

**HIGH COURT OF MADHA PRADESH : BENCH AT INDORE**

**S.B.: Hon'ble Shri Justice S.K. Awasthi**

**Criminal Revision No.4376/2019**

(Narpat Singh s/o Shivji Singh

**Versus**

The State of Madhya Pradesh

Through Police Station Gandhi Sagar, District Mandsaur MP)

\* \* \* \* \*

Mr. Vikas Jain, learned counsel for the applicant.

Mr. Pranay Joshi, learned Public Prosecutor for the respondent /  
State of Madhya Pradesh.

\* \* \* \* \*

**ORDER**

(Passed on this 16<sup>th</sup> day of September, 2019)

The applicant has preferred this criminal revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 and Section 19 (2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (herein after referred to as the Act) against order dated 03.08.2019 passed by learned Additional Special Judge (under NDPS Act), Bhanpura, District Mandsaur (MP) in Special Sessions Trial No.01/2019, whereby an application filed on behalf of the petitioner regarding the claim of his juvenility has been rejected.

2. Brief facts of the case are that on 11.12.2018 on the basis of source information, Mr. Jitendra Singh Chouhan, Assistant Sub Inspector, Police Station Gandhi Sagar, District Mandsaur (MP) has apprehended the applicant along with truck bearing registration number RJ-36 GA-5020 and recovered 27 quintals and 50 kilograms of poppy straw from the possession of the applicant and one Sher Singh @

Sheru s/o Banna Singh which was being transported without having any valid license. FIR has been registered at Crime No.151/2015 Police Station Gandhi Sagar, District Mandsaur (MP). After completion of the investigation, charge sheet has been filed.

3. During the trial, an application was moved on behalf of the applicant before the Additional Special Judge (under NDPS Act), Bhanpura, District Mandsaur (MP) for claim of his juvenility, but the same has been dismissed vide order dated 03.08.2019 by holding that the applicant has failed to establish his date of birth as "22.09.2002", therefore, on the date of the incident i.e. 11.12.2018 he was above 18 years of age.

4. Learned counsel for the applicant has submitted that the actual date of birth of the applicant is "22.09.2002", which is also established by entry made in the scholar register of Ojas Little Flower Primary School, Sumel, Tahsil Raipur, District Pali, Rajasthan State, which has been proved by Head Master Gopal Singh of the School, even then, the trial Court has committed an error of law in holding that the age of the applicant was above 18 years at the time of the incident. It is further submitted that under the provision of New Act of 2015, the trial Court has no jurisdiction to ascertain the age of the accused at the time of the incident; and now this power is conferred

solely on the Juvenile Justice Board. In this regard, learned counsel for the applicant has placed reliance on a judgment of this Court in the case of **Indra Singh Rajput v. State of Madhya Pradesh** reported in **2017 (2) Criminal Law Reporter (MP) 407**.

5. Learned Public Prosecutor for the respondent / State of Madhya Pradesh opposes the application and submitted that an application was filed on behalf of the applicant before the trial Court claiming that at the time of incident, he was 'juvenile'; but, he had not prayed that the matter be send to the Juvenile Justice Board regarding an inquiry for determination of age of the applicant; and when his application has been dismissed by the trial Court, then he raised objection before this Court, that Special Court is not having power to decide the claim of juvenility, which is not acceptable. Hence, he prayed for rejection of the application.

6. I have heard learned counsel for the parties.

7. In the case of **Indra Singh Rajput v. State of Madhya Pradesh** (supra) this Court has observed, as under: -

“7. After repeat of the Juvenile Justice (Care and Protection of Children) Act, 2000 by the new Act - Juvenile Justice (Care and Protection of Children) Act, 2015 the situation is entirely different. The

provisions of Rule 12 of Rule 2007 were incorporated in Section 94 of the new Act, which may be reproduced as under:-

“94. (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.

8. The old Act was repeal and Section 111 by the new Act, which provides as under:-

“111. (1) the Juvenile Justice (Care and Protection of Children) Act, 2000 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.”

9. In light of provisions of Section 111 of new Act, it is apparent that all the actions taken and acts done under the repealed Act, shall be deemed to have been done and taken under the corresponding provisions of this Act. Corresponding provision in the present case is Section 94 of new Act. The new Act came into force in January, 2016 while the impugned order was passed in March, 2016 and therefore, it was incumbent on the learned Special Judge that Judge should follow the provisions of Section 94, according to which, the Court of Session had no power to determine the age of accused and this power is granted only to the Juvenile Justice Board, constituted under the Act. How the age would be determined, as provided in Sub-Section 2 of Section 94 of new Act and therefore, it is apparent that the impugned order was not passed in accordance with the provisions of the new Act and therefore, the impugned order is liable to be set - aside. Accordingly, this application is allowed. The impugned order is set-aside the matter is reverted back to learned Special Judge for determining the age of the accused in accordance with Section 94 of new Act”

8. In view of the aforesaid, it is apparent that the Court of Additional Special Judge (under NDPS Act), Bhanpura, District Mandsaur (MP) has no power to determine the age of the accused and this power is only granted to the Juvenile Justice Board. As such, the learned Additional Special Judge (under NDPS Act), Bhanpura, District Mandsaur (MP) has erred in not

appreciating the provisions of the new Act of 2015 properly and proceeded to determine the age of the accused / applicant while such powers were not vested in him. As such, this revision deserves to be allowed.

9. Accordingly, Criminal Revision No.4376/2019 is allowed and impugned order dated 03.08.2019 passed by learned Additional Special Judge (under NDPS Act), Bhanpura, District Mandsaur (MP) in Special Sessions Trial No.01/2019 is set aside. The matter is referred to the learned Juvenile Justice Board for determination of age of the applicant / accused, in accordance of Section 94 of the new Act of 2015.

**(S.K. Awasthi)**  
**Judge**