2025 INSC 737

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 603 OF 2025
(ARISING OUT OF SLP (CRL.) NO. 11233 OF 2022)

RAJNI **APPELLANT(S)**

VERSUS

STATE OF UTTAR PRADESH & ANR. **RESPONDENT(S)**

WITH

CRIMINAL APPEAL NO. 2569 OF 2025
(ARISING OUT OF SLP (CRL.) NO. 7370 OF 2025)
(ARISING OUT OF SLP (CRL.) DIARY NO. 24862 OF 2022)

J U D G M E N T

UJJAL BHUYAN, J.

This order will dispose of both the criminal appeals.

2. It may be mentioned that by order dated 21.02.2023, this Court directed tagging of SLP (Crl.) D. No. 24862 of 2022

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with SLP (Crl.) No. 11233 of 2022 out of which the related Criminal Appeal No. 603 of 2025 has arisen.

3. Since SLP (Criminal) D. No. 24862 of 2022 has been tagged with Criminal Appeal No. 603 of 2025, separate notice has not been issued therein as parties are the same with the issues intertwined and being represented by the same set of lawyers. Accordingly, both the matters were heard together.

4. In Criminal Appeal No. 603 of 2025, appellant is the complainant. She has challenged the order dated 13.05.2022 passed by a learned Single Judge of the High Court of Judicature at Allahabad ('High Court' for short) dismissed Criminal Revision No. 82 of 2022. It may be mentioned that by order dated 27.08.2021 the Juvenile Justice Board, Meerut ('JJB' for short) dismissed Miscellaneous Case No. 55/2021 (*Akki alias Anmol alias Akshansh alias Goldee Vs. State*) filed by the mother on behalf of respondent No. 2 to declare him as a juvenile in conflict with law. JJB held that on the date of the incident i.e. on 17.02.2021, respondent No. 2 was an adult being more than 18 years of age.

5. Aggrieved by the aforesaid order dated 27.08.2021, respondent No. 2 through his mother/natural guardian filed an appeal before the Additional District and Sessions Judge/ Special Judge, Exclusive Court, POCSO Act, Meerut (for short 'the Addl. Sessions Judge' hereinafter) which was registered as Criminal Appeal No. 67 of 2021. By the judgment and order dated 14.10.2021, learned Addl. Sessions Judge set aside the order of JJB dated 27.08.2021 declaring that respondent No. 2 was a juvenile delinquent on the date of the incident.

6. Appellant, thereafter, preferred criminal revision petition before the High Court assailing the aforesaid judgment and order dated 14.10.2021, which was registered as Criminal Revision No. 82 of 2022. By the impugned order dated 13.05.2022, High Court held that the date of birth of respondent No. 2 mentioned in the school certificate is determinative and did not find any reason to disbelieve or ignore the same. Accordingly, the criminal revision petition was dismissed upholding the judgment and order of the Addl. Sessions Judge dated 14.10.2021.

7. Against the impugned order dated 13.05.2022, appellant preferred the related special leave petition (criminal). This Court, by order dated 18.11.2022, had condoned the delay and issued notice. Thereafter, in the hearing held on 04.02.2025, leave was granted.

8. In SLP (Crl.) D. No. 24862 of 2022, the challenge is to the order dated 13.05.2022 passed by the learned Single Judge of the High Court in Criminal Revision No. 234 of 2022 (*Goldee alias Anmol Rana alias Akki alias Akshansh Vs. State of U.P.).* By the aforesaid order dated 13.05.2022 (impugned order), High Court allowed the criminal revision filed by respondent No. 2.

9. Be it stated that JJB *vide* the order dated 27.10.2021 declined to grant bail to respondent No. 2. When this order was put to challenge before the Court of Sessions Judge in Criminal Appeal No. 67 of 2021, learned Additional District and Sessions Judge passed an order dated 01.12.2021 declining to grant bail to respondent No. 2. Respondent No. 2, thereafter, filed Criminal Revision No. 234 of 2022 before the High Court. By the

impugned order, High Court allowed the criminal revision and set aside the order of the learned Addl. Sessions Judge. High Court further directed that respondent No. 2 should be enlarged on bail on furnishing a personal bond by either of his parents and in absence of his legal guardian with two sureties each in the like amount to the satisfaction of the court of Additional District and Sessions Judge.

