holding the respondent herein to be a juvenile on date

of the commission of the offence. The impugned order of the High Court reads thus:

> *“26. Admittedly, the date of birth of the respondent in the Municipal record as well as school record is shown as 23.10.2002, meaning thereby on the date of registration of the FIR, he was below the age of 18 years. Moreso, the petitioners have not denied the authenticity of the aforesaid record. Once there is clear proof of the respondent in the shape of birth certificate of the Municipal Committee and certificate issued by the school authority, the medical examination regarding the age of the respondent automatically loses its significance.*
>
> *27. Next question raised by Mr. Pant is with regard to the maintainability of the Revision Petition. As held by the Apex Court in **Jabar Singh Vs. Dinesh and another 2010(3) SCC 757,** the scope of Revision is very limited. The relevant paragraph of the judgment is reproduced as under:*
>
> > *"29. A plain reading of Section 52 of the Act shows that no statutory appeal is available against any finding of the court that a person was not a juvenile at the time of commission of the offence. Section 53 of the Act which is titled "Revision", however, provides that the High Court may at any time, either of its own motion or on an application received on that behalf, call for the record of any proceeding in which any competent authority or court of session has passed an order for the purpose of satisfying itself as to the legality or propriety of any such order, and may pass such order in relation thereto as it thinks fit. While exercising such revisional powers, the High Court cannot convert itself to an appellate court and reverse the findings of fact arrived at by the trial Court on the basis of evidence or material on record, except where the High Court is not satisfied as to the legality or propriety of the order passed by the trial Court."*
>
> *28. It is admitted by the petitioners that the scope of Revision is the same as the scope of Revision under Code of Criminal*

Procedure. Section 52 of Juvenile Justice Act, 2013 referred to by the petitioners also refers to the facts that Court has to satisfy itself as to the legality and propriety of any such order, as such, the factual findings of fact cannot be upset by the Court unless and until it is found to be perverse. In the present case where, factual finding has been given by the Court below, therefore, there is no illegality or impropriety in the order, as such, there is no question of interference with the findings of the Court below.

29. In the instant case, the trial Court has given finding of fact relying upon the evidence and has acted in conformity with Rule 74 of the Rules of 2014 and that there is no perversion in the findings of fact, as such, the trial Court has not committed any illegality or impropriety which warrants interference in this Revision Petition. Accordingly, this Revision Petition is dismissed along with connected CrlM(s).

Record, if any, be sent down. Interim direction, if any, shall stand vacated.

Jammu *Tashi Rabstan)*
11.10.2019 *Judge"*

22. In view the aforesaid the appellant State is here before this Court with the present appeal.

Submissions on behalf of the Appellant State:

23. Mr. P.S. Patwalia, the learned senior counsel appearing for the appellant State vehemently submitted that the orders passed by the CJM, Kathua and the High Court could be termed as palpably erroneous and thereby rendering the dispensation of justice to a mockery. The learned

senior counsel came down very heavily while criticizing both the orders submitting that the two courts have conveniently ignored about the statutory rules governing the determination of age of a juvenile. He submitted that there is no cogent, clear and convincing documentary evidence on record to suggest or indicate that the respondent was born on 23.10.2002. He invited the attention of this Court to an order passed by the Executive Officer Municipal Committee, Hira Nagar dated 15.04.2004 specifying the date and place of birth of three children of Om Prakash Sangra. This order dated 15.04.2004 came to be passed pursuant to an application said to have been filed by the father of the respondent herein namely Om Prakash under Section 19 (3) of the Registration of Births and Deaths Act, 1956 r/w Rule 19(3) of the Rules. The order reads thus:

> *"Application U/S 19(3) of Registration of Birth and Deaths Act, 1956 (illegible) with Rule 19(3) of the J&K Registration of Births and Deaths (illegible) of birth certificate of the (illegible) Son Rahul Sangra Riya Sangra Shubam Sangra District Hiranagar, Tehsil Hiranagar.*
>
> ***ORDER***
>
> *The applicant has moved an application for the issuance of date of birth certificate. The applicant Om Parkash Sangra has stated that he/she was born on 23-11-97, 21-2-98, 23-10-02 Village Hiranagar Tehsil Hiranagar and submitted that the of birth has not been recorded by the M.C. Hiranagar. The applicant has filed an application in this Court supported by duly sworn affidavit avering therein that due to ignorance of the concerned his/her date of birth could not be recorded.*

The applicant has examined (illegible) S/o Ram Krishan of Tehsil Hiranagar besides himself as his own witnesses in support of the averments made in the application. The applicant has supported the contents of the application and Hiranagar, Ward No. 7 Distt Kathua witnesses appearing for the applicant have corborated the material averments of the applicant.

I have gone through the application, affidavit and the statements of witnesses from the above it has been established that the (illegible) of the applicant's son Rahul Sangra has taken place at village Tehsil Hiranagar on 23-11-97, 21-2-98, 23-10-02 keeping in view the material placed before this Court, it is ordered that entry of the above named applicant's. ____ be made in the Register of __ as mentioned above in terms of Rule 19(3) of the Registration of birth and __ Rules.

The child particulars are stated as under :-

S.No. Name	*Father*	*Date & Place of birth*
1. Rahul Sangra	*Om Parkash*	*23-11-97*
2. Riya Sangra	*R/o Hiranagar*	*21-02-98*
3. Shubam Sangra		*23-10-02*

No: 22/JC *Sd/-*

Date 15-4-04 *............ Hiranagar*

Copy of this order shall be forwarded to the M.C. Hiranagar for information and necessary action.

