

ORDER

While enclosing herewith a pdf copy of Judgment/Order dated 19.01.2026 passed by Hon'ble High Court of Judicature at Allahabad in Criminal Misc. Application u/s 528 BNSS No. 49660 of 2025 titled **Maksudan Gond @ Kahsudan Gond Vs. State of U.P.**, through Principal Secretary (Home), Civil Secretariate, Lucknow and judgment/order dated 20.09.2023 passed by Division Bench of Hon'ble High Court (at Lucknow) in **Criminal Appeal No. 921 of 1981, Ali Hasan Vs. State of U.P.** to strictly comply with the mandate of Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 vide Hon'ble High Court's Letter No. 10866/Admin. G-II Dated 19.08.2026 and instructions to communicate the directions of Order/judgement dated 19.01.2026 and 20.09.2023 passed by the Hon'ble High Court in the aforementioned cases to all the Judicial Officers working under supervision and Administrative control of undersigned for information and strict compliance has been provided.

II. In compliance of Hon'ble Court's above directions, following order is being passed with immediate effect:

- (a) The System Officer is directed to provide a soft/pdf copy of **Order/judgment dated 19.01.2026 and 20.09.2023** passed by the **Hon'ble High Court** in the aforementioned case as well as Hon'ble High Court's Letter No. 10866/Admin G-II Dated 19.08.2026 to all the Judicial Officers working under control of undersigned for information & strict compliance in letter & spirit.
- (b) A hard-copy of above mentioned Order dated 19.01.2026 and 20.09.2023 passed by the **Hon'ble High Court** in the aforementioned case as well as **Hon'ble High Court's Letter No. 10866/Admin G-II Dated 19.08.2026** be also circulated among all the Judicial Officers working under control of undersigned for information & strict compliance in letter & spirit.
- (c) In compliance of order/judgement dated 12.08.2025 passed by Hon'ble High Court in Crl. Misc. Application u/s 528 BNSS No. 6400 of 2025 titled Smt. Bacchi Devi Vs State of UP And Another, a meeting of all Judicial Officers of the Judgeship is convened on **21.08.2026 at 4.35 PM**, in the **Meeting Hall**, situated at the II-Floor of Newly constructed 24-Court Room Building of District Court Prayagraj for discussion and deliberation regarding compliance of **order/Judgement dated 19.01.2026** passed by **Hon'ble High Court of Judicature at Allahabad in Criminal Misc. Application u/s 528 BNSS No. 49660 of 2025 titled Maksudan Gond @ Kahsudan Gond Vs. State of U.P.**, through Principal Secretary (Home), Civil Secretariate, Lucknow and **judgment/order dated 20.09.2023** passed by Division Bench of Hon'ble High Court (at Lucknow) in **Criminal Appeal No. 921 of 1981, Ali Hasan Vs. State of U.P.** All the Judicial Officers of the Judgeship are directed to participate in the said meeting.

Inform all concerned for strict compliance.

Dated: August ,2026


(Divaker Dwivedi)
Incharge District Judge
Prayagraj.



Through e-mail

From,

Registrar General
High Court of Judicature at,
Allahabad

To,

All the District and Sessions Judges/OSD
All the Principal Judges, Family Courts
All the Presiding Officers of Commercial Courts, MACTs & LARRAs
State of Uttar Pradesh

Letter No. **10866** /Admin G-II Dated **19/08/2026**

Sub: Regarding strict compliance with the mandate of Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015

Madam/Sir,

I am directed by Hon'ble Court to circulate the judgment/ order dated **19.01.2026** passed by this Hon'ble Court in **Criminal Misc. Application u/s 528 BNSS No. 49660 of 2025, Maksudan Gond @ Kahsudan Gond Vs. State of U.P.** though Principal Secretary (Home), Civil Secretariate, Lucknow and judgment/ order dated **20.09.2023** passed by Division Bench of this Court (at Lucknow) in **Criminal Appeal No. 921 of 1981, Ali Hasan Vs State of U.P.** to **strictly comply with the mandate of Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.**

You are, therefore, requested to communicate the directions issued by Hon'ble Court to all the Judicial Officers of your judgeship for their information and strict compliance.