10. Aggrieved by the grant of bail to respondent No. 2 by the High Court, complainant has preferred Special Leave Petition (Criminal) D. No. 24862 of 2022.

11. At the outset, relevant facts may be briefly noted.

12. Respondent No. 2 is an accused in Crime Case No. 80 of 2021 registered before the Medical College Police Station, Meerut under Sections 302/201/34 of the Indian Penal Code, 1860 (IPC) as well as Crime Case No. 97/ 2021 registered before the same police station under Sections 3/25/27 of the Arms Act, 1959 ('Arms Act' for short). Natural guardian/mother of respondent No. 2 filed applications before the JJB relating to both the crime cases to declare respondent No. 2 as a juvenile.

The two applications were registered as Miscellaneous Case No. 55/2021 and Miscellaneous Case No. 56/2021. By the order dated 27.08.2021, JJB dismissed both the applications declaring that respondent No. 2 was found to be an adult i.e. more than 18 years of age on the date of the incident i.e. 17.02.2021.

13. Aggrieved by the aforesaid order of the JJB, respondent through his mother/natural guardian preferred Criminal Appeal No. 67/2021 in the Court of the Additional District and Sessions Judge/ Special Judge, Exclusive Court, POCSO Act, Meerut. Learned Additional District and Sessions Judge passed order dated 14.10.2021 holding that order of JJB dated 27.08.2021 was contrary to law. Accordingly, the said order was set aside. While allowing the criminal appeal it was held that date of birth of respondent No. 2 is 08.09.2003 as per the school certificate. Thus the age of respondent No. 2 was below 18 years of age on the date of registration of the first information report. Accordingly, respondent No. 2 was declared as a juvenile delinquent on the date of the incident. Appellant

who is the mother of the deceased and the informant filed Criminal Revision No. 82 of 2022 before the High Court assailing the order dated 14.10.2021 passed by the learned Additional District and Sessions Judge holding respondent No. 2 to be a juvenile and setting aside the order passed by the JJB. By the order dated 13.05.2022, High Court held that high school certificate of respondent No. 2 was available on record. Therefore, the said certificate ought not to have been ignored by the JJB. When such certificate was available, there was no question of seeking medical examination of the accused. Date of birth mentioned in the certificate is determinative of the age. High Court did not find any reason to disbelieve or ignore the same. Holding that order of the learned Additional District and Sessions Judge was in accordance with facts and law, High Court declined to interfere with the same and dismissed the criminal revision.

14. While the proceedings were on for determination of juvenility of respondent No. 2, bail application of respondent No. 2 was rejected by the JJB *vide* the order dated 27.10.2021.

15. Thereafter, respondent No. 2 preferred Criminal Appeal No. 86/2021 before the Court of Additional District and Sessions Judge/ Special Judge, Exclusive Court, POCSO Act, Meerut against the rejection of bail by JJB. By order dated 01.12.2021, learned Additional District and Sessions Judge held that no ground was made out to grant bail to respondent No. 2. Accordingly, the criminal appeal filed by respondent No. 2 came to be dismissed.

16. Aggrieved thereby, respondent No. 2 preferred Criminal Revision No. 234 of 2022 before the High Court assailing the orders whereby his prayer for bail were rejected. By a separate order dated 13.05.2022, a learned Single Judge of the High Court opined that gravity of the offence cannot be a ground to reject the prayer for bail of a juvenile in conflict with law. Learned Single Judge further observed that there were no satisfactory materials on record to conclude that the release of the juvenile would expose him to moral, physical or psychological danger or that it would bring him to be in the association of known criminals. Opining that respondent No. 2 deserved to be

released on bail, the orders of JJB and learned Additional District and Sessions Judge were set aside. The criminal revision was allowed. Respondent No. 2 was directed to be enlarged on bail on furnishing of personal bond by his parents/legal guardian and subject to the conditions mentioned therein.

