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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 22nd April, 2026

Uploaded on: 29th April, 2026

+ **CRL.A. 53/2020**

KULDEEP SINGH SENGAR

.....Appellant

Through: Mr. N. Hariharan, Sr. Adv. with Mr. S.P.M. Tripathi, Ms. Punya Rekha Angara, Ms. Vasundhara N., Mr. Aman Akhtar, Ms. Aishwarya Singh, Mr. Rahul Poonia, Ms. Vasundhara Raj Tyagi, Mr. Arjan Mandal, Mr. Aman Akhtar and Ms. Shambhavi Singh, Advs.

versus

CENTRAL BUREAU OF INVESTIGATION

.....Respondent

Through: Ms. Anubha Bhardwaj, SPP for CBI with Mr. Anurag Modi, Ms. Ananya Shamsbery, Mr. Mayank Bawa, Ms. Riddhi Grover, Advs. & Mr. Arijit Sinha, IO, CBI.
Mr. Mehmood Pracha, Mr. Sanawar, Mr. Kshtij Singh, Mr. Sikander, Advs. for Complainant Ms. Urvi Mohan, Advocate for DCW
Arijit Sinha IO, CBI

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE MADHU JAIN

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CRL.M.A. 21475/2025

2. This application has been filed by the victim seeking the following



prayers:

“(a) Allow the present application and take on record the documents annexed with the present application; and

(b) Direct the recording of further evidence of P.W. 3 Sh. Arun Kumar Singh and P.W. 4 Shri Virender Singh, or of any other relevant official of A.B.S. Public School, after production of a certificate of the date of birth of the Victim as recorded in the records of the school.

(c) pass any other or further order(s) as this Hon’ble Court may deem fit and proper in the circumstances of the case.”

3. The present application was considered by the Court on 15th January, 2026, and having perused the same as also having heard the parties, the Court had directed the victim to file the additional documents sought to be brought on record. The relevant portion of the said order reads as under:

“11. During the pendency of the present appeal, the present application being CRL.M.A. 21475/2025 has been filed by the Survivor, for bringing on record certain documents and for leading further evidence.

12. Mr. Mehmood Pracha, ld. Counsel for the Survivor submits that the present application has been filed on behalf of the Survivor to lead further evidence in respect of her date of birth.

13. Upon a query from the Court, ld. Counsel further submits that the Survivor prays for recording of further evidence of PW-3, Mr. Arun Kumar Singh and PW-4, Mr. Virender Singh, and any other relevant official of A.B.S., Public School, along with production of certain documents, including date of the birth of the Survivor from the school records.

14. It is clarified by the ld. Counsel for the Survivor



that the aforesaid documents are part of the Trial Court record. This position is disputed by Mr. N Hariharan, ld. Sr. Counsel for the Appellant.

15. Heard. The Court has perused the application and notices that there are no documents forming part of the school record, that have been attached with the present application.

16. Ld. Counsel for the Survivor seeks time to file the aforesaid documents.

17. Accordingly, let the aforesaid documents be filed by 31st January, 2026, with an advanced copy being served upon ld. Counsel for the Appellant and CBI.

18. Ld. Counsels for the Appellant and CBI are permitted to file a reply to this application.

19. The application shall be considered on the next date of hearing.”

4. Today, Mr. Mehmood Pracha, ld. Counsel appearing for the victim submits that he restricts the prayer in this application for leading additional evidence only to the date of birth certificate from the A.B.S. Public School, Saidapur, Chivlaha, Raebareli, Uttar Pradesh (hereinafter “*concerned school*”) where the victim had studied. It is submitted that the said document ought to have been called for during the trial in order to remove any doubt that may arise in respect of the age of the victim.

5. It is further submitted that in terms of Section 94(2)(i) of the Juvenile Justice (Care and Protection of Children) Act, 2015, (hereinafter “*the JJ Act*”) for determining the age of the victim, first and foremost, the date of birth certificate from the concerned school had to be called and produced. However, the same had not been done by the Central Bureau of Investigation (hereinafter “*CBI*”). It is Mr. Pracha’s submission that the CBI was hand in glove with the



Accused/Appellant.