Encl. As above

With Regards,

Yours faithfully,


Registrar General



2026:AHC:18310

**HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 49660 of 2025**

Maksudan Gond @ Kahsudan Gond

.....Applicant(s)

Versus

State of U.P.

.....Opposite Party(s)

Counsel for Applicant(s)	: Avijit Saxena
Counsel for Opposite Party(s)	: G.A.

Court No. - 79

HON'BLE TEJ PRATAP TIWARI, J.

1. Heard Sri Avijit Saxena, learned counsel for the applicant, learned A.G.A for the State and perused the record.
2. The instant petition has been filed under Section 528 BNSS with a prayer to quash the impugned order dated 03.03.2020 passed by the Additional District & Sessions (F.T.C-I), Deoria, u/s 9(2) of Juvenile Justice Act (Care and Protection of Act), 2015 (hereinafter referred to as 'Act') and the consequential Order dated 30.05.2022 passed by the Juvenile Justice Board, Deoria in S.T. No. 219/2019 arising out of Case Crime No. 135/2019 under Section 498A, 304B IPC and 3/4 DP Act, Police Station Khampar, District Deoria and remand back the matter before learned Additional District & Sessions Judge (F.T.C-I), Deoria.

3. The bone of contention of the present matter is whether the impugned order passed on an application claiming the Juvenility under Section 9(2) of the Act which does not take the claim by conducting an enquiry and recording the positive finding, but instead mechanically refering the matter to the Juvenile Justice Board is lawful or not? As per the contention submitted by the learned counsel for the applicant, the said impugned order, assailed by way of the instant petition is illegal and has been passed without jurisdiction. Section 9 (2) of the Act mandates that where a claim of juvenility is raised before a Court other than Board, the Court "*shall make an enquiry, take such evidence as may necessary....., and shall record the finding in the matter, stating the age of the person as nearly as may be*". The aforesaid legal provisions is imperative and the duty casted upon the Courts by the aforesaid provision of law is mandatory, adjudicatory and non delegable. During the course of the argument, learned counsel for the applicant relied on a **Habeas Corpus Writ Petition No. 497 of 2025 (Pawan Kumar(Corpus) and Another Vs. State of U.P and 4 Ors.)** delivered on 25.09.2025 wherein the Division Bench of this Court held that Section 9 of the Act shows that if a person accused of committing an offence, claims before the Court that he was juvenile on the date of commission of the offence, the Court shall make an enquiry and after taking such evidence as may be necessary, determine the age of the person and shall record a finding on the matter stating the age of the person as nearly as may be. The aforesaid view of the Division Bench of this Court finds support by the decision of the Hon'ble Supreme Court in the case of **Rishipal Singh Solanki Vs. State of U.P. and Ors., 2022 8 SCC 602.**

4. Per contra, learned A.G.A while referring to the provision of the Juvenile Justice Act, 2015 has vehemently opposed the argument rendered by the learned counsel for the applicant and has unshakenly contended that the impugned order is as per law,

therefore, instant application under Section 528 B.N.S.S. is liable to be dismissed.

5. Having heard learned counsel of both the sides, and after perusing the relevant legal provisions as well as the judgments relied upon by the parties, this Court finds that Section 9(2) of the Act imposes a mandatory non delegable duty on the Court to conduct an inquiry, take evidence and record a positive finding on juvenility. Referring such an issue, to the Juvenile Justice Board, looks to be prima facie without jurisdiction as the question of juvenility has not been decided, but has only been referred to the Juvenile Justice Board. During the course of argument, the emphasis of the learned counsel for the applicant, is on the impugned order passed by learned Additional District and Sessions Judge (F.T.C.-I), Deoria dated 03.03.2020 annexed at page 37 of the instant application. The consequential order dated 30.05.2022 passed by Juvenile Justice Board, Deoria is based on the order of the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, which is also under challenge in the instant petition.