17. Learned counsel for the appellant submits that the High Court fell in error in holding respondent No. 2 to be a juvenile ignoring the materials on record. It is evident that respondent No. 2 has taken shelter under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short 'the JJ Act, 2015' hereinafter) to defeat the ends of justice. Respondent No. 2 had committed a heinous offence under Section 302 IPC and, thereafter, took shelter behind the reformative provisions of the JJ Act under the guise of being a minor. In a case of this nature, High Court was required to adopt the procedure provided under Section 15 of the JJ Act, 2015.

17.1. Learned counsel submits that respondent No. 2 has got four criminal antecedents. He is a habitual offender, all involving serious offences.

17.2. It is further submitted that JJB had rightly held that respondent No. 2 was not a juvenile and was more than 18 years of age on the date of the incident. Both the learned Additional District and Sessions Judge and the High Court committed a manifest error holding respondent No. 2 to be a juvenile though medical examination clearly indicated him to be above 21 years of age.

17.3. Learned counsel further submits that even if we proceed on the assumption that respondent No. 2 was a juvenile in conflict with law, both JJB and learned Additional District and Sessions Judge had rightly denied bail to him. High Court fell in serious error in granting bail to respondent No. 2.

17.4. Learned counsel, therefore, submits that both the orders declaring respondent No. 2 to be a juvenile and granting him bail are required to be appropriately interfered with. Further submission is that even if we proceed on the assumption that respondent No. 2 is a juvenile, without admitting the same, any case of this nature where he is accused of murder, the provisions relating to Section 15 of the JJ Act are

required to be followed. She, therefore, seeks appropriate intervention by this Court.

18. *Per contra*, learned counsel for respondent No. 2 supports both the impugned orders. According to him, both the learned Additional District and Sessions Judge and High Court followed the correct procedure mandated under Section 94 of the JJ Act while holding respondent No. 2 to be a juvenile. He further submits that when it is a case of juvenile in conflict with law, the parameters for grant of bail would be entirely different. This has rightly been observed by the High Court while granting bail to respondent No. 2.

18.1. Learned counsel submits that respondent No. 2 is on bail for more than three years now. At this stage, it would be most inappropriate to interfere with the order of bail.

18.2. He submits that no case for interference is made out insofar both the impugned orders are concerned: one holding respondent No. 2 to be a juvenile and the other granting him bail. Therefore, both the criminal appeals are liable to be dismissed.

19. Submissions made by learned counsel for the parties have received the due consideration of the Court.

20. In this case, there are two issues. The first issue is relating to juvenility of respondent No. 2. The second issue is grant of bail to him. Insofar the first issue is concerned, though the JJB held that respondent No. 2 was not a juvenile, the said decision was overturned by the learned Additional District and Sessions Judge who held respondent No. 2 to be a juvenile. This decision has since been affirmed by the High Court. In so far bail is concerned, both JJB and learned Additional District and Sessions Judge denied bail to respondent No. 2 after he was held to be a juvenile. However, High Court granted him bail. Both decisions have been assailed before this Court by the informant who is the mother of the victim.

21. Let us first deal with the issue of juvenility. Question for consideration is whether learned Additional District and Sessions Judge and the High Court were justified in holding respondent No. 2 to be juvenile and whether any interference is called for in such decision?

22. Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000 empowered the state government to make rules by notification in the official gazette to carry out the purposes of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('the JJ Act, 2000'). As per the proviso to sub-section (1) of Section 68, the central government was also empowered to frame model rules which would apply to the states also till such time rules were made in that behalf by the concerned state government; and while making any such rules so far as practicable to conform to the model rules framed by the central government.