Sd/-
Executive Officer
Municipal Committee
Hiranagar”

24. The learned senior counsel submits that no reliance could have been placed on the aforesaid order for the purpose of coming to the conclusion that the date of birth of the respondent herein is 23.10.2002.

25. Our attention was drawn to the fact that the first child of Om Prakash namely Rahul Sangra is shown to have been born on 23.11.1997 whereas the second child i.e. the daughter namely Riya Sangra is shown to have been born on 23.01.1998 i.e. just within three months from the date of birth of the eldest child. The date of birth of the respondent herein is shown to have been 23.10.2002.

26. As against the aforesaid, the learned senior counsel invited the attention of this Court to a birth certificate said to have been issued by Modern Public Higher Secondary School dated 06.09.2017. The same reads thus:

"Modern Public Higher Secondary School
(10+2)
Ward. N .. 10-11 Hiranagar (Kathua) J&K

Recognised by J&K Govt. and Affiliated to J&K State Board of School

Education

No. *Dated 06/09/2017*

DATE OF BIRTH CERTIFICATE

Certified that the Date of Birth of Shubam Sangra Son of Sh Om Parkash / Tripta Devi is (In Figures) 23/10/2003 (In Words) Twenty Third Oct. Two Thousand Three as per School Records.

His Admission No. is 1435. He was reading in Class 10th.

Address
W/ No. 10, P.O Hiranagar, Teh Hiranagar,
Distt Kathua, Pin 184142

Sd/-
Principal
Modern Public Higher Sec. School
Hiranagar"

27. Thus, in the aforesaid certificate the date of birth is shown to be 23.10.2003. Our attention was thereafter drawn to an extract of the admission withdrawal register of the primary department school, Modern Public Higher Secondary School, which is at page 58 of the paper book Annexure-P-3, wherein the name of the respondent is at S. No. 1757 and the date of birth is shown to be 23.10.2003.

28. After highlighting the contradictions in the date of birth as above, the learned senior counsel invited our attention to the Jammu & Kashmir Juvenile Justice (Care and Protection of Children) Rules, 2014, (for short, 'the Rules, 2014') more particularly Rule 74. Rule 74 is with respect to the

determination of age. Although what is relevant for our purpose is sub-rule (3) of Rule 74 of the Rules, 2014, yet we deem it appropriate to reproduce the entire Rule 74, which reads thus:

> *"**74. Determination of age**.—(1) Whenever an alleged offender who appears to be below the age of 21 years is produced before a Court not being the Board, it shall on the very first date of production question the alleged offender about his age, satisfy itself that he is not a juvenile, make a note of its findings and order immediate transfer of the matter to the Board where necessary.*
>
> *(2) When a juvenile or child or a juvenile in conflict with the law is produced before the Board or the Committee as the case may be, it shall determine and declare his age within a period of thirty days from the date of such production.*
>
> *(3) The Board or the Committee, as the case may be shall, as far as possible, decide the juvenility or otherwise, on the basis of physical appearance or documents available, if any. Where an inquiry is instituted by the Board or the Committee for determination of age, such inquiry shall be conducted on the basis of following evidence: —*
>
> > *(i) the birth certificate issued by a Corporation or a Municipal Committee or any other notified authority; or*
> >
> > *(ii) the matriculation or equivalent certificate; or*
> >
> > *(iii) in absence of the certificates mentioned in sub-clauses (i) and (ii) or in case of any contradiction arising therefrom, the authority deciding the age issue may refer the matter to a duly constituted Medical Board, which shall record its findings and submit to the Juvenile Justice Board.*
>
> *(4) All Government Hospitals shall constitute Medical Boards for medical age examination, consisting of a Physiologist, a Dental Examiner and a Radiologist or Forensic Expert, of whom one shall be notified as the Chairperson.*

(5) All the Members of the Medical Board shall give their individual findings on age, which shall then be forwarded to the Chairperson of the Board to give the final opinion on the age within a margin of one year.

(6) The duly constituted Medical Boards shall give their report with the findings on age within 15 days of request being made in this regard."

29. The learned senior counsel submitted that sub-rule (3) of the Rule 74 makes it abundantly clear that in case of any contradiction between the certificates mentioned in sub clause (i) and (ii) of the sub-rule (3), the authority deciding age may refer the matter to a duly constituted medical board which, in turn, shall record its findings and submit it to the Juvenile Justice Board.

30. The learned senior counsel submits that there is an apparent contradiction in the documentary evidence on record in the form of various certificates and in such circumstances the matter had to be referred to a duly constituted medical board and the age has now to be determined on the basis of the report of the medical board which is on record.

31. The learned senior counsel submitted that the certificate issued by the medical board makes it abundantly clear that the age of the respondent herein at the time of commission of the offence could be between 19 and 23 years.

32. In the last, the learned senior counsel submitted that the case on hand is one of a very heinous crime committed on a minor girl aged 08 years. He would submit that if the plea of juvenility or the fact that the accused had not attained the age of discretion so as to understand the consequences of his heinous act is not free from ambiguity or doubt, such plea cannot be allowed to be raised merely on doubtful certificates evidencing age and in such circumstances the medical evidence will have to be given due weightage while determining the age of the accused. In the aforesaid context, the learned senior counsel placed strong reliance on the decision of this Court in ***Ramdeo Chauhan alias Raj Nath v. State of Assam***, (2001) 5 SCC 714.