6. The further submission is that the date of birth certificate from the concerned school being one of the documents that could establish the date of birth of the victim in an uncontroverted manner, the same ought to be called for even at the appellate stage.

7. Ms. Anubha Bhardwaj, Id. SPP for the CBI has filed a reply to this application and has submitted that all the available evidence in respect of the date of birth of the victim had already been produced before the Trial Court. The Id. SPP has relied on the relevant paragraphs of the CBI's reply which read as under:

“5. That the contents of para 5 of the application pertains to F.I.R. No.314 of 2018 registered at P.S. Makhi, District Unnao, Uttar Pradesh. This case has not been investigated by CBI. It has been submitted by the victim/survivor that the F.I.R. No.314 of 2018 registered at P.S. Makhi pertains to an alleged forged Transfer Certificate from A.B.S. Public School, where the victim/survivor had first attended school. It is submitted that CBI has duly submitted in the charge sheet filed before the Learned Trial Court that date of birth of the victim/survivor as disclosed from admission register of ABS Public School, Chhibalaha, Saidapur, District Rai Bareli is 17.08.2001, while the date of birth as disclosed from Transfer Certificate purportedly issued by ABS Public School, Chhibalaha, Saidapur, District Rai Bareli which was seized by CBI from Shri Mahesh Singh, (paternal uncle of the victim) is 17.08.2002. During trial, PW-3 Arun Kumar Singh, Principal of ABS (Akbal Bahadur Singh) Public School, Saidapur, Sareni Khande, Post Chhiblaj, District Raebarely, Uttar Pradesh, deposed that during the investigation he handed over the original "Admission Register of the students from year 2005-2010 to the CBI, which is



Ex.PW-312 (D-16) wherein vide relevant entry No. 45 on pages 15 and 16, the date of birth of victim girl was recorded as 17.08.2001. This was further corroborated by PW-4 Virender Singh, Assistant Teacher at ABS School, who deposed that the admission register D-16 was in his handwriting and he recorded the date of birth of child 'AS' in the School as 17.08.2001, who was admitted in Class-1 on 01.07.2006. PW-5 Chander Pal Singh, the maternal grandfather of the victim/ survivor, deposed that the victim/survivor (his maternal grand daughter) lived with him during her child hood along with his family in their house at village Khande Sarai, where she studied in ABS Public School, Saidapur upto 5th Standard. This has been corroborated by PW-6 Dhirender Singh, the maternal uncle of victim/ survivor, who deposed that the victim survivor as a child resided with them at their village where she completed her primary education from ABS Public School, Saidapur from KG-1 to 5th Standard. Based on such evidence the Ld. Trial Court accepted the date of birth of victim/survivor as 17.08.2001 and concluded that the victim/ survivor was a minor on the date of offence. Regarding the contents pertaining to developments between the victim / survivor and her then advocates narrated in the application, the same are within the knowledge of the victim/survivor and are not the subject matter of the case investigated by CBI, hence merits no comment from CBI.

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13. That in reply to the contents of para 13 and prayer of the application, it is submitted that during trial, PW-3 Arun Kumar Singh, Principal of ABS (Akbal Bahadur Singh) Public School, and PW-4 Virender Singh, Assistant Teacher were examined by the prosecution (CBI) and they proved the "Admission Register" of the students from year 2005-2010 and the relevant entry



No.45 on pages 15 and 16. wherein the date of birth of victim girl was recorded as 17.08.2001. Thus, it has been proved during the trial that the victim/survivor was a minor on the date of offence.”

8. Ld. Counsel for the CBI further submits that the Trial Court has already held that the victim is a minor on the basis of the evidence produced during the trial. In view of the same, it is submitted that appropriate orders may be passed as Court deems fit.