23. With a view to provide for better implementation and administration of the provisions of the JJ Act, 2000 in its true spirit and substance, the central government in exercise of the powers conferred by the proviso to sub-section (1) of Section 68 of the JJ Act, 2000 made the Juvenile Justice (Care and Protection of Children) Rules, 2007 (briefly, 'the JJ Rules, 2007') laying down the fundamental principles to be applied in the administration of juvenile justice. Rule 12 dealt with the

procedure to be followed in determination of age. As per sub-rule (1) in every case concerning a child or juvenile in conflict with law, the court or JJB or the child welfare committee was required to determine the age of such juvenile or child or a juvenile in conflict with law within a period of 30 days from the date of making of the application for that purpose. As per sub-rule (2), the court or the JJB or the child welfare committee was required to decide the juvenility or otherwise of the juvenile or the child or the juvenile in conflict with law *prima-facie* on the basis of physical appearance or documents if available and send him to the observation home or to jail, as the case may be.

23.1. Sub-rule (3) of Rule 12 is relevant. Therefore, the same is extracted hereunder:

> (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.

23.2. Thus, sub-rule (3) of Rule 12 provided that age determination enquiry should be conducted firstly on the basis

of matriculation or equivalent certificate. If such a certificate was not available, then the date of birth certificate from the school first attended (other than a play school). In the absence of such a certificate, the birth certificate given by a corporation or a municipal authority or a panchayat should be the basis. Clause (b) of sub-rule (3) made it clear that only in the absence of such certificates as enumerated above, medical opinion would be sought for from a duly constituted medical board which would declare the age of a juvenile or a child. In case exact assessment of age could not be done, the court or JJB or the child welfare committee, for the reasons to be recorded, if considered necessary, had the discretion to give benefit to the child or to the juvenile by considering his/her age on the lower side within the margin of one year. While passing orders in such a case, evidence as may be available or the medical opinion as provided should be taken into consideration before recording a finding in respect of age.

24. To consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need

of care and protection by catering to their basic needs through proper care etc. by adopting a child friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation etc., the Juvenile Justice (Care and Protection of Children) Act, 2015 (already referred to as the JJ Act, 2015) came to be enacted. Section 111 is the repeal and savings clause. As per sub-section (1), the JJ Act, 2000 was repealed.

25. Section 94 deals with presumption and determination of age. Section 94 reads thus:

> **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.

25.1. Thus the process of age determination is provided in sub-section (2) of Section 94 which is identical to the procedure prescribed under sub-rule (3) of Rule 12 of the JJ Rules, 2007.

Sub-section (2) of Section 94 says that to undertake the process of age determination, the child welfare committee or the JJB shall seek evidence in the following manner:

(i) the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned Board, if available;

(ii) in the absence thereof, the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) in the absence of (i) and (ii), the age shall be determined by an ossification test or by any other latest medical age determination test conducted on the orders of the child welfare committee or the JJB.

26. Having noticed the relevant legal framework, let us examine as to how the case of respondent No. 2 *vis-à-vis* juvenility was dealt with by the JJB and thereafter by the learned Additional District and Sessions Judge. As already noted above, JJB had held respondent No. 2 to be not a juvenile

which decision was reversed by the learned Additional District and Sessions Judge and affirmed by the High Court.

27. At this stage, we need to mention that the date of the incident is 17.02.2021. On behalf of respondent No. 2, certificate from the DPS Higher Secondary School, Parvesh Vihar, Meerut was filed. Date of admission was mentioned as 04.04.2016. Date of birth of respondent No. 2 was mentioned as 08.09.2003. Respondent No. 2 had passed the high school examination in the year 2018 from the said DPS Higher Secondary School, Parvesh Vihar, Meerut. Thereafter, he was studying in CRK Inter College, Meerut. Therefore, on the date of the incident, respondent No. 2 was below 18 years of age. In the register of DPS Higher Secondary School and marksheet of high school examination, the date of birth of respondent No. 2 was mentioned as 08.09.2003. JJB in an earlier proceeding relating to respondent No. 2 i.e. Miscellaneous Case No. 9/2000 in respect of Crime Case No. 11/2000 under Section 307 IPC, Police Station Medical College, Meerut had accepted the date of birth of respondent No. 2 as 08.09.2003. It is seen that in the

