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

+ **CRL.REV.P. 1011/2024**

**VIVEK KUMAR GAUTAM**

.....Petitioner

Through: Mr. Nishant Nain, Ms. Charu Sharma,  
Mr. Akash Mishra and Ms. Nisha  
Singh, Advs.

versus

**STATE OF NCT OF DELHI**

.....Respondent

Through: Ms. Shubhi Gupta, APP for the State  
with SI Pawan, P.S. North, Rohini.

**CORAM:**

**HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI**

**ORDER**

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**08.08.2024**

**CRL.M.A. 23551/2024 (exemption)**

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed-of.

**CRL.M.A. 23552/2024 (condonation of delay)**

By way of the present application filed under section 5 of the Limitation Act 1963, the petitioner seeks condonation of 589 days' delay in *filing* the petition.

2. Upon being queried about the reason for the delay in filing the present petition, Mr. Nishant Nain, learned counsel appearing for the petitioner submits, that the petitioner had filed a revision petition before the learned Sessions Judge, which petition had initially been



entertained by that court, but it subsequently transpired that in ***Master X th. Shah Wali vs. State of J&K and Anr.***<sup>1</sup> the High Court of Jammu & Kashmir and Ladakh had taken the view that the revisional power under section 102 of the Juvenile Justice (Care and Protection of Children) Act 2015 ('JJ Act') is available only with the High Court; and by reason thereof *vide* order dated 24.04.2024, the revision petition filed by the petitioner before the learned Sessions Judge was disposed-of as withdrawn, with liberty to approach the appropriate forum, whereupon the present revision petition came to be filed.

3. For the reasons stated in the application, which is duly supported by an affidavit, the application is allowed.
4. Delay in *filing* the petition is condoned.
5. The petition is taken on Board.
6. The application stands disposed-of.

**CRL.REV.P. 1011/2024**

7. By way of the present petition filed under section 102 of the JJ Act, the petitioner, who is the complainant in case FIR No. 0251/2020 dated 09.05.2020 registered under sections 188/323/341/379/34 of the Indian Penal Code 1860 at P.S.: Rohini, Delhi ('subject FIR'), impugns order dated 27.09.2022 passed by the learned Metropolitan Magistrate, Rohini District Courts, Delhi whereby the learned Magistrate has determined the date of birth of accused 'A' @ 'M' in the subject FIR as 01.11.2003; and has accordingly declared her as a child in conflict with the law ('CCL').

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<sup>1</sup> Judgement dated 10.03.2023 in Crl.A(S) No. 2/2022



8. Mr. Nain submits that in an earlier order dated 01.09.2021, the learned Magistrate had determined the date of birth of the accused, which was set-aside *vide* order dated 08.06.2022 made by the learned Additional Sessions Judge, Rohini District Courts, Delhi ('Sessions Judge') in criminal revision petition bearing Cr. Rev. No. 45/2022; and the learned Sessions Judge had remanded the matter back to the learned Magistrate directing her to decide the claim of juvenility after holding a proper inquiry.
9. Counsel informs the court, that in the said earlier round of litigation, the learned Magistrate had proceeded to verify the school records in respect of the accused based on a report of an Investigating Officer *in a different case*; and accordingly, the learned Sessions Judge had directed the learned Magistrate to decide the claim of juvenility after holding a proper inquiry.
10. Counsel submits, that pursuant to such remand, *vide* order dated 27.09.2022, the learned Magistrate has again determined the accused to be a CCL, based on the mere say-so of the I.O., and based on the I.O.'s submission that he has verified the age of the accused from the records of her previous two schools; and that as per the records of both those schools, the date of birth of the accused is 01.11.2003.
11. Attention in this behalf is drawn to the following extracts of the impugned order, which read as follows :

*“Section 9(2) of the J.J. Act provides that the court shall make enquiry, taking such evidence as may be necessary to determine the age of such person and then the Court shall record the findings on the matter stating the age of the person. Section 94 of the J.J. Act states the evidence which has to be taken for*



*determination of age. The said section states that the process of age determination shall be undertaken by seeking evidence on record, firstly, the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination board if available. It is only in the absence of the aforementioned proof that the other modes of age determination shall be looked into by the Court.*

*“In the present matter, the IO has duly verified the age of A @ M from her previous schools and as per the record of both her schools, the date of birth of A @ M is 01.11.3003.*

*“No other evidence has been filed on record on the basis of which the claim of the juvenility be determined in the present matter. Court notice was also issued to the complainant in the present matter, however, the notice was received back unserved with the report that the complainant does not reside at the stated premises any more. In the absence of any other contact details/address of the complainant available on record, no other efforts can be made to secure the presence of the complainant in the present case to hear his side of the story and to give an opportunity to him to place on record any documents available with him.*

*“In view of the said observations, the Court is of the considered opinion that date of birth of the accused A @ M is 01.11.2003 as per school record and the date of offence in the present case being 08.05.2020, it is clear that accused A @ M was a child in conflict with law on the date of the alleged offence thus the proceedings qua CCL A @ M will be henceforth proceeded by the J.J. Board.”*

*(emphasis supplied)*

12. Counsel submits, that the requirement of section 94(2) of the JJ Act is that the Magistrate must undertake the process of age determination by seeking evidence, *inter-alia* by way of the date of birth certificate from the school *first attended* by an accused.



13. Counsel submits that in the present case however, the two schools, the records of which the I.O. claims to have verified, were the schools in which the accused is stated to have attended classes IV and V; and there is nothing on record to show that either of those schools was the school that she *first attended*.
14. Furthermore, counsel submits, that the petitioner is seized of material including a marriage certificate relating to the accused; a custody warrant; a statement of the mother of the accused; as well as an order whereby the accused had sought anticipatory bail, all of which show that she was 'major' as of the date of commission of the alleged offence on 08.05.2020, pursuant to which the subject FIR has come to be registered.
15. Mr. Nain submits however, that since the petitioner was himself in judicial custody at the relevant time, he was unable to participate in the age determination process conducted by the learned Magistrate.
16. Counsel also submits, that section 94(2) of the JJ Act requires a Magistrate to requisition the records of the school first attended and/or call an authorised person from such school, to verify the date of birth; and a Magistrate cannot go merely on the *ipse dixit* of an I.O.
17. It is accordingly argued, that in view of the material available with the petitioner, the age determination inquiry undertaken by the learned Magistrate is flawed.
18. In the above view of the matter, issue notice.
19. Ms. Shubhi Gupta, learned APP appears for the State on advance copy; accepts notice; and seeks time to file status report.



20. Let status report be filed within 06 weeks; with copy to the opposing counsel.
21. Let intimation be sent by the I.O. to the accused in the subject FIR, informing her that she is entitled to be heard in these proceedings, for which she may remain present or be represented in court on the next date.
22. Re-notify on 25<sup>th</sup> November 2024.
23. In the meantime, let the Trial Court record be also requisitioned in electronic form. Let copies of the same be furnished to learned counsel for the parties.

**ANUP JAIRAM BHAMBHANI, J**

**AUGUST 8, 2024/V.Rawat**