33. In such circumstances referred to above, Mr. Patwalia, the learned senior counsel prayed that there being merit in his appeal, the same be allowed and the impugned order passed by the High Court be set aside and it be held that the respondent was not a juvenile on the date of the commission of the offence.

Submissions on behalf of the Respondent accused:

34. On the other hand, the learned counsel appearing for the respondent vehemently opposed the present appeal submitting that no error, not to speak of any error of law could be said to have been committed by the

courts below in determining the age of the respondent. According to him, sub-rule (3) of Rule 74 has no application in the present case as there is no contradiction in the certificates evidencing the age of the respondent accused. He would submit that the respondent accused was born on 23.10.2002 is crystal clear and the same is evident from the admission form of the respondent duly filled while seeking admission in the Modern Public Higher Secondary School, Hira Nagar in the year 2008. He submitted that howsoever the heinous crime may be but on the date of commission of the alleged offence if the accused is a juvenile then he has to be tried as a juvenile in accordance with law and not like any other accused. He would submit that heinousness or brutality of the crime has nothing to do with the object of the Juvenile Justice Act. He further argued that no reliance could be placed on the opinion of the medical board because ultimately it is an expert opinion and cannot be said to be conclusive as regards the age. The learned counsel vehemently submitted that the court may take notice of the relevant fact that there is no certificate / document in the case on hand which indicates that the respondent was not a minor or a major as on the date of the alleged offence. He argued that in the event the school record (Admission Form) indicating the date of birth is not be treated as falling in the category

mentioned in sub-rule (3) (ii) of Rule 74, then in view of the Order No. 22/JC/certificate issued by the Municipal Committee being available, recourse to Rule 74(3)(ii) is not at all warranted.

35. The learned counsel in support of his aforesaid submissions placed reliance on the following decisions of this Court:

(i) ***Ashwani Kumar Saxena v. State of Madhya Pradesh***, (2012) 9 SCC 750

(ii) ***Darga Ram alias Gunga v. State of Rajasthan***, (2015) 2 SCC 775

36. In such circumstances referred to above, the learned counsel appearing for the respondent accused prayed that there being no merit in the present appeal, the same may be dismissed.

Analysis

37. 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 whether the High Court committed any error in passing the impugned order?

38. Sub-rule (3) of Rule 74 referred to by us in Para 28 above, makes it abundantly clear that in the absence of the certificates mentioned in sub-clause (i) to (iii) or in the event of any contradiction arising therefrom, the

authority deciding the issue of age may refer the matter to a duly constituted medical board which, in turn, would record its findings and submit to the Juvenile Justice Board. The materials on record as looked into by us above reveal no manner of doubt that there are discrepancies in the certificates on record disclosing the date of birth of the respondent. We fail to understand as to why the Courts below were not able to take cognizance of such discrepancies or contradictions. We are not at all impressed with the submission canvassed on behalf of the respondent that even if there are contradictions or discrepancies in the documentary evidence of record there is not a single date emerging on record on the basis of which it could be said that the respondent was major on the date of the alleged offence. It is a very unreasonable argument. That is not the correct way of looking at the core issue. The correct way of looking at the core issue is to closely examine whether there is any cogent or convincing evidence as regards the correct date of birth of the respondent accused and after ascertaining the same, reach to an appropriate conclusion. If, there is any doubt in this regard, there is no good reason why the matter should not be referred to a duly constituted medical board which shall, in turn, record its findings and submit to the Juvenile Justice Board. The word

"may" should be read as "shall" having regard to the very object of sub-rule (3) of Rule 74.

39. It is a well settled principle of interpretation that the word 'may' when used in a legislation by itself does not connote a directory meaning. If in a particular case, in the interests of equity and justice it appears to the court that the intent of the legislature is to convey a statutory duty, then the use of the word 'may' will not prevent the court from giving it a mandatory colour. This Court in ***Bachahan Devi v. Nagar Nigam, Gorakhpur*** reported in (2008) 12 SCC 372, held as under:

> *"18. It is well settled that the use of the word "may" in a statutory provision would not by itself show that the provision is directory in nature. In some cases, the legislature may use the word "may" as a matter of pure conventional courtesy and yet intend a mandatory force. In order, therefore, to interpret the legal import of the word "may", the court has to consider various factors, namely, the object and the scheme of the Act, the context and the background against which the words have been used, the purpose and the advantages sought to be achieved by the use of this word, and the like. It is equally well settled that where the word "may" involves a discretion coupled with an obligation or where it confers a positive benefit to a general class of subjects in a utility Act, or where the court advances a remedy and suppresses the mischief, or where giving the words directory significance would defeat the very object of the Act, the word "may" should be interpreted to convey a mandatory force. As a general rule, the word "may" is permissive and operative to confer discretion and especially so, where it is used in juxtaposition to the word "shall", which ordinarily is imperative as it imposes a duty. Cases, however, are not wanting where the words "may", "shall" and "must" are used*

interchangeably. In order to find out whether these words are being used in a directory or in a mandatory sense, the intent of the legislature should be looked into along with the pertinent circumstances."