9. On the other hand, on behalf of the Appellant, Mr. N. Hariharan, Id. Senior Counsel submits that the Accused/Appellant has already served more than ten years in custody. It is further submitted that this application would only delay the matter further as all the evidence on behalf of the prosecution to establish the age of the victim has already been produced on record.

10. In response, on behalf of the victim, it is submitted that no harm would be caused to the Appellant, if the birth certificate is called for from the concerned school, as the trial of this case was completed in an expeditious manner and therefore, no delay would be caused in the hearing of the appeal also after calling for the birth certificate.

11. Heard, Id. Counsels for the parties. The Court has perused the Trial Court Record in this matter as also the pleadings. The victim in this case is stated to have studied in A.B.S. (Akbal Bahadur Singh) Public School, Saidapur, District Raebareli, Uttar Pradesh. The Principal of the concerned school *i.e.*, Mr. Arun Kumar Singh, had deposed in the trial as **PW-3** and the following documents were exhibited by him:

- (i) **Ex.PW-3/1[D-15]**: Seizure Memo prepared by the concerned I.O. in respect of documents handed over by PW-3.
- (ii) **Ex.PW3/2 [D-16]**: Register pertaining to admission of students



- from the year 2005 to 2010 at the subject school.
- (iii) **Ex.PW3/3 [D-18]**: Document *qua* recognition of the subject school.
 - (iv) **Ex.PW3/4 [D-17]**: Handwritten letter dated 20th April, 2018 written by PW-3 (Principal of the subject school).
 - (v) **Ex.PW3/4A**: The format of Transfer Certificate issued by the subject school.

In addition to **PW-3**, the prosecution had also examined one Mr. Virender Singh as **PW-4** who was an Assistant Teacher at the concerned school at the time of examination. The entries that were made in the admission register exhibited as **Ex.PW3/2 [D-16]** have been corroborated by this witness as to have been handwritten by him.

12. It is seen from the testimonies of both **PW-3** and **PW-4** that the said register in respect of the students admitted from the year 2005 to 2010 was maintained in the ordinary course of business. The observations of the Trial Court in respect of the said register is relevant and the same are extracted below:

“85. That brings us to the most contentious document with respect to the aspect of determination of age of the victim girl which is D-16 the admission register of ABS Public School. The entries of which were made by PW-4 Virender Singh Yadav and substantiated by PW-3 Arun Kumar Singh to the effect that vide entry No. 45, a girl student ‘AS’ was admitted for studying in 1st standard on 01.07.2006 whose date of birth was recorded as 17.08.2001 and she completed her 5th standard and left the school on 01.07.2011. PW-3 Sh. Arun Kumar Singh and PW-4 Sh. Virender Singh maintained that the admission register D-16 Ex.Pw-3/2 was being maintained in the “ordinary course of their



business” and there is no challenge to the fact that it was PW-4 Virender Singh, who had been maintaining the entries in the said register. A meticulous scrutiny of the admission register Ex.PW-3/2 would show that the entries had been made in respect of admission of students in ABS Public School, Saidapur, Raebareli, U.P. from the year 2005 to 2011 and PW-4 Virender Singh categorically stated that he did the corrections in entry No. 45 at Q-1 writing in Hindi “1 (एक)” pointing out that date of birth was otherwise correctly mentioned in English numerals as ‘17.08.2001’. Similarly, at point Q-2 the name Village Makhi was corrected instead of the word ‘Mali’. No suggestion was given to PW-4 that such correction was done by him for ulterior motives or at the instance of PW-9 Mahesh Singh or the Investigating Officer of the CBI.

