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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

ON THE 14th OF MARCH, 2024

CRIMINAL REVISION No. 3438 of 2023

BETWEEN:-

**VIKAS S/O SHRI JITENDRA SOLANKI, AGED 18 YEARS,
OCCUPATION: STUDENT R/O GRAM BEGANDA
PUNERWAS DHAMNOD DISTRICT DHAR (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI BHARAT SHARMA - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH THROUGH POLICE
STATION DHAMNOD DISTT. DHAR (MADHYA
PRADESH)**

.....RESPONDENT/STATE

(BY SHRI HEMANT SHARMA - GOVT. ADVOCATE)

*This revision coming on for admission this day, the court passed the
following:*

ORDER

This revision petition has been filed by the accused u/S 102 of Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred as act, 2015) against the order dated 30.06.2023, passed by Special Judge (POCSO Act), Dharampuri, Distt. - Dhar, whereby the learned trial Court had rejected an application filed by the petitioner, wherein he claimed that at the time of the incident, he was a child below 18 years of age. Therefore, the criminal case pending against the petitioner was requested to be transferred to the Juvenile Justice Board (hereinafter referred as JJ Board).

2. Facts of the case in brief are that a Special case No.11/2023, offence punishable u/S 366, 376(2)(n), 344 and 506(II) of IPC and S. 5(l)/6 of POCSO Act, 2012 is pending against the petitioner. On 30.06.2023, the petitioner had filed an application, wherein he claimed that at the time of the incident, he was below 18 years of age. Therefore, the criminal case pending against him should be transferred to the JJ Board. After hearing both the parties, the trial Court had rejected the application on the same day.

3. Learned counsel for the petitioner submits that the impugned order is perverse and bad in law. It is submitted that as provided u/S 9(2) of the act, 2015, it was a mandate for the learned trial Court to inquire the age of the petitioner. But without commencing an inquiry, the learned trial Court had rejected the application. Therefore, the impugned order is liable to be set aside.

4. On other hand learned counsel for the State/non-applicant has opposed the prayer and supported the impugned order.

5. Before moving ahead, it is apposite to reproduce here S.9 of the act, 2015.

Section 9. Procedure to be followed by a Magistrate who has not been empowered under this Act.

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary

(but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the persons claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety.

6. On bare perusal of the provision, it is clear that when the plea of Juvenility is made before a Court, other than a JJ Board, it must undertake an inquiry and take evidence, if any, as per the mandate of S.9(2) of the Act, 2015 before rendering any decision on the application.

7. In the instant case, the petitioner claimed that date of the incident is 15.11.2021 and his date of birth is mentioned as 01.07.2004 in his educational documents. Therefore, on the date of the incident, he was below 18 years. On perusal of the impugned order, it is revealed that the learned trial Court without conducting any inquiry of the application filed by the petitioner had dismissed on the same day on the ground that the trial Court has no authority to transfer the criminal case to the JJ Board. Hence, it is clear that the learned trial Court without considering the provision of Section 9 of the JJ Act has rejected the application. Therefore, the learned trial Court has committed legal error in

passing the impugned order.

8. Consequently, the revision petition is **allowed** and the impugned order is hereby set aside. The learned trial Court is directed to inquire on the application filed by the petitioner in the light of S.9 of the Act, 2015 and proceed accordingly.

(PRAKASH CHANDRA GUPTA)
JUDGE

Shruti