40. Similarly, this Court in ***Dhampur Sugar Mills Ltd. v. State of U.P***. reported in (2007) 8 SCC 338, held:

"36. ….In our judgment, mere use of word "may" or "shall" is not conclusive. The question whether a particular provision of a statute is directory or mandatory cannot be resolved by laying down any general rule of universal application. Such controversy has to be decided by ascertaining the intention of the legislature and not by looking at the language in which the provision is clothed. And for finding out the legislative intent, the court must examine the scheme of the Act, purpose and object underlying the provision, consequences likely to ensue or inconvenience likely to result if the provision is read one way or the other and many more considerations relevant to the issue."

41. We may also refer to Section 8 of the Act, 2013. Section 8 provides for the procedure to be followed, when the claim of juvenility is raised before any court. Section 8 reads thus:

*"**8. 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 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 the Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of the 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 order and the sentence, if any, passed by a court shall be deemed to have no effect."

42. The plain reading of Section 8 referred to above indicates that whenever a claim of juvenility is raised before any court or the court is of the opinion that the accused person was a juvenile on the date of the commission of the offence, then it is mandatory for the court to make an inquiry and in the course of such inquiry, the court may take such evidence as may be necessary, however, not an affidavit, so as to determine the age of such person. At the end of the inquiry, if the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1) of Section 8, then in such circumstance, the court is obliged in law to forward the juvenile to the Juvenile Justice Board for passing appropriate order and the sentence.

43. We may also look into Section 48 of the Act, 2013. Section 48 is in regard to the presumption and determination of age. Section 48 reads thus:

> ***“48. Presumption and determination of age**.—(1) Where it appears to a competent authority that person brought before it under any of the provisions of the Act (otherwise than for the purpose of giving evidence) is a juvenile or the child, the competent authority shall make due inquiry so as to the age of that person and for that purpose shall take such evidence as may be necessary (but not an affidavit) and shall record a finding whether the person is a juvenile or the child or not, stating his age as nearly as may be.*
>
> *(2) No order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order has been made is not a juvenile or the child, and the age recorded by the competent authority to be the age of person so brought before it, shall for the purpose of the Act, be deemed to be the true age of that person.”*

44. Section 48 referred to above talks about a competent authority, whereas, Section 8 of the Act 2013 referred to above, is in respect to the court. However, what is relevant to note is that in both the Sections i.e., Section 8 as well as Section 48 the word ‘shall’ has been used.

45. There is one another aspect of this matter. It is the High Court who thought fit to pass the order dated 21.02.2018 referred to by us in para 9 as above, directing the Special Investigation Team (SIT) to take steps for ascertaining the age of the respondent herein. It is pursuant to such

directions issued by the High Court that a Special Medical Board comprising of five medical experts on different subjects was constituted and it is this medical board comprising of five medical experts whose report we are looking into so far as the approximate age of the respondent is concerned. When we have reached to the conclusion that there is no cogent and convincing documentary evidence on record as regards the date of birth or age of the respondent accused on the date of the alleged crime then there is no good reason for us not to look into or ignore the medical report prepared by the Special Medical Board which is on record. In such circumstances, the argument canvassed on behalf of the respondent in regard to the applicability of sub-rule (3)(iii) of Rule 74 pales into insignificance. In other words, the argument that the Special Medical Board should not have been constituted pales into insignificance because the Special Board was constituted under the directions issued by the High Court.

46. Let us see what this Court has to say in the case of ***Darga Ram @ Gunga*** (supra) upon which strong reliance has been placed on behalf of the learned counsel appearing for the respondent accused. In ***Darga Ram @ Gunga*** (supra), this Court held as under:

> ***“****16. The medical opinion given by the duly constituted Board comprising Professors of Anatomy, Radiodiagnosis and*

Forensic Medicine has determined his age to be "about" 33 years on the date of the examination. The Board has not been able to give the exact age of the appellant on medical examination, no matter the advances made in that field. That being so, in terms of Rule 12(3)(b) the appellant may even be entitled to the benefit of fixing his age on the lower side within a margin of one year in case the Court considers it necessary to do so in the facts and circumstances of the case. The need for any such statutory concession may not however arise because even if the estimated age as determined by the Medical Board is taken as the correct/true age of the appellant he was just about 17 years and 2 months old on the date of the occurrence and thus a juvenile within the meaning of that expression as used in the Act aforementioned. Having said that we cannot help observing that we have not felt very comfortable with the Medical Board estimating the age of the appellant in a range of 30 to 36 years as on the date of the medical examination.

***17.** The general rule about age determination is that the age as determined can vary plus minus two years but the Board has in the case at hand spread over a period of six years and taken a mean to fix the age of the appellant at 33 years. We are not sure whether that is the correct way of estimating the age of the appellant. What reassures us about the estimate of age is the fact that the same is determined by a Medical Board comprising Professors of Anatomy, Radiodiagnosis and Forensic Medicine whose opinion must get the respect it deserves. That apart, even if the age of the appellant was determined by the upper extremity limit i.e. 36 years the same would have been subject to variation of plus minus 2 years meaning thereby that he could as well be 34 years on the date of the examination. Taking his age as 34 years on the date of the examination he would have been 18 years, 2 months and 7 days on the date of the occurrence but such an estimate would be only an estimate and the appellant may be entitled to additional benefit of one year in terms of lowering his age by*

one year in terms of Rule 12(3)(b) (supra) which would then bring him to be 17 years and 2 months old, therefore, a juvenile."

