2025:AHC:196952-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

HABEAS CORPUS WRIT PETITION No. - 799 of 2025

Smt. Joolee And Another

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Jigyasha Tripathi, Surendra Kumar Tripathi
Counsel for Respondent(s)	:	Ajay Kumar Chaurasia, G.A.

AFR

Court No. - 44

HON'BLE J.J. MUNIR, J.
HON'BLE SANJIV KUMAR, J.

A *rule nisi* was granted in this case on 03.09.2025. It was followed by a number of orders. We inquired into the detenue's date of birth, or so to speak, her age, in order to determine whether she is entitled to be set at liberty and left free to go wherever she likes and stay with whomsoever she wants.

In compliance with the rule, the only affidavit that has been filed is an affidavit of compliance filed by the Investigating Officer of the case in a related crime. This affidavit, is therefore, treated to be the return.

The detenue has been produced and we proceed to hear the matter forthwith.

This petition for grant of a writ of habeas corpus has been filed on behalf of Smt. Joolee wife of Harsh Goswami, daughter of Madan Giri with a prayer that Smt. Joolee (for short ' the detenue') be ordered to be produced by a rule *nisi* of ours and set at liberty. This petition has been filed on behalf of the detenue, arraying Smt. Joolee as the first petitioner through Harsh Goswami, who has been arrayed as the second petitioner.

The case of the petitioner is that the detenue is a major aged about 18 years, her date of birth, being 16th April, 2007, as mentioned on her Aadhar Card. It is the petitioners' case that a First Information Report (for short 'FIR') was lodged by the detenue's father on 08.07.2025 alleging commission of offences punishable under Sections 137 (2) and 351 (2) of Bhartiya Nyaya Sanhita (BNS), 2023, Police Station Sikandra, District Agra.

The substance of the allegations is that the detenue was kidnapped on 3rd

July, 2025 in order to marry the second petitioner. The second petitioner was aided by one Lokesh Gupta in his enterprise of kidnapping the detenue.

On the other hand, it is pleaded by the petitioners, which includes the detenue i.e. the first petitioner, that the detenue has married the second petitioner of her freewill in the Arya Samaj, Prayagraj on 6th July, 2025. It is also the petitioners' case that the FIR last mentioned giving rise to Case Crime No. 0425 of 2025 was challenged by them before this Court by means of Criminal Misc. Writ Petition No.15338 of 2025, where this Court issued notice and granted stay of arrest to the petitioners.

In the affidavit of compliance, which is, for all effective purposes, treated as a return in this case, it is the respondents' case that detenue is a minor, whose date of birth is 25th November, 2010, which makes her fifteen years of age. The return, that has been filed, annexes as Annexure-1 a handwritten certificate dated 16.07.2025 issued by the Principal of the Upper Primary School (Composite School), Kailash, Bichpuri Agra, certifying that the detenue's date of birth, according school records, is 25th November, 2010. There is then annexed a photostat copy of the school leaving certificate dated 07.07.2025, which indicates the detenue's date of birth to be 25th Novermber, 2010. A photostat copy of the admission register from the Upper Primary School (Composite School), Kailash, Bichpuri Agra too has been annexed to the return, where also, the detenue's date of birth indicated is 25th November, 2010.

We were not much convinced with the school records, which were produced before us and therefore, summoned the school leaving certificate book in original as well as the admission register. We also required Smt. Avnish Malik, the Headmistress of the School to be present in person in order to explain the records that have material bearing on the point. Smt. Avnish Malik, the Headmistress of the School i.e. Upper Primary School (Composite School), Kailash, Bichpuri Agra in compliance with the orders, has appeared today and produced the original records. It includes the admission register as well as the school leaving certificate book. We have pursued these records. No doubt, in these records, the detenue's date of birth recorded is 25.11.2010. But, when we inquired of the Headmistress as to the basis on which this date of birth is recorded, she told us candidly that the date of birth is not recorded on the basis of any kind of birth certificate issued by a Municipal corporation or the hospital where the child was born. It is recorded on the basis of information furnished by the parents or the guardian, who brings the child along for admission. Innately, therefore, the date of birth recorded in the school records is not a very dependable index of what the date of birth of the detenue is, in this case.

