



2026:AHC:18310

HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 49660 of 2025

Maksudan Gond @ Kahsudan Gond

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s) : Avijit Saxena
Counsel for Opposite Party(s) : G.A.

Court No. - 79

HON'BLE TEJ PRATAP TIWARI, J.

1. Heard Sri Avijit Saxena, learned counsel for the applicant, learned A.G.A for the State and perused the record.
2. The instant petition has been filed under Section 528 BNSS with a prayer to quash the impugned order dated 03.03.2020 passed by the Additional District & Sessions (F.T.C-I), Deoria, u/s 9(2) of Juvenile Justice Act (Care and Protection of Act), 2015 (hereinafter referred to as 'Act') and the consequential Order dated 30.05.2022 passed by the Juvenile Justice Board, Deoria in S.T. No. 219/2019 arising out of Case Crime No. 135/2019 under Section 498A, 304B IPC and 3/4 DP Act, Police Station Khampar, District Deoria and remand back the matter before learned Additional District & Sessions Judge (F.T.C-I), Deoria.

3. The bone of contention of the present matter is whether the impugned order passed on an application claiming the Juvenility under Section 9(2) of the Act which does not take the claim by conducting an enquiry and recording the positive finding, but instead mechanically refering the matter to the Juvenile Justice Board is lawful or not? As per the contention submitted by the learned counsel for the applicant, the said impugned order, assailed by way of the instant petition is illegal and has been passed without jurisdiction. Section 9 (2) of the Act mandates that where a claim of juvenility is raised before a Court other than Board, the Court "*shall make an enquiry, take such evidence as may necessary....., and shall record the finding in the matter, stating the age of the person as nearly as may be*". The aforesaid legal provisions is imperative and the duty casted upon the Courts by the aforesaid provision of law is mandatory, adjudicatory and non delegable. During the course of the argument, learned counsel for the applicant relied on a **Habeas Corpus Writ Petition No. 497 of 2025 (Pawan Kumar(Corpus) and Another Vs. State of U.P and 4 Ors.)** delivered on 25.09.2025 wherein the Division Bench of this Court held that Section 9 of the Act shows that if a person accused of committing an offence, claims before the Court that he was juvenile on the date of commission of the offence, the Court shall make an enquiry and after taking such evidence as may be necessary, determine the age of the person and shall record a finding on the matter stating the age of the person as nearly as may be. The aforesaid view of the Division Bench of this Court finds support by the decision of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki Vs. State of U.P. and Ors., 2022 8 SCC 602.**

4. Per contra, learned A.G.A while referring to the provision of the Juvenile Justice Act, 2015 has vehemently opposed the argument rendered by the learned counsel for the applicant and has unshakenly contended that the impugned order is as per law,

therefore, instant application under Section 528 B.N.S.S. is liable to be dismissed.

5. Having heard learned counsel of both the sides, and after perusing the relevant legal provisions as well as the judgments relied upon by the parties, this Court finds that Section 9(2) of the Act imposes a mandatory non delegable duty on the Court to conduct an inquiry, take evidence and record a positive finding on juvenility. Referring such an issue, to the Juvenile Justice Board, looks to be *prima facie* without jurisdiction as the question of juvenility has not been decided, but has only been referred to the Juvenile Justice Board. During the course of argument, the emphasis of the learned counsel for the applicant, is on the impugned order passed by learned Additional District and Sessions Judge (F.T.C.-I), Deoria dated 03.03.2020 annexed at page 37 of the instant application. The consequential order dated 30.05.2022 passed by Juvenile Justice Board, Deoria is based on the order of the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, which is also under challenge in the instant petition.

6. At the first instance, it would be appropriate to reproduce the provisions of law under which the present criminal misc. application has been preferred i.e **Section 528 BNSS- Saving of inherent powers of High Court.**

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Looking to the facts of present case, reliance be placed on the judgment of the case **Ravindra Alias Loola versus State of U.P., Criminal Appeal No. 3672 of 2016.**

“Even previously this Court has noticed a similar case where after filing of an appeal before this Court, the JJB has entertained an application, without there being any order by the appellate court.