47. On the other hand, the learned senior counsel appearing for the appellant State submitted that ***Darga Ram @ Gunga*** (supra) came to be considered by this Court in the case of ***Mukarrab v. State of Uttar Pradesh*** (2017) 2 SCC 210, and this Court in ***Mukarrab*** (supra) observed as under:

> ***"22.*** *A reading of the above decision in* Darga Ram case *(supra) shows that courts need to be aware of the fact that age determination of the persons concerned cannot be certainly ascertained in the absence of original and valid documentary proof and there would always lie a possibility that the age of the person concerned may vary plus or minus two years. Even in the presence of medical opinion, the Court showed a tilt towards the juvenility of the accused. However, it is pertinent to note that such an approach in* **Darga Ram case** *(supra) was taken in the specific facts and circumstances of that particular case and any attempt of generalising the said approach could not be justifiably entertained."*

48. Thus, in ***Mukarrab*** (supra), this Court made itself clear that ***Darga Ram*** @ **Gunga** (supra) was rendered in the peculiar facts & circumstances of that case & any attempt of generalizing the said approach could not be justifiably entertained.

49. Before we proceed further, we may clarify that ***Darga Ram @ Gunga*** (supra), was under the Juvenile Justice (Care and Protection of Children)

Act, 2000 (for short, 'the Act, 2000'). We may give a fair idea in regard to the scheme of procedure to be followed, when claim of juvenility is raised under the Act, 2000.

50. Section 7A of the Act, 2000 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.*
>
> *(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."*

51. 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.

52. 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—*
>
> *(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;*
>
> *(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."*

53. 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 can ask for medical information/ossification test.

54. ***Mukarrab*** (supra), referred to above was also under the Act, 2000.

55. We shall now look into the decision of this Court in the case of ***Ashwani Kumar Saxena*** (supra) wherein this Court observed in para 34 as under:

> *"**34**. … There may be situations where the entry made in the matriculation or equivalent certificates, date of birth certificate from the school first attended and even the birth certificate given by a corporation or a municipal authority or a panchayat may not be correct. But court, Juvenile Justice Board or a committee functioning under the JJ Act is not expected to conduct such a roving enquiry and to go behind those certificates to examine the correctness of those documents, kept during the normal course of business. Only in cases where those documents or certificates are found to be fabricated or manipulated, the court, the Juvenile Justice Board or the committee need to go for medical report for age determination."*

56. ***Ashwani Kumar Saxena*** (supra), referred to above, also deals with the Act, 2000.

57. After observing the aforesaid this Court in ***Ashwani Kumar Saxena*** (supra) proceeded to examine the essential differences between the words "inquiry, investigation and trial" as we find in the Criminal Procedure Code (for short "CrPC"). Thereafter the Court proceeded to hold that the procedure to be followed under the Juvenile Justice Act in conducting the inquiry is the procedure as laid down in that statute itself i.e. Rule 12 of 2007 Rules and held that the age determination inquiry contemplated under the Juvenile Justice Act and the Rules had nothing to do with the inquiry under other legislations like entry in service, retirement and promotion. The Court observed that where the entry made in the school certificates is available, the Court or the Juvenile Justice Board is not expected to conduct a roving inquiry and go beyond those certificates to examine their correctness when those documents have been kept during the normal course of business. The Court held that the credibility and acceptability of the documents, including the school leaving certificate, would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard. This Court also held that the certificates should not be viewed as doubtful on a notion that the parents

usually get wrong date of birth entered in the admission registers. The decision of ***Ashwani Kumar Saxena*** (supra) has been pressed hard in service by the learned counsel appearing for the respondent to make good his submission that the Court should not conduct a roving inquiry and go beyond the documentary evidence on record.

58. This Court in ***Rishipal Singh Solanki v. State of U.P.***, (2022) 8 SCC 602, after due consideration of its following earlier decisions,:

(i) ***Parag Bhati v. State of U.P.**,*

(2016) 12 SCC 744,

(ii) ***Sanjeev Kumar Gupta v. State of Uttar Pradesh***,

(2019) 12 SCC 370,

(iii) ***Abuzar Hossain @ Gulam Hossain v. State of West Bengal***,

(2012) 10 SCC 489,

(iv) ***Ashwani Kumar Saxena v. State of Madhya Pradesh***,

(2012) 9 SCC 750,

(v) ***Babloo Pasi v. State of Jharkhand***,

(2008) 13 SCC 133,

(vi) ***Arnit Das v. State of Bihar***,

(2000) 5 SCC 488,

(vii) ***Jitendra Ram alias Jitu v. State of Jharkhand***,

(2006) 9 SCC 428.

pointed out the difference in the procedure under the two enactments, i.e., the Act, 2000 and the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short, ‘the Act, 2015’), as to the inquiry into determination of age of the juvenile and also the power to seek evidence, how and when to exercise that power and when to go for the ossification test. This Court held that each case may be dealt with in the light of its own peculiar facts and circumstances while keeping certain principles as the guiding factor in mind as described in the concluding para of the judgment of this Court. We shall reproduce the concluding para a little later.

59. In ***Rishipal Singh Solanki*** (supra), this Court pointed out the similarity between the Rule 12 of the JJ Rules, 2007 and sub-section (2) of Section 94 of the Act, 2015, as substantive provisions. This Court referred to its decisions in ***Ashwani Kumar Saxena*** (supra) and ***Abuzar Hossain @ Gulam Hossain*** (supra) highlighting the fact that only in the cases where certificates are found to be fabricated and manipulated, the Juvenile Justice Board need to go for medical report and also highlighted the fact that the yardstick for relying on the school certificates may be a bit different

where the school leaving certificate or voter list etc. is obtained after conviction.