We, therefore, find these records to be undependable, so far as the detenue's date of birth is concerned. We **reject** the same.

The date of birth of a victim in an offence under the POCSO Act is to be determined in the manner provided under Section 94 (2) of the Juvenile Justice Act, 2015 (hereinafter referred to as "the Act of 2015"). Section 94 (2) of the Act of 2015 reads:-

> **94. Presumption and determination of 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.

A reading of sub-Section (2) of Section 94 of the Act of 2015 would show that there is a preference about evidence as to age carried in various clauses of sub-Section (2) of Section 94. The first preference is to be given to the date of birth certificate from the school or the matriculation or equivalent certificate from the Board concerned. It is in the absence of this class of evidence about the date of birth that a birth certificate given by a corporation of a municipal authority or a *panchayat* is relevant to determine a victim's age. If the second class of documents/evidence is not available, the age has to be determined by a medical age determination test done under orders of the Child Welfare Committee or the Board. For the purpose of doing a medical determination of age, an ossification test or any other latest medical age determination test has to be followed.

Now, in this case, what we find is that the date of birth recorded, in whatever kind of records from the school, have been produced before us, is not at all a dependable document regarding the detenue's age. The reason is that it is recorded on the basis of word of mouth that fell from the guardian or the detenue's parents, when she was admitted to Class II in the School. It is not backed by any documentary evidence such as a birth certificate from the hospital or a birth certificate from the corporation or municipality. There is, decidedly, no evidence covered by Clause (ii) of Sub Section (2) of Section 94 of the Act, 2015 forthcoming in this case, about which there is no cavil. This leaves the Court with no

option but to ascertain the detenue's age, by falling back on a medical determination of age done for the prosecutrix.

A supplementary affidavit has been filed by the petitioner, annexing therewith copy of opinion of the Medical Board, comprising four doctors and countersigned by the Chief Medical Officer, Agra. The doctors, who have evaluated the detenue for her age, included a Radiolagist, an Orthopedic Surgeon, a Deputy Chief Medical Officer and a Dental Surgeon. They have estimated the detenue on the basis of an ossification test to be aged about 19 years. With the usual variation of the age that is to be inferred in the case of medical opinion, there could be a variation of two years on either side. Since the variation is to be taken on that side, which exculpates, the age would firmly place the petitioner on the right side of the majority.

There is another aspect of the matter which needs to be noticed. So far as the determination of age under Section 94 (2) of the Act of 2015 is concerned, the date of birth certificate envisaged under Section 94 (2) (i) of the Act of 2015 is not just a transfer certificate or school leaving certificate or the admission register. These documents do not qualify as the 'date of birth certificate' from the school or matriculation or equivalent certificate. In the absence of a proper date of birth certificate issued by the School or the Board, where the victim or the detenue has passed a graduating examination, a transfer certificate or school leaving certificate or an admission register entry cannot be considered to be a proof of the victim/detenue's age.

In the view that we take, we are supported by the authority of the Supreme Court in **P. Yuvaprakash v. State Rep. By Inspector of Police, 2023 SCC OnLine SC 846**. In **P. Yuvaprakash** *(supra),* it has been held :

> **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 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.

18. Reverting to the facts of this case, the headmaster of M's School, CW-1, was summoned by the court and produced a Transfer Certificate (Ex.C-1). This witness produced a Transfer Certificate Register containing M's name. He deposed that she had studied in the school for one year, i.e., 2009-2010 and that the date of birth was based on the basis of the record sheet given by the school where she studied in the 7th standard. DW-2 TMT Poongothoi, Headmaster of Chinnasoalipalayam Panchayat School, answered the summons served by the court and deposed that ‘M’ had joined her school with effect from 03.04.2002 and that her date of birth was recorded as 11.07.1997. She admitted that though the date of birth was based on the birth certificate, it would normally be recorded on the basis of horoscope. She conceded to no knowledge about the basis on which the document pertaining to the date of birth was recorded. It is stated earlier on the same issue, i.e., the date of birth, Thiru Prakasam, DW-3 stated that the birth register pertaining to the year 1997 was not available in the record room of his office.