86. Much was urged about the cuttings on the cover of admission register X-1, X-2 and X-3, which are inconsequential. The admission register D-16 Ex.PW-3/2, seen holistically reflect that the relevant entries were made in different ink or Pen from time to time and the mere fact that date of admission of each child was recorded as 01.07.2006 (which as per the learned Counsel for (A-1) happened to be Sunday) hardly invites an adverse consequence to the case of the prosecution/CBI since it was an area where students were coming from rural background and it has come in the evidence of PW-3 that Academic Session was starting full-fledged from July every year. Mere fact that recognition had not been granted to the School and that it was only granted in the year 2012 as per Ex.PW3/4 is again hardly of any consequence since it is not unknown that many private school are run without recognition, and government recognition comes about in due course of time. It appears to be unthinkable that when one is operating a private school, they would not be maintaining a proper attendance register that would be



basic document for facilitating collection of tuition fees. PW-3 Arun Kumar Singh pointed out that it was a self financed project by Mr. Bhupender Singh and it is not unknown that many Kindergarten School or Primary School are run without recognition on premise of imparting better education and atmosphere to the students. No reasons have been attributed to PW-3 Arun Kumar Singh and PW-4 Virender Singh by way of suggestion or otherwise so as to demonstrate that they had any reasons to fabricate the admission register (D-16) Ex.PW-3/2 and / or to depose falsely before the Court in order to support the case of the victim/survivor girl 'AS' and her family members. Interestingly, there is no denying the fact that Dr. Bhupinder Singh and Rajesh Kurmar Singh in their above noted statement Ex.PW- 13/D-7, Ex.PW13/D-8, PW-13/D-1 and PW-13/D-9 vouched the authenticity of their school record.”

13. A perusal of the judgement of the Trial Court would show that the Trial Court has considered several aspects to determine the age of the victim, including the oral testimony of the victim herself, the *Parivar* record *i.e.*, **Ex.PW2/3**, the records of the concerned school, and record of the Govt. Primary School, Khande Sarai. Having considered these aspects, the Trial Court has reached the following conclusion on the issue of the victim's age:

*“94. To sum up, **I have no hesitation in holding that the victim/survivor 'AS' and her family members have been able to establish that she studied in ABS Public School, Saidapur, Raebarely, UP.** In view of Section 94 of the JJ Act, 2015, the Court has to look no further and the medical evidence brought on record in the nature of Ossification or age determination test of the girl 'AS' need not be looked into. Moreover, final opinion from the AllMS vide admitted document D-30 dated 23.06.2018 would show that earlier findings by the RML, Lucknow that*



girl was over 19% years of age were diluted and final report came that she was of 18 years of age as on the date of medical examination on 22.06.2017. The said report is in sync with the testimony of victim/survivor 'AS' and is also a consistent version of her family members and thus an inference can be drawn that on the date of alleged incident on 04.06.2017, the girl 'AS' was most probably a minor.

95. In the said view of the discussion, I find that prosecution / CBI has been able to prove the core foundation of its case under POCSO Act, and accordingly, the victim/survivor 'AS' was a 'child' within the meaning of Section 2 (d) of the POCSO Act, as on the date of commission of offence.

14. Thus, the Trial Court has categorically held, on the basis of the evidence on record, that the victim was a minor as on the date of the incident which is the subject matter of the present appeal.

15. The present application has been moved, despite the above findings, on the basis of certain apprehensions of the victim. The prayer is for bringing on record the birth certificate of the victim from the concerned school.

16. However, at this stage, the Court's attention has been drawn to **Ex.PW3/4** *i.e.*, the handwritten letter dated 20th April, 2018 provided by the Principal of the concerned school to the concerned Investigating Officer. In the said letter, it is stated that no birth certificate was submitted to the concerned school at the time of admission as it was not the practice to obtain such a birth certificate at the relevant time. For the sake of completeness, the said letter written in Hindi is extracted below along with the translation of the same:



A.B.S. PUBLIC SCHOOL

SAIDAPUR, CHIVLAHA, RAEBARELI

D-17

Ref.