present proceeding JJB examined mother of respondent No. 2 who had filed the application to declare her son, respondent No. 2, as juvenile. JJB observed that she did not remember in which school respondent No. 2 had studied from Class 1 to Class 7 before taking admission in DPS Higher Secondary School in Class 8. In her statement, Principal of DPS Higher Secondary School, Smt. Manju Mala Sharma stated that she was working in the same school since the year 1996 and asserted that respondent No. 2 had obtained his education from her school from Class 4 to High School but original record of Class 4 to Class 8 were not available as those were destroyed due to fire.

27.1. JJB also rejected the birth certificate of Meerut Municipal Corporation which showed the date of birth of respondent No. 2 as 08.09.2003 on the ground that it was issued on 08.06.2020.

27.2. As regards the earlier decision of JJB, it was observed that the present informant was not a party therein. Therefore, she had no opportunity to tender evidence or to rebut the claim

of juvenility of respondent No. 2. Thus the previous decision of JJB was not applicable.

27.3. It was in that context, JJB passed an order for medical examination of respondent No. 2. In compliance to such order, the Medical Board submitted report on 27.07.2021 assessing the age of respondent No. 2 as about 21 years.

27.4. JJB accepted the medical report dated 27.07.2021 wherein age of respondent No. 2 was assessed as about 21 years. On that basis, respondent No. 2 was found to be more than 18 years of age on the date of the incident. Thus respondent No. 2 was held to be an adult as on 17.02.2021 i.e. the date of the incident.

28. Admittedly, the line of reasoning adopted by the JJB is totally fallacious. When the concerned birth certificate from the school was available as well as birth certificate issued by the Meerut Municipal Corporation, JJB could not have opted for ossification test. The statute is very clear that only in the absence of the certificates under clause (i) and clause (ii) of sub-section (2) of Section 94 can the JJB order for an ossification

test or any other medical test to determine the age of the juvenile. The certificate of the Meerut Municipal Corporation was issued on 08.06.2020 before the date of the incident. In any event, it was not open to the JJB to go behind the available school certificate or the birth certificate of the Corporation and record evidence to examine the correctness or otherwise of such certificate. This is not the mandate of Section 94(2) of the JJ Act, 2015. Therefore, the learned Additional District and Sessions Judge was justified in reversing such decision of the JJB. Learned Additional District and Sessions Judge gave preference to the date of birth of respondent No. 2 mentioned in the high school certificate wherein his date of birth was mentioned as 08.09.2003. Thus, respondent No. 2 was 17 years 3 months 10 days on the date of the incident. Accordingly, he was declared as a juvenile delinquent.

29. But there is a more fundamental issue here. In an earlier proceeding being Miscellaneous Case No. 9/2000 arising out of Crime Case No. 11/2000 registered under Section 307 IPC in the Medical College Police Station, Meerut, JJB had

accepted the date of birth of respondent No. 2 as 08.09.2003. It is not open to the JJB to say in subsequent proceeding that date of birth of respondent No. 2 is not 08.09.2003 and thereafter proceed to have the opinion of the medical board. If this is permitted, it will amount to reviewing its earlier order. The JJ Act, 2015 confers no such power of review upon the JJB. It is trite law that power of review is either statutorily conferred or by necessary implication. No such power of JJB is traceable under the JJ Act, 2015.

30. High Court accepted the high school certificate of respondent No. 2 and held that there is no scope to interfere with the order of the learned Additional District and Sessions Judge.