60. Thus, this Court kept in mind the facts and circumstances attached to the production of documents/certificates, as required by the provisions of the Juvenile Justice Act before those documents could be relied upon. In other words, even if the documents are found to be *prima facie* correct, there may be facts and circumstances to alert the Court to go into the inquiry to satisfy itself as to correctness of the claim. In the same breath, this Court referred to an opinion given in the judgment of ***Abuzar Hossain @ Gulam Hossain*** (supra) that when any claimant or any of the parents or siblings in support of the claim of the juvenility raised for the first time in appeal or revision depends on mere affidavits, it shall not be sufficient to justify the inquiry for determination of age unless there exist circumstances which cannot be ignored.

61. In ***Sanjeev Kumar Gupta*** (supra), the credibility and authenticity of the matriculation certificate for the purpose of determination of age under Section 7(A) of the Act, 2000 came up for consideration. In the said case, the Juvenile Justice Board had rejected the claim of the juvenility and that decision of the Juvenile Justice Board was restored by this Court by rejecting the order of the High Court. It was observed therein that the

records maintained by the C.B.S.E. were purely on the basis of final list of the students forwarded by the Senior Secondary School where the juvenile had studied from Class 5 to 10 and not on the basis of any other underlying documents. On the other hand, there was clear and unimpeachable evidence of date of birth which had been recorded in the records of another school, which the second respondent therein had attended till class 4 and which was supported by voluntary disclosure made by the accused while obtaining both, the Aadhaar Card and driving license. It was observed that the date of birth reflected in the matriculation certification could not be accepted as authentic or credible. In the said case, it was held that the date of birth of the second respondent there was 17.12.1995 and that he was not entitled to claim juvenility as the date of the alleged incident was 18.08.2015.

62. This Court in ***Sanjeev Kumar Gupta*** (supra) considered the judgments in ***Ashwani Kumar Saxena*** (supra) and ***Abuzar Hossain @ Gulam Hossain*** (supra), and observed that the credibility and acceptability of the documents including the school leaving certificate would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid down in that regard. This Court reproduced the

observation of itself in ***Abuzar Hossain @ Gulam Hossain*** (supra) which is below:

> *"**48.** … 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. …"*

63. ***Abuzar Hossain*** (supra) is also under the Act, 2000.

64. In ***Rishipal Singh Solanki*** (supra), after due consideration of all its earlier decisions, this Court held as below:

> "33*. What emerges on a cumulative consideration of the aforesaid catena of judgments is as follows:*
>
> *33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.*
>
> *33.2. An application claiming juvenility could be made either before the Court or the JJ Board.*
>
> *33.2.1. When the issue of juvenility arises before a Court, it would be under sub-section (2) and (3) of section 9 of the JJ Act, 2015 but when a person is brought before a Committee or JJ Board, section 94 of the JJ Act, 2015 applies.*
>
> *33.2.2. If an application is filed before the Court claiming juvenility, the provision of sub-section (2) of section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of section 9 so as to seek evidence for the purpose of*

recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a Court, then the procedure contemplated under section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of juvenility when the trial is before the concerned criminal court, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a Court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the concerned criminal court. In case of an inquiry, the Court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of section 94 of 2015 Act, a

declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.7. This Court has observed that a hyper- technical approach should not be adopted when evidence is adduced on behalf of the accused in support of the plea that he was a juvenile.

33.8. If two views are possible on the same evidence, the court should lean in favour of holding the accused to be a juvenile in borderline cases. This is in order to ensure that the benefit of the JJ Act, 2015 is made applicable to the juvenile in conflict with law. At the same time, the Court should ensure that the JJ Act, 2015 is not misused by persons to escape punishment after having committed serious offences.

33.9. That when the determination of age is on the basis of evidence such as school records, it is necessary that the same would have to be considered as per Section 35 of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

33.10. Any document which is in consonance with public documents, such as matriculation certificate, could be accepted by the Court or the JJ Board provided such public document is credible and authentic as per the provisions of the Indian Evidence Act viz., section 35 and other provisions.

33.11. Ossification Test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion

by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

65. ***Rishipal Singh Solanki*** (supra) is under the Act, 2015.

66. With a view to compare Section 48 of the Act, 2013 with Section 94 of the Act, 2015, we may also reproduce hereinbelow Section 94 of the Act, 2015:

> *“**94. Presumption and determination of age.**—(1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation 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.*
>
> *(2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining —*
>
> > *(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;*
> >
> > *(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;*
> >
> > *(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:*

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

(3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.”

67. This Court after referring to the fact that there was no other document contradicting the date of birth as shown in the matriculation certificate, held that the medical evidence was not required and thereby upheld the order of the High Court affirming the judgment of the Sessions Court as well as the Juvenile Justice Board. Thus, the decisions relied upon by the learned counsel appearing for the respondent accused should be looked into and appreciated as aforesaid. The decisions do not help the respondent accused in any manner. On the contrary, the ratio discernable from all the decisions discussed above, is that the credibility and acceptability of the documents including the school leaving certificate etc. would depend on the facts and circumstances of each case and no hard and fast rule as such could be laid in that regard.

68. In ***Parag Bhati*** (supra), after referring to ***Abuzar Hossain case*** (supra) and other decisions, this Court held as under:

“34. It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the

> *incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.*
>
> *35. The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue."*
>
> *(emphasis added)*

The dictum of the aforesaid is that the purpose of the Act, 2000 is not to give shelter to the accused of grave and heinous offences.