6. At the first instance, it would be appropriate to reproduce the provisions of law under which the present criminal misc. application has been preferred i.e **Section 528 BNSS- Saving of inherent powers of High Court.**

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Looking to the facts of present case, reliance be placed on the judgment of the case **Ravindra Alias Loola versus State of U.P., Criminal Appeal No. 3672 of 2016.**

“Even previously this Court has noticed a similar case where after filing of an appeal before this Court, the JJB has entertained an application, without there being any order by the appellate court.

The Supreme Court in Karan @ Fatiya Vs. The State of Madhya Pradesh reported in (2023) 5 SCC 504 while relying upon an earlier judgment in Raju Vs. State of Haryana (2019) 14 SCC 401, has held that where the appellant has not taken the plea of juvenility before trial court and such plea is raised before the High Court, which was rejected. The Supreme Court got an inquiry conducted by the Registrar (Judicial) of the Court who submitted a report, and accordingly the appeal was decided in light of the said report. In Jitendra Singh @ Babboo Singh and others Vs. State of U.P. reported in (2013) 11 SCC 193 while relying upon the earlier judgment in Kalu @ Amit Vs. State of Haryana, the Supreme Court observed that plea of juvenility was raised for the first time, got an inquiry conducted and thereafter proceeded to direct the Board to pass appropriate order under Section 15 of the Juvenile Act. It is also held in this judgment that in all the pending cases including trial, appeal, revision or any other proceedings, the determination of juvenility shall be in terms of Clause (1) of Section 2 of the Act, even if juvenile cases to be so on or before the date of commencement of 2008.”

Further in case of **Satyaveer versus State of U.P., Criminal Appeal No. 2682 of 2016.**

“A reliance is also placed on an order of Supreme Court in S.L.P. (Criminal) No.643 of 2020, decided

on 29.11.2021, in case of Ashok vs. The State of Madhya Pradesh wherein, when an objection was raised before the Supreme Court regarding the juvenility of the appellant, a direction was issued to the Session Court to examine the claim of the said appellant (Ashok) to decide his claim of juvenility in accordance with law and submit a report to the Supreme Court within time specified. In this order also, the Supreme Court has referred to the provisions of Section 7A (1) of Juvenile Justice (Care and Protection of Children) Act, 2000 with observation that claim of the juvenility can be raised before any Court, at any stage, even after final disposal of the case. It is thus clear from the order that the Supreme Court while entertaining the S.L.P. has itself directed the Court of Sessions to ascertain the age of the appellant. In the instant case also the Juvenile Justice Board, Hathras without there being any such order passed by the Appellate Court has assumed the jurisdiction after conclusion of trial and has passed an order without even issuing notice to the informant/victim. This case on was listed alongwith Criminal Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP). A copy of this order also served upon Director J.T.R.I., Lucknow in terms of the previous order dated 5th April, 2024. Considering that it is duty of concerned Administrative Committee to keep a check on the working of Juvenile Justice Board by randomly calling and scrutinizing their judgements, in absence of same, in additionally, we direct the Registrar General of this Court to circulate both the orders dated 5th April, 2024, passed in Criminal

Appeal No.3672 of 2016 (Ravindra Alias Loola vs. State of UP) as well as present order passed in present case to all the Sessions Judges in State of U.P. on e-mail, with a direction that being the Chairman of the Legal Services Authority of their respective districts, they will sensitize all the members of the Juvenile Justice Board, specially the Principal Magistrate of the Board about the procedure to be followed in cases where a trial has already been concluded; the trial Court has become Functus Officio; an appeal is already preferred by the accused person and without filing an application before the appellate Court to declare him juvenile, which may be decided in accordance with law, if, such application is independently filed before the Juvenile Justice Board at a subsequent stage, the Juvenile Justice Board will assume the jurisdiction only on direction or order passed by Appellate Court and that too by following the procedure under the Act and by giving notice to complainant/informant. The needful be done within two days and the report of all the concerned District and Session Judges be received in this regard by e-mail before 15th May, 2024.”