31. In *Rishipal Singh Solanki Vs. State of U.P.*[1], this Court after considering a catena of previous decisions of this Court held as follows:

33. * * * * * *

[1] (2022) 8 SCC 602

33.1. A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.

33.2. An application claiming juvenility could be made either before the court or the JJ Board.

33.2.1. When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.

33.2.2. If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.

33.2.3. When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said

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

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

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same

may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

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

33.7. This Court has observed that a hypertechnical approach should not be adopted when evidence is

adduced on behalf of the accused in support of the plea that he was a juvenile.

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

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

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

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view

regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.

32. A two-Judge Bench of this Court in *P. Yuvaprakash Vs. State*[2] held thus:

> 14. Section 94 (2)(iii) of the JJ Act clearly indicates that the date of birth certificate from the school or matriculation or equivalent certificate by the concerned examination board has to be firstly preferred in the absence of which the birth certificate issued by the Corporation or Municipal Authority or Panchayat and it is only thereafter in the absence of these such documents the age is to be determined through "an ossification test" or "any other latest medical age determination test" conducted on the orders of the concerned authority, i.e. Committee or Board or Court. In the present case, concededly, only a transfer certificate and not the date of birth certificate or matriculation or equivalent certificate was considered. Ex. C1, i.e., the school transfer certificate showed the date of

[2] 2023 INSC 676

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

33. A great deal of reliance was placed by the appellant on a recent decision of this Court in *Union Territory of J&K Vs. Shubam Sangra*[3]. In that case, a two-Judge Bench of this Court had set aside the order of the High Court affirming the order of the Chief Judicial Magistrate declaring the respondent as a juvenile. While date of birth of the respondent was shown and

[3] (2022) INSC 1205

claimed as 23.10.2002, it was found from the record that no such delivery of the mother of the respondent had taken place on 23.10.2002 in the municipal hospital. It was in that context, the Bench observed that there was no good reason to overlook or ignore or doubt the credibility of the medical opinion given by a team of 5 qualified doctors all of whom said in unison that on the basis of physical, dental and radiological examination, approximate age of the respondent was between 19 and 23 years. The Bench made it clear that the documents evidencing date of birth of the respondent did not inspire any confidence and, therefore, there was no other option but to fall back on the report of the medical board.

33.1. Even while holding so, the Bench observed that if there is a clear and unambiguous case in favour of the juvenile in conflict with law that he was a minor on the date of the incident and that the documentary evidence atleast *prima-facie* establish the same, he would be entitled to the special protection under the Juvenile Justice Act.

34. The facts in *Shubam Sangra* (supra) and the present case are clearly distinguishable. In the present case, the JJB itself had accepted in a previous proceeding, the date of birth of respondent No. 2 to be 08.09.2003 but the ground given for not accepting the same is that the present informant was not a party to the said proceeding and therefore she had no occasion to raise her objection. The earlier proceeding arose out of a different incident where the appellant was not the informant. Therefore, she could not have been a party to such proceeding. Such convulated logic of the JJB was rightly reversed by the learned Additional District and Sessions Judge and affirmed by the High Court.

35. Under the scheme of the JJ Act, 2015, a declaration of juvenility may not by itself enure to the benefit of the juvenile in conflict with law. Section 2 (33) of the JJ Act, 2015 defines 'heinous offences' to include the offences for which the minimum punishment under the Indian Penal Code, 1860 (IPC) or any other law for the time being in force is imprisonment for seven years or more. Section 15 of the JJ Act, 2015 deals with

preliminary assessment into heinous offences alleged to have been committed by a juvenile by the JJB. Section 15 reads as under:

> **15. Preliminary assessment into heinous offences by Board -**
>
> (1) In case of a heinous offence alleged to have been committed by a child, who has completed or is above the age of sixteen years, the Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence, and may pass an order in accordance with the provisions of sub-section (3) of Section 18:
>
> Provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts.
>
> *Explanation.*—For the purposes of this section, it is clarified that preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence.
>
> (2) Where the Board is satisfied on preliminary assessment that the matter should be disposed of by the Board, then the Board shall follow the procedure, as far as may be, for trial in summons case under the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that the order of the Board to dispose of the matter shall be appealable under sub-section (2) of Section 101:

Provided further that the assessment under this section shall be completed within the period specified in Section 14.