Date... 20-4-18

सेवा में

श्रीमान पुलिस इपाधीक्षक
C.B.I/A.C.B. हजरतगंज लखनऊ

विषय- केस संख्या R.C.006201850006 के सम्बन्ध में

महोदय आपको अवगत कराना है कि यह स्कूल (ए.बी.एस. पब्लिक स्कूल सादापुर) वर्ष 2004 से प्रारम्भ हुआ था। इसकी मान्यता दिनांक 20-12-2008 को जिला जेसिक शिक्षा अधिकारी द्वारा अनस्थायी रूप से दिनांक 01-07-2008 से हटान की गयी थी। मेरे विद्यालय में कुं० अनुराधा पुत्री श्री परसू सिंह व माया सिंह का प्रवेश कक्षा एक में 01/07/2006 को हुआ था। इसके दौरान प्रवेश से सम्बन्धित कोई भी दस्तावेज जैसे जन्म प्रमाण पत्र, प्रवेश सम्बन्धित शर्तनाम पत्र आदि स्कूल में नहीं जमा कराये गये थे, जो कि उस समय आवश्यक भी नहीं थे।

मैं पुनः अवगत कराना चाहता हूँ कि मेरा विद्यालय जिसकी मान्यता 2008 से प्राप्त हुई, के बाद से स्थानान्तरण प्रमाणपत्र निर्गत करता है। परन्तु इससे सम्बन्धित कोई भी दस्तावेज विद्यालय द्वारा सुरक्षित नहीं किये जा सके हैं। विद्यालय ने 2009 से 2015 तक जो स्थानान्तरण प्रमाणपत्र जारी किये हैं, वह बाजार से खरीदे जाते थे जिसमें विद्यालय का नाम नहीं दिया जाता था। उक्त प्रपत्र में विद्यालय का नाम एवं विद्यार्थी से सम्बन्धित जानकारी दाख से भरी जाती थी। 2015 के बाद से स्थानान्तरण प्रमाणपत्र का प्रपत्र, जिसकी प्रमाणित शाली प्रति पत्र के साथ संलग्न है, की तरह का निर्गत किया जा रहा है। मैं यह भी अवगत कराना चाहता हूँ कि दोनों प्रपत्रों का धाकार एक जैसा है।

संलग्न - उपरोक्तानुसार

Exh 13/4

SC 13/10

19/08/19

भवदीय
अनुराधा पुत्री
प्रधानाचार्य
ए.बी.एस. पब्लिक स्कूल
सादापुर, चिवलाहा-रायबरेली

293

1557



TRANSLATION IN ENGLISH:

**A.B.S. PUBLIC SCHOOL
SAIDAPUR, CHIVLAHA, RAEBARELI**

Date: 20.04.2018

To,

The Deputy Superintendent of Police,
C.B.I./A.C.B Hazratganj, Lucknow

Subject: In regard to Case No. R.C. 0062018S0006.

Respected Sir,

It is brought to your kind notice that this school (A.B.S. Public School, Saidapur) was established in the year 2004. The District Basic Education Officer granted temporary recognition to this school on 20.12.2008 retrospectively from 01.07.2008. XXX, D/o Sh. XXX and XXX, was admitted to my school on 01.07.2006 in standard I. **At the time of admission, no relevant documents including the birth certificate, application for admission etc. were submitted as they were not even required at the time.**

Furthermore, it is also apprised that my school began issuing transfer certificates only after being recognized in 2008. However, the school has not been able to procure any documents in this regard. The transfer certificates issued by the school from 2009-2015 were bought from the market and the said forms did not possess the name of the school. Information relating to the student and the name of the school was filled manually on the said form. A certified blank transfer certificate form that the school has been issuing since 2015 has been enclosed with this letter. It is also noteworthy that both the forms are identical.

Thanking You,

Sd/- (In English),



*Arun Kumar Singh,
Principal, A.B.S. Public School,
Saidapur, Chivlaha, Raebareli,
Date: 20.04.2018*

Enclosed: As above

17. A perusal of the above letter would show that the Principal of the concerned school has clearly certified to the concerned Investigating Officer that at the time of admission of the victim, no other document such as birth certificate was submitted to the school and the same was also not necessary as per the practice at the prevalent time.