69. This Court in several of its decisions including ***Ramdeo Chauhan alias Raj Nath*** (supra) dealing with a similar situation which fortifies what we have stated, observed as follows:

> *"…….. it is clear that the petitioner neither was a child nor near about the age of being a child within the meaning of the Juvenile Justice Act or the Children Act. He is proved to be a major at the time of the commission of the offence. No doubt, much less a reasonable doubt is created in the mind of the Court, for the accused entitling him to the benefit of a lesser punishment. It is true that the accused tried to create a smokescreen with respect to his age but such efforts appear to have been made only to hide his real age and not to create any doubt in our mind. The judicial system cannot be allowed to be taken to ransom by having resort to imaginative and concocted grounds by taking advantage of loose sentences appearing in the evidence of some of the witnesses, particularly at the stage of special leave petition. The law insists on finality of judgments and is more concerned with the strengthening of the judicial system. The courts are enjoined upon to perform their duties with the object of strengthening the confidence of the common man in the institution entrusted with the administration of justice. Any effort which weakens the system and shakes the faith of the common man in the justice dispensation system has to be discouraged."*
>
> (Emphasis supplied)

70. The above-noted observations in ***Ramdeo Chauhan alias Raj Nath*** (supra) no doubt were recorded by the learned Judges of this Court while considering the imposition of death sentence on the accused who claimed to be a juvenile, nevertheless the views expressed therein clearly lend weight for resolving an issue where the court is not in a position to clearly draw an inference wherein an attempt is made by the accused or his guardian claiming benefit available to a juvenile which may be an effort to

extract sympathy and impress upon the court for a lenient treatment towards the so-called juvenile accused who, in fact was a major on the date of incident. (See ***Om Prakash v. State of Rajasthan*** (2012) 5 SCC 201).

71. In ***Om Prakash*** (supra), this Court in paras 33, 34, 35, 36, 37 and 38 resply observed as under:

> *"33. Similarly, if the conduct of an accused or the method and manner of commission of the offence indicates an evil and a well-planned design of the accused committing the offence which indicates more towards the matured skill of an accused than that of an innocent child, then in the absence of reliable documentary evidence in support of the age of the accused, medical evidence indicating that the accused was a major cannot be allowed to be ignored taking shelter of the principle of benevolent legislation like the Juvenile Justice Act, subverting the course of justice as statutory protection of the Juvenile Justice Act is meant for minors who are innocent law-breakers and not the accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.*
>
> *34. The benefit of benevolent legislation under the Juvenile Justice Act obviously will offer protection to a genuine child accused/juvenile who does not put the court into any dilemma as to whether he is a juvenile or not by adducing evidence in support of his plea of minority but in absence of the same, reliance placed merely on shaky evidence like the school admission register which is not proved or oral evidence based on conjectures leading to further ambiguity, cannot be relied upon in preference to the medical evidence for assessing the age of the accused.*
>
> *35. While considering the relevance and value of the medical evidence, the doctor's estimation of age although is not a sturdy substance for proof as it is only an opinion, such opinion based on scientific medical tests like ossification and*

radiological examination will have to be treated as strong evidence having corroborative value while determining the age of the alleged juvenile accused.

36. In ***Ramdeo Chauhan alias Raj Nath v. State of Assam*** *[(2001) 5 SCC 714 : 2001 SCC (Cri) 915] , the learned Judges have added an insight for determination of this issue when they recorded as follows: (SCC p. 720 d-e)*

> *"Of course the doctor's estimate of age is not a sturdy substitute for proof as it is only his opinion. But such opinion of an expert cannot be sidelined in the realm where the court gropes in the dark to find out what would possibly have been the age of a citizen for the purpose of affording him a constitutional protection. In the absence of all other acceptable materials, if such opinion points to a reasonable possibility regarding the range of his age it has certainly to be considered."*
>
> *(emphasis supplied)*

The situation, however, would be different if the academic records are alleged to have been withheld deliberately to hide the age of the alleged juvenile and the authenticity of the medical evidence is under challenge at the instance of the prosecution. In that event, whether the medical evidence should be relied upon or not will obviously depend on the value of the evidence led by the contesting parties.

37. *In view of the aforesaid discussion and analysis based on the prevailing facts and circumstances of the case, we are of the view that Respondent 2 Vijay Kumar and his father have failed to prove that Respondent 2 was a minor at the time of commission of offence and hence could not have been granted the benefit of the Juvenile Justice Act which undoubtedly is a benevolent legislation but cannot be allowed to be availed of by an accused who has taken the plea of juvenility merely as an effort to hide his real age so as to create a doubt in the mind of the courts below who thought it appropriate to grant him the benefit of a juvenile merely by adopting the principle of benevolent legislation but missing its vital implication that although the Juvenile Justice Act by itself*

> *is a piece of benevolent legislation, the protection under the same cannot be made available to an accused who in fact is not a juvenile but seeks shelter merely by using it as a protective umbrella or statutory shield. We are under constraint to observe that this will have to be discouraged if the evidence and other materials on record fail to prove that the accused was a juvenile at the time of commission of the offence.*
>
> ***38.*** *The Juvenile Justice Act which is certainly meant to treat a child accused with care and sensitivity offering him a chance to reform and settle into the mainstream of society, the same cannot be allowed to be used as a ploy to dupe the course of justice while conducting the trial and treatment of heinous offences. This would clearly be treated as an effort to weaken the justice dispensation system and hence cannot be encouraged."*

72. Thus, it is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor on the date of the incident and the documentary evidence at least *prima facie* establishes the same, he would be entitled to the special protection under the Juvenile Justice Act. However, when an accused commits a heinous and grave crime like the one on hand and thereafter attempts to take the statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of a common man in the institution entrusted with the administration of justice. As observed by this Court in

Parag Bhati (supra), the benefit of the principle of benevolent legislation attached to the Juvenile Justice Act would thus be extended to only such cases wherein the accused is held to be a juvenile on the basis of at least *prima facie* evidence inspiring confidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he is alleged to have committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.