36. Thus, what Section 15 contemplates is that in a case of heinous offence alleged to have been committed by a juvenile who has completed or is above 16 years of age, the JJB shall conduct a preliminary assessment with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he had allegedly committed the offence and, thereafter, pass an order in accordance with the provisions of sub-section (3) of Section 18. The proviso says that for making such an assessment, the JJB may take the assistance of experienced psychologists or psycho-social workers or other experts.

37. Section 18 deals with orders regarding child found to be in conflict with law. We are concerned with sub-section (3)

which says that where the JJB after preliminary assessment under Section 15 passes an order that there is a need for trial of the said child as an adult, then the JJB may order transfer of the trial of the case to the Children's Court having jurisdiction to try such offences.

38. As per Section 19(1), after receipt of preliminary assessment from the JJB under Section 15, the Children's Court may decide whether there is need for trial of the child as per provisions of Cr.P.C. or there is no need for trial of the child as an adult. Depending upon the decision taken, the process laid down from sub-section (2) to sub-section (5) of Section 19 shall be carried out.

39**.** It has come on record (Annexure-P/9 in Criminal Appeal No. 603 of 2025) that JJB in Miscellaneous Case No. 58/2021 had carried out the preliminary assessment under Section 15 of the JJ Act, 2015. JJB noted that learned Additional District and Sessions Judge *vide* the order dated 14.10.2021 had assessed the age of respondent No. 2 as 17 years 3 months and 10 days on the date of the incident which

is less than 18 years and therefore declared respondent No. 2 as a juvenile delinquent. Since the crime allegedly committed by the juvenile delinquent is of heinous nature and the age of respondent No. 2 being between 16 to 18 years, JJB conducted the preliminary assessment with regard to the mental and physical capacity of respondent No. 2 to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. In the course of the preliminary assessment, report of psychiatrist as well as social survey report from the District Probation Officer were called for and examined. Thereafter, JJB found that respondent No. 2 was physically and mentally fit and mature enough to commit the alleged offence and that he was competent to understand the consequences of the offence. Therefore, an order was passed on 10.12.2021 under Section 18(3) of the JJ Act, 2015 to the effect that respondent No. 2 be sent to and produced before the Juvenile Court/POCSO Court.

40. There is nothing on record to show that the said order of JJB dated 10.12.2021 has been assailed by respondent No. 2 in any proceeding.

41. Be that as it may, we may now proceed to the second issue which is relating to grant of bail to respondent No. 2. It may be mentioned that respondent No. 2 had filed a bail application before the JJB which was dismissed *vide* order dated 27.10.2021. As against this, respondent No. 2 preferred Criminal Appeal No. 86/2021 before the learned Additional District and Sessions Judge who was also the Special Judge of the POCSO Court. Learned Additional District and Sessions Judge *vide* order dated 01.12.2021 dismissed the criminal appeal by holding that there was no good ground to grant bail to respondent No. 2. High Court by order dated 13.05.2022 granted bail to respondent No. 2 subject to the conditions mentioned therein.

42. Three years have gone by since respondent No. 2 was granted bail. Nothing has been placed on record to show that respondent No. 2 has misused the liberty granted to him. If that

be the position, we are of the view that it would not be just and proper to interfere with the order of bail at this stage. Of course, it is always open to the appellant as well as to the State to seek cancellation of bail in the event respondent No. 2 misuses the liberty granted to him. Subject to the above, no case for interference in the order of bail is made out.

43. Thus having regard to the discussions made above, we find no good reason to interfere with the impugned orders. Both the appeals are accordingly dismissed. However, there shall be no order as to cost.

.....J.
[ABHAY S. OKA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
MAY 20, 2025.