18. In the opinion of the Court, it would be appropriate to also consider the applicable law for determination of age as provided under the JJ Act. A perusal of Section 94 of the JJ Act, which is the provision in respect of presumption and determination of age, also applicable to the POCSO Act, would show that a hierarchy of documents has been provided in sub-clause 2 thereto. As per the same, the priority is given to a date of birth certificate from the respective school or matriculation certificate from the respective examination board, which if available, shall be produced. In the absence thereof, birth certificate from a Corporation/Municipal Authority/ or a Panchayat, may be produced. It is only in cases where neither of the two categories of documents are available, would determination through ossification test or other medical examination may be resorted to. The said provision is extracted hereunder:

*“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.”

19. Recently, the Supreme Court in ***State of Uttar Pradesh v. Anurudh,***



Criminal Appeal No. 163/2025, has examined various aspects *qua* determination of age under the JJ Act, including the appropriate stage and the Court for such determination. The observations in this regard would be applicable in the present case, and accordingly, the relevant portions thereof are extracted hereunder:

*“13.1 Section 2(d) of the POCSO Act defines a child as any person below eighteen years. So, for the provisions of this Act to be applied, the person against whom the offence in question has been perpetrated must necessarily be below 18 years of age. This is the sine qua non. **The natural question which then arises is how the age of victim is to be determined. Jarnail Singh v. State of Haryana [(2013) 7 SCC 263] put this question to rest as follows:***

*“23. Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. **Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in***



a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion.

(emphasis supplied)

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007²⁴ it must be noted, provides the same hierarchy of documents as has been provided by Section 94 of the JJ Act. The same is reproduced below for felicity of reference:



[...]

14.5 Now we proceed to examine the merits of this argument. It is clear from the above that all of these cases discuss the determination of age from the point of view of the offender and not the victim. **Although the process to be followed therefor is the same as that for an offender as held by Jarnail Singh (supra), the question involved in the instant lis concerns the forum and the stage at which the determination of age is to be made.** According to the High Court, the bail Court would, if a challenge is presented by the offender, entertain such challenge and take a prima facie view. Here, it becomes important to appreciate the difference between the JJ Act and the POCSO Act.

[...]

14.6 Having discussed thus, the two separate fields that these two legislations govern, we now turn back to the question of age determination. **If the POCSO Act is examined, it can be found that the Act does not prescribe a manner for determination of the age of the victim. As we have already noticed, it is an established position in law that the procedure under Section 94 of the JJ Act is to be applied.**[See: Section 34 of the Act] When the question of determination of age of a child in conflict with the law emerges for the first time before a Court, the concerned legislation provides the procedure as housed in its Section 9 of the Act lays down the procedure to be followed when a person is brought before a Magistrate who is not empowered under the Act, and there arises a claim or reasonable doubt that such person is a child. In such cases, the Magistrate must conduct an inquiry to determine the person's age in accordance with Section 94 of the Act, which prescribes the method for age determination. If, upon inquiry, the Magistrate finds



that the person was a child at the time of commission of offence, the case must be immediately forwarded to the JJB having jurisdiction, which will thereafter deal with the matter as per the provisions of the JJ Act. Conversely, if the person is found not to be a child, the Magistrate proceeds with the case as per the regular criminal procedure. The object of Section 9 is to ensure that no juvenile offender is tried as an adult merely due to an initial misclassification and to safeguard the rehabilitative and welfare-oriented spirit of the juvenile justice system by ensuring that every child in conflict with law is tried by the appropriate forum, i.e., the JJB

[...]