The Supreme Court in Karan @ Fatiya Vs. The State of Madhya Pradesh reported in (2023) 5 SCC 504 while relying upon an earlier judgment in Raju Vs. State of Haryana (2019) 14 SCC 401, has held that where the appellant has not taken the plea of juvenility before trial court and such plea is raised before the High Court, which was rejected. The Supreme Court got an inquiry conducted by the Registrar (Judicial) of the Court who submitted a report, and accordingly the appeal was decided in light of the said report. In Jitendra Singh @ Babboo Singh and others Vs. State of U.P. reported in (2013) 11 SCC 193 while relying upon the earlier judgment in Kalu @ Amit Vs. State of Haryana, the Supreme Court observed that plea of juvenility was raised for the first time, got an inquiry conducted and thereafter proceeded to direct the Board to pass appropriate order under Section 15 of the Juvenile Act. It is also held in this judgment that in all the pending cases including trial, appeal, revision or any other proceedings, the determination of juvenility shall be in terms of Clause (1) of Section 2 of the Act, even if juvenile cases to be so on or before the date of commencement of 2008.”

Further in case of **Satyaveer versus State of U.P., Criminal Appeal No. 2682 of 2016.**

“A reliance is also placed on an order of Supreme Court in S.L.P. (Criminal) No.643 of 2020, decided

on 29.11.2021, in case of Ashok vs. The State of Madhya Pradesh wherein, when an objection was raised before the Supreme Court regarding the juvenility of the appellant, a direction was issued to the Session Court to examine the claim of the said appellant (Ashok) to decide his claim of juvenility in accordance with law and submit a report to the Supreme Court within time specified. In this order also, the Supreme Court has referred to the provisions of Section 7A (1) of Juvenile Justice (Care and Protection of Children) Act, 2000 with observation that claim of the juvenility can be raised before any Court, at any stage, even after final disposal of the case. It is thus clear from the order that the Supreme Court while entertaining the S.L.P. has itself directed the Court of Sessions to ascertain the age of the appellant. In the instant case also the Juvenile Justice Board, Hathras without there being any such order passed by the Appellate Court has assumed the jurisdiction after conclusion of trial and has passed an order without even issuing notice to the informant/victim. This case on was listed alongwith Criminal Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP). A copy of this order also served upon Director J.T.R.I., Lucknow in terms of the previous order dated 5th April, 2024. Considering that it is duty of concerned Administrative Committee to keep a check on the working of Juvenile Justice Board by randomly calling and scrutinizing their judgements, in absence of same, in additionally, we direct the Registrar General of this Court to circulate both the orders dated 5th April, 2024, passed in Criminal

*Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP) as well as present order passed in present case to all the Sessions Judges in State of U.P. on e-mail, with a direction that being the Chairman of the Legal Services Authority of their respective districts, they will sensitize all the members of the Juvenile Justice Board, specially the Principal Magistrate of the Board about the procedure to be followed in cases where a trial has already been concluded; the trial Court has become *Functus Officio*; an appeal is already preferred by the accused person and without filing an application before the appellate Court to declare him juvenile, which may be decided in accordance with law, if, such application is independently filed before the Juvenile Justice Board at a subsequent stage, the Juvenile Justice Board will assume the jurisdiction only on direction or order passed by Appellate Court and that too by following the procedure under the Act and by giving notice to complainant/informant. The needful be done within two days and the report of all the concerned District and Session Judges be received in this regard by e-mail before 15th May, 2024."*

7. In view of the foregoing discussions, the legal provisions, and the authoritative pronouncements referred to hereinabove, this Court is of the considered opinion that the order dated 03.03.2020, impugned in the present proceedings and passed by the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, purportedly in exercise of powers under Section 9(2) of the Act, suffers from patent illegality and is not sustainable in the eyes of law. Consequently, the impugned order is liable to be set aside, and the instant petition stands to be allowed.

8. In the light of above, the matter is accordingly remitted to the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, to provide a fresh opportunity of hearing to the parties and pass appropriate orders in accordance with law, considering the aspects dealt hereinabove.

9. Taking note of the fact, that mandate of Section 9(2) of the Juvenile Justice Act, 2015, is not being followed across the State, therefore, it seems expedient in the interest of justice to ask the learned Registrar General of this Court, to place the matter before the appropriate body, and after getting necessary approval, may issue a circular to all the learned District & Sessions Judges across the State of U.P directing all concerned to act in compliance of the provisions of law, discussed above.

10. Accordingly, with these observations, the impugned order dated 03.03.2020 passed by the Additional District & Sessions (F.T.C-I), Deoria, u/s 9(2) of Juvenile Justice Act (Care and Protection of Act), 2015 and the consequential Order dated 30.05.2022 passed by the Juvenile Justice Board, Deoria in the aforesaid case are hereby set aside and the instant petition is **allowed.**

(Tej Pratap Tiwari,J.)

January 19, 2026
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