73. It appears from the material on record that the father of the respondent at the time of preferring the application under Section 19(3) of the Registration of Birth and Deaths Act, 1956 r/w 19(3) of the Rules declared before the Executive Officer Municipal Committee, Hira Nagar that the medical committee, Hira Nagar had failed to record the birth of his three children including the respondent herein and in such circumstances he sought an order from the authority concerned as regards the date and place of birth under Section 19(3) of the Act, 1956. However, the letter dated 15.03.2018 addressed by the Block Medical Officer of the Health and Family Welfare, Hira Nagar to the Superintendent of Police, Jammu stating

that no delivery in the name of Smt. Tripta Devi, W/o Om Prakash had taken place on 23.10.2002 at the municipal hospital makes the picture abundantly clear.

74. There is no good reason why we should overlook or ignore or doubt the credibility of the final opinion given by a team of five qualified doctors, one from the Department of Physiology, one from the Department of Anatomy, one from the Department of Oral Diagnosis, one from the Department of Forensic Medicine and one from the Department of Radio Diagnosis, all saying in one word that on the basis of the physical, dental and radiological examination, the approximate age of the respondent could be fixed between 19 and 23 years.

75. We may only add that there are better techniques available and are used for determination of age across the world. For example, the United States Immigration Department uses 'wisdom teeth' technique for determination of age. Under this technique, the doctors examine the third molar which usually erupts between 17 to 25 years of age. The average error, in this technique is also significantly lower than the ossification of any other bone. Another technique is 'epigenetic clock' technique. The Epigenetic clock is DNA clock which measures DNA methylation levels to estimate the age of a tissue or an organ. The median error in this

technique can be reduced to less than four weeks. What we are trying to convey is that such techniques should be introduced in our country as well. (Reference : Shamin T, Age Estimation: A Dental Approach, Journal of Punjab Academy of Forensic Medicine & Toxicology, Vol. 6 Issue 1. ISSN-0972-5687)

76. As observed by this Court in ***Ramdeo Chauhan alias Raj Nath*** (supra), the medical expert's estimate of age may not be a statutory substitute for proof and is only an opinion but such opinion of an expert should not be brushed aside or ignored when the Court itself is in doubt in regard to the age of a citizen claiming constitutional protection. In the absence of all other acceptable materials, if such opinion of the experts points to a reasonable possibility regarding range of his age, the Court must consider the same in the interest of justice. This is not a case wherein the appellant State has been accused of deliberately withholding the necessary records only with a view to hide or conceal the age of the alleged juvenile and the authenticity of the medical evidence is challenged at the instance of the prosecution. If such would have been the case then whether the medical evidence should be relied upon or not would obviously depend on the value of the evidence that may led by the contesting parties.

77. It is pertinent to note that nothing much has been said on behalf of the respondent accused in regard to the credibility of the medical report prepared by the Special Medical Board constituting of five medical experts. At the cost of repetition, the only argument is that ignore the medical report as there is proof of the date of birth to be found in the various documents on record. We have made ourselves very clear that the documents evidencing date of birth does not inspire any confidence and there is no other option but to fall back on the report of the Special Medical Board in the interest of justice.

78. In the overall view of the matter, we are convinced that the order passed by the High Court affirming the CJM's order is not sustainable in law.

79. Before we close this matter, we would like to observe that the rising rate of juvenile delinquency in India is a matter of concern and requires immediate attention. There is a school of thought, existing in our country that firmly believes that howsoever heinous the crime may be, be it single rape, gangrape, drug peddling or murder but if the accused is a juvenile, he should be dealt with keeping in mind only one thing i.e., the goal of reformation. The school of thought, we are taking about believes that the goal of reformation is ideal. The manner, in which brutal and heinous

crimes have been committed over a period of time by the juveniles and still continue to be committed, makes us wonder whether the Act, 2015 has subserved its object. We have started gathering an impression that the leniency with which the juveniles are dealt with in the name of goal of reformation is making them more and more emboldened in indulging in such heinous crimes. It is for the Government to consider whether its enactment of 2015 has proved to be effective or something still needs to be done in the matter before it is too late in the day.

80. In the result, this appeal succeeds and is hereby allowed. The impugned order passed by the CJM, Kathua and the High Court is set aside. It is held that the respondent accused was not a juvenile at the time of commission of the offence and should be tried the way other co-accused were tried in accordance with the law. Law to take its own course.

81. It is needless to clarify that the guilt or the innocence of the respondent accused shall be determined strictly on the basis of the evidence that may be led by the prosecution and the defence at the time of the trial. All observations made in this judgment are meant only for the purpose of deciding the issue of juvenility.

82. Pending application, if any, also stands disposed of.

...……....……………………………J.
(AJAY RASTOGI)

....……...………………..……….J.
(J.B. PARDIWALA)

NEW DELHI;
NOVEMBER 16, 2022