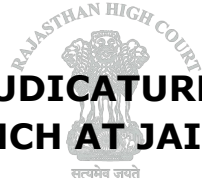




**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No.5961/2024

Chetan Mali S/o Shri Ramswaroop Mali, Aged About 31 Years,  
R/o Village Chhan, P.S. Khandar, District Sawai Madhopur (Raj).

----Petitioner

Versus

1. State Of Rajasthan through P.P.
2. Victim

----Respondents



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For Petitioner(s) : Mr. Amit Jindal  
Ms. Vijay Luxmi Gautam

For Respondent(s) : Mr. Jitendra Singh Rathore, PP  
Mr. Gaurav Gupta, Asstt. GA with  
Mr. Sapan Soni

Mr. Vishnu Bohra

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**JUSTICE ANOOP KUMAR DHAND**

**Order**

**20/05/2026**

1. By way of filing the instant criminal misc. petition, a prayer has been made to quash the impugned order dated 29.07.2024, passed by Special Judge, POSCO Act, Sawai Madhopur by which the application submitted by the petitioner under Section 311 read with Section 91 Cr.P.C. has been rejected.

2. Learned counsel for the petitioner submits that the petitioner is facing trial for the offences under Sections 366, 363, 376, 344 and 346 IPC and Sections 3(2)(v) of SC/ST Act, 1989 and Section 5/6 of the POCSO Act, 2012. Learned counsel submits that as per the case of the prosecution, relying upon the admission form of the prosecutrix for Class-IV, the date of birth of the prosecutrix "M" has been submitted as 10.02.2001. He submits that as per



the mark-sheet for Class-X, issued by the Board of Secondary Education, the date of birth of the prosecutrix is 10.02.2000, whereas according to the prosecutrix, she has studied in Upper Primary Aadarsh Vidhya Mandir, Chhan where her date of birth was mentioned as 05.07.1999. He submits that the prosecutrix was a major, i.e. she was 19 years of age, on the date of alleged occurrence i.e. 13.11.2018.



3. Learned counsel for the petitioner further submits that when this fact with regard to the date of birth of the prosecutrix being 05.07.1999 according to Class-I school record came into notice of the petitioner, the instant application has been submitted with a request to summon the Principal of the said school i.e. Chiranjilal S/o Kaduram along-with the record of Class-I of the prosecutrix. Learned counsel submits that the said application submitted by the petitioner has been rejected on a technical count that affidavit of other persons was not submitted and the application was submitted at the stage of final arguments. He submits that summoning of the aforesaid witness with the aforesaid document is essential for just decision of the case, hence, interference of this Court is warranted.

4. Learned counsel for the petitioner has placed reliance upon the judgment passed by the Hon'ble Apex Court in the case of **Natasha Singh Vs. Central Bureau of Investigation (State)** reported in **(2013) 5 SCC 741**, wherein it has been held in Para 8 as under:-

"8. Section 311 CrPC empowers the court to summon a material witness, or to examine a person present at "any stage" of "any enquiry", or "trial", or



"any other proceedings" under CrPC, or to summon any person as a witness, or to recall and re-examine any person who has already been examined if his evidence appears to it, to be essential to the arrival of a just decision of the case. Undoubtedly, CrPC has conferred a very wide discretionary power upon the court in this respect, but such a discretion is to be exercised judiciously and not arbitrarily. The power of the court in this context is very wide, and in exercise of the same, it may summon any person as a witness at any stage of the trial, or other proceedings. The court is competent to exercise such power even suo motu if no such application has been filed by either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case."

5. *Per contra*, learned Public Prosecutor as well as learned counsel appearing for the complainant opposed the prayer and submitted that the petitioner has submitted the instant application at the fag end of the trial when the case was posted for final arguments just to delay the disposal of the matter. They further submitted that no relevant information has been furnished by the petitioner to show under what circumstances he got such information with regard to the aforesaid date of birth of the prosecutrix in her Class-I school record.

6. They submitted that during course of the investigation, the Police has collected the school admission form and a certificate issued by Sharma Shikshan Sansthan Secondary School, Chhan District Sawai Madhopur pertaining to Class-IV record of the prosecutrix, which reveals that the date of birth of the prosecutrix is 10.02.2001. Hence, under these circumstances, the Court below has not committed any error in passing the order impugned, which





warrants any interference of this Court and the instant misc. petition is liable to be rejected.

7. Heard and considered the submissions made at the Bar and perused the material available on record.

8. Perusal of the record indicates that the petitioner is facing trial for the above stated offences before the Court of Special Judge, POCSO Act at Sawai Madhopur. As per the case of the prosecution, the date of birth of the prosecutrix is 10.02.2001, according to her Class-IV school record.

9. This fact has been seriously disputed by the petitioner by way of placing on record the copy of the Secondary School Certificate issued by the Board of Secondary Education, wherein the date of birth of the prosecutrix is mentioned as 10.02.2000.

10. An application was submitted by the petitioner before the Trial Court, wherein it was averred that the prosecutrix has studied at Upper Primary Aadarsh Vidhya Mandir, Chhan and when she took admission in the aforesaid school in Class-I, her date of birth was mentioned as 05.07.1999.

11. Section 94 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short "the Act of 2015") deals with the presumption and determination of age and as per sub-section (2) of Section 94 of the Act of 2015 when there is reasonable grounds for doubt regarding age determination, the same is required to be determined on the basis of date of birth certificate from the school or the matriculation or the equivalent certificate from the concerned examination Board, if available.

12. In the instant case, two different documents are available on the record i.e. admission form of the prosecutrix for Class-IV,





which reveals the date of birth of the prosecutrix is 10.02.2001, while as per the Secondary School Certificate issued by the Board of Secondary Education, her date of birth is 10.02.2000.

13. Whereas, it is the case of the petitioner that the correct date of birth of the petitioner is 05.07.1999, and the same is alleged to be mentioned in the prosecutrix's school record from Class-I Upper Primary Aadarsh Vidhya Mandir, Chhan. Therefore, an application was submitted by the petitioner under Section 311 read with Section 91 Cr.P.C. for summoning the aforesaid record along-with the Principal of the said school i.e. Chiranjilal S/o Kaduram, however, the said application has been rejected by the court below by passing the impugned order.

14. The purpose of Section 311 Cr.P.C. is not to favour or disfavour the prosecution or the accused, but naturally elicit and unfold the truth in order to exercise just decision in a case.

15. In the considered opinion of this Court, the instant case pertains to the alleged offence committed with a minor, so in order to bring the correct facts with regard to the actual date of birth of the prosecutrix, it is essential to summon prosecutrix's school record from Upper Primary Aadarsh Vidhya Mandir, Chhan pertaining to her admission in Class-I.

16. Considering the above, the instant criminal misc. petition stands allowed. The impugned order dated 29.07.2024 passed by Special Judge, POSCO Act, 2012, Sawai Madhopur stands quashed and set-aside. The Trial Court is directed to summon the Principal Chiranjilal S/o Kaduram Upper Primary Aadarsh Vidhya Mandir, Chhan i.e. along-with the prosecutrix's Class-I school record.





17. The Trial Court is directed to make all possible endeavours for summoning the aforesaid record and witness and also record his statements expeditiously, as early as possible. The Trial Court is further directed not to entertain any unnecessary or unwarranted request made by either side to defer the matter from one date to another and make all possible endeavours to conclude the trial expeditiously, as early as possible.

18. Stay application as well as all pending applications stand disposed of.

(ANOOP KUMAR DHAND),J

20/Karan