*4.8 As is obvious and as we have observed, the victim being a child is sine qua non for the application of the POCSO Act. If a charge-sheet is filed and it contains charges against a person under the POCSO Act, it is but obvious that such an accused would challenge the same at the first available instance in the Court concerned, or in other words, at the inception of trial, so as to ensure that the foundation of the trial is correctly in place before it proceeds further. **The Court would then undertake the exercise as provided for, and in accordance with the result obtained therefrom, proceed further, either under the POCSO Act or under the provisions of the IPC, as the case may be. Should the accused be dissatisfied with the manner in which the result has been drawn by the Trial Court, an appeal from such determination would have to be filed and only when the question of age is set at rest can the trial proceed forward on firm footing.***

14.9 Unlike an offender who can claim benefit of juvenility at any point in time, even after completion of proceedings given the beneficial nature of the JJ Act, a



victim of a crime cannot claim to be a juvenile at any point in time, for the charges against which an offender is tried, are intrinsically tied to the age of the victim. If a victim of a sexual offence was allowed to claim juvenility at any stage of the proceedings, in the same manner that an offender can under Section 9 of the JJ Act, it would have serious procedural and substantive consequences. For instance, an accused may have been charged under Section 376 IPC which applies when the victim is an adult. However, if the victim is later determined to be below eighteen, the offence would fall under the POCSO Act, where consent is irrelevant and the punishments are more stringent. This would mean that the earlier trial, framing of charges, and recording of evidence were all conducted under an incorrect legal framework. The proceedings would therefore be vitiated, and the trial could be rendered a nullity, necessitating the reframing of charges and a fresh trial under the correct statute.

*14.10 As can be seen from **Mahadeo v. State of Maharashtra [(2013) 14 SCC 637]**, and **Sanjeev Kumar Gupta (supra)** the consideration of the documents enumerated in Section 94, JJ Act is a matter of consideration of evidence since it may involve the examination of witnesses to prove the veracity of the documents. That can only be done by the Trial Court. Contra evidence to challenge the documents, can also be presented only before the Trial Court. In our considered view, therefore, the High Court fell in error in holding that a Court in bail jurisdiction is empowered to entertain a challenge to the documents as Section 94 would not apply at the bail stage.*

20. It is clear from a reading of the above that the issue of determining the age of the victim is central to the entire trial against an accused under the



provisions of the POCSO Act. The process of such determination being one which requires appreciation of evidence, the Trial Court is best suited for undertaking the same. The objections raised by an accused would also be dealt with by the Trial Court and then proceed with the trial for offences punishable either under the POCSO Act or the IPC.

21. In the present case, the Trial Court has undertaken extensive analysis of the testimonies of the victim and other witnesses as also the exhibits placed on record. The Principal of the concerned school has been examined and has been given detailed testimony and the admission register having been produced, it cannot be said that there would be a necessity to call for additional evidence at the appellate stage. Moreover, it is clear from the letter exhibited as **Ex.PW3/4** that the date of birth certificate was not submitted in the concerned school at the time of admission and consequently the same is not available. Further, the said letter has been written in 2018 and, *prima facie*, in the opinion of the Court, if the Principal of the concerned school had the certificate the same would have been mentioned in or provided along with the said letter. This view is supported by the fact that despite the Court granting liberty to the victim to file additional documents sought to be brought on record, no such document, including the birth certificate from the concerned school has been filed by the victim. At this stage, after conviction of the accused, the Court cannot start a fresh roving inquiry into a document which is evidently not available with the school.

22. In view of the above, no useful purpose will be served at this stage calling for any further documents from the school.

23. Accordingly, the present application is rejected and dismissed.

24. The matter would be heard on the basis of the evidence which is already



on record.

25. All contentions of parties are left open and nothing contained in this order shall affect the final adjudication of the present appeal.

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26. Considering the fact that the Appellant has been in custody for a substantial period of time, Mr. N. Hariharan, Id. Senior Counsel requests for a short date.

27. The matter is, accordingly, fixed for hearing on 25th May, 2026.

**PRATHIBA M. SINGH
JUDGE**

**MADHU JAIN
JUDGE**

APRIL 22, 2026/ys/msh