

N.D.P.S. Case No. 35/2026

Order No. 5, dated 21.04.2026.

Today is fixed for production of the accused person and hearing on submission of the Defence with respect to the claim of the petitioner being a child and to remand the petitioner in protective custody from the BCCH, Murshidabad where he is in judicial custody as of now.

One person namely Rahul Sk., father of the said petitioner is present and files hazira.

The petitioner Romjan Sk. has not been physically produced today before this court due to ensuing Assembly Election and a message is received from the Superintendent of Police, Murshidabad PD.

Ld. Special P.P. and Ld. Defence Counsel both are present.

Ld. Counsel for the petitioner submits that a report was called for from the I.O. of this case regarding determination of juvenility of the petitioner vide order No. 3 dated 08.04.2026. However the I.O. has not submitted the report since he is badly engaged in the ensuing General Assembly Election. It is further submitted that during the pendency of enquiry regarding determination of the age/juvenility of the petitioner, the petitioner may kindly be placed in a place of safety in the intervening period by passing an interim order to that effect. In support of his contention he has submitted the original birth certificate of the petitioner. Ld. Defence Counsel has also submitted a certificate dated 07.04.2026 issued by Lalgola M. N. Academy Primary School and Lalgola Mahesh Narayan Academy High School regarding age of the petitioner. In this background, he has prayed before this court to pass an interim order allowing protective custody of the petitioner so that the petitioner may be placed in a place of safety in the intervening period till the disposal of the instant application of this case.

Per contra, Ld. Special Public Prosecutor has raised objection. He has contended that the I.O. of this case is badly engaged in law and order duty in the ensuing Assembly Election and due to that reason the I.O. could not comply the order of this Court dated 08.04.2026 by which this court has called for a report from the I.O. regarding the question of juvenility of the petitioner. His further contention is that allegation against the petitioner is that the petitioner has committed an offence u/s 21(c) of the NDPS Act which falls within the purview of heinous offence as defined u/s 2(33) of the JJ Act, 2015. It is further submitted that even assuming without conceding that the petitioner is below 18 years of age, the document relied by the petitioner shows that the age of the petitioner is above 16 years and below 18 years. His further contention is that taking into consideration nature of offence committed by the petitioner and his age as claimed, this court being the Special Court under Child's Right Act is fully empowered for trial of this case and there is no merit in the application and the argument of Ld. Advocate for the petitioner wherein he has contended for sending the instant case to JJB on the ground that the accused person was above 16 years and below 18 years. In this

background, he seeks time so that the I.O. of this case can submit his report on the next date fixed positively. However he has raised no objection if this court would pass any interim order during the intervening period till the disposal of the instant application.

Heard the rival submissions at the Bar.

Perused the case record including the CD.

I have also perused the documents submitted on behalf of the petitioner regarding his age, i.e. the original birth certificate of the petitioner, certificate dated 07.04.2026 issued by Lalgola M. N. Academy Primary School and the Lalgola Mahesh Narayan Academy High School and it transpires that the age of the petitioner recorded in those documents is 25.09.2008. I have also perused the written complaint/FIR in the instant case and it transpires that the date of offence committed by the petitioner is 29.03.2026. Apparently the age of the petitioner is below the age of 18 years. I have also taken into consideration the submission as advanced by the Ld. Special Public Prosecutor regarding the non-compliance of order dated 08.04.2026 passed by this court and his absence today due to his engagement in law and order duty in the ensuing Assembly Election.

In this connection, I have also perused the relevant provisions as contained u/S 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 which reads as under :

“ 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) XXXXXXXXXXXX

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

From bare perusal of the provisions of Section 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015 it is clear that till this court shall make an enquiry to determine the age of the petitioner, the petitioner may be kept in protective custody and the petitioner may be placed in a place of safety till the disposal of the instant application moved on behalf of the petitioner.

In light of the above discussion, I am of the opinion that the petitioner may be kept in protective custody till the disposal of the instant application. Accordingly, it is hereby directed that the petitioner Romjan Sk. be kept in a protective custody/place of safety, namely Ananda Ashram Observational Home for Boys, Berhampore, Murshidabad while the petitioner's claim of being a child is enquired into and finally disposed of.

Superintendent, BCCH is directed to place the custody of the petitioner Romjan Sk. to the Superintendent, Ananda Ashram Observational Home for Boys, Berhampore, Murshidabad immediately.

The instant application is disposed of in above terms.

Return CD.

Fix 05.05.2026 for production, final report and final hearing of application dt. 08.04.2026 moved by the petitioner.

Let a copy of this order be sent to the Superintendent, BCCH and Superintendent, Ananda Ashram Observational Home for Boys, Berhampore, Murshidabad for information and necessary compliance.

Dictated & corrected by me,

Judge.
(J.O. Code WB 01303)

ADJ, 2nd Court, Cum,
Judge, Special Court, Under N.D.P.S. Act,
Berhampore, Murshidabad.
(J.O. Code WB 01303)