19. It is clear from the above narrative that none of the documents produced during the trial answered the description of “*the date of birth certificate from the school*” or “*the matriculation or equivalent certificate*” from the concerned examination board or certificate by a corporation, municipal authority or a Panchayat. In these circumstances, it was incumbent for the prosecution to prove through acceptable medical tests/examination that the victim's age was below 18 years as per Section 94(2)(iii) of the JJ Act. PW-9, Dr. Thenmozhi, Chief Civil Doctor and Radiologist at the General Hospital at Vellore, produced the X-ray reports and deposed

> that in terms of the examination of M, a certificate was issued stating "*that the age of the said girl would be more than 18 years and less than 20 years*". In the cross-examination, she admitted that M's age could be taken as 19 years. However, the High Court rejected this evidence, saying that "*when the precise date of birth is available from out of the school records, the approximate age estimated by the medical expert cannot be the determining factor*". This finding is, in this court's considered view, incorrect and erroneous. As held earlier, the documents produced, i.e., a transfer certificate and extracts of the admission register, are not what Section 94(2)(i) mandates; nor are they in accord with Section 94(2)(ii) because DW-1 clearly deposed that there were no records relating to the birth of the victim, M. In these circumstances, the only piece of evidence, accorded with Section 94 of the JJ Act was the medical *ossification test*, based on several X-Rays of the victim, and on the basis of which PW-9 made her statement. She explained the details regarding examination of the victim's bones, stage of their development and opined that she was between 18-20 years; in cross-examination she said that the age might be 19 years. Given all these circumstances, this court is of the opinion that the result of the ossification or bone test was the most authentic evidence, corroborated by the examining doctor, PW-9.

In the totality of circumstances, we find this is a case where we cannot rely on sundry school records that have been produced before us and would have to accept the medical opinion regarding the detenue's age expressed by the Medical Board under the CMO's Certification at Agra *vide* his certificate date 21.08.2025. This certificate, incidentally, has been annexed to the return filed on behalf of the Investigating Officer as well. There is no cavil about its authenticity.

In the circumstances, we hold that the detenue is a major aged 18 years or more.

The detenue is before us, and we proceed to ascertain her wish about the matter where she wants to go or stay. Accordingly, we record her statement as follows :

> प्रश्न - आपका नाम?
>
> उत्तर - जूली
>
> प्रश्न - आपके पिताजी का नाम?

उत्तर - मदन गिरी

प्रश्न - आपकी आयु?

उत्तर - 18 साल 6 महीना

प्रश्न - आप कहा से आयी है?

उत्तर - बालिका बाल गृह से

प्रश्न - आप घर जाना चाहती है अपने पिताजी के पास?

उत्तर - नहीं

प्रश्न - आप कहाँ जाना चाहती है?

उत्तर - हस्बैंड के साथ

प्रश्न - आपके हस्बैंड का क्या नाम है?

उत्तर - हर्ष गोस्वामी

The detenue has clearly stated that she does not want to go to her parents, but wishes to go and stay with her husband, Harsh Goshwami. The detenue is apparently a major and there is absolutely no justification in detaining her in a protection home, as done by the Child Welfare Committee in this case pending investigating in the crime registered at the instance of the detenue's father.

In the circumstances, this habeas corpus petition **succeeds** and stands **allowed**. The *rule nisi* is made **absolute**. The detenue, Smt. Joolee wife of Harsh Goswami, daughter of Madan Giri, who is present in Court, is ordered to be set at liberty forthwith. She is free to go wherever she likes and stay with whomsoever she wants, including her husband.

The Headmistress, Higher Primary School (Composite School), Kailash, Bichpuri Agra, who had appeared in compliance with the order is **exempted** from all future appearance. The policemen, who have brought the detenue in Court, are discharged of their assignment. They will report back to the respective headquarters.

Let the records produced by the Headmistress be returned to her forthwith.

(Sanjiv Kumar,J.) (J.J. Munir,J.)

November 7, 2025
Amit

Digitally signed by :-
AMIT KUMAR
High Court of Judicature at Allahabad