7. In view of the foregoing discussions, the legal provisions, and the authoritative pronouncements referred to hereinabove, this Court is of the considered opinion that the order dated 03.03.2020, impugned in the present proceedings and passed by the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, purportedly in exercise of powers under Section 9(2) of the Act, suffers from patent illegality and is not sustainable in the eyes of law. Consequently, the impugned order is liable to be set aside, and the instant petition stands to be allowed.

8. In the light of above, the matter is accordingly remitted to the learned Additional District and Sessions Judge (F.T.C.-I), Deoria, to provide a fresh opportunity of hearing to the parties and pass appropriate orders in accordance with law, considering the aspects dealt hereinabove.

9. Taking note of the fact, that mandate of Section 9(2) of the Juvenile Justice Act, 2015, is not being followed across the State, therefore, it seems expedient in the interest of justice to ask the learned Registrar General of this Court, to place the matter before the appropriate body, and after getting necessary approval, may issue a circular to all the learned District & Sessions Judges across the State of U.P directing all concerned to act in compliance of the provisions of law, discussed above.

10. Accordingly, with these observations, the impugned order dated 03.03.2020 passed by the Additional District & Sessions (F.T.C-I), Deoria, u/s 9(2) of Juvenile Justice Act (Care and Protection of Act), 2015 and the consequential Order dated 30.05.2022 passed by the Juvenile Justice Board, Deoria in the aforesaid case are hereby set aside and the instant petition is **allowed**.

(Tej Pratap Tiwari,J.)

January 19, 2026
PS

Interlocutory AFR

**High Court of Judicature at Allahabad
(Lucknow)**

Court No. - 9

Case :- CRIMINAL APPEAL No. - 921 of 1981

Appellant :- Ali Hasan

Respondent :- State of U.P.

Counsel for Appellant :- S.C. Shukla, Arshad Ahsan

**Siddiqui, Arun Sinha, G. Saran, S.B. Mathur, V. Sharotria, Vivek
Tripathi**

**Counsel for Respondent :- Government Advocate, Anurag Singh
Chauhan, Arun Kumar Singh, N. Mohan**

Hon'ble Rajan Roy, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Per: Rajan Roy, J.)

(C.M. Application No.46349 of 2017)

1. Heard.

2. This is an application for declaring applicant/ appellant no.6, namely, Abdul Wahid @ Channan as juvenile. Merely because, the application is said to have been moved under Section 7 of the Juvenile Justice Act (Care and Protection of Children) Act, 2000 by itself cannot be a ground of rejecting the application as mentioning of a wrong provision by itself will not be fatal. The application is accordingly treated as one

under Section 9(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. We have perused Section 9 of the Juvenile Justice 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) 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."

4. We have also perused Section 25 of the Juvenile Justice Act, 2015 which reads as under:-

"Section 25. Special provision in respect of pending cases.

Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

5. As regards Section 25 of the Act, 2015, on the date of coming into force of the Act i.e. on 15.01.2016, no claim of juvenility by applicant/ appellant no.6, namely, Abdul Wahid @ Channan was pending before the Board or this Court.

6. When we peruse Section (9) of the Act, 2015, we find, firstly, that as per sub-Section (1) of Section 9 of the said Act, when a Magistrate, not empowered to exercise the powers of the Board under the said 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. In the case at hand, sub-Section (1) of Section 9 of the said Act does not apply as we are seized with the matter at appellate stage under Section 374(2) Cr.P.C.

7. In this context, sub-Section (2) of Section 9 of the said Act is relevant which provides that 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. The word 'court' used in sub-Section (2) of Section 9 has to be understood and applied as a reference to a court having criminal jurisdiction where proceedings are pending as in this case before us under Section 374 (2) Cr.P.C. arising out of judgment of the trial court. The word 'court' used therein cannot be read and understood in the light of the definition of the term 'court' given in Section 2 (23) of the Juvenile Justice Act, 2015, according to which, the said term means a civil court, which has jurisdiction in matters of adoption and guardianship and may include the District Court, Family Court and City Civil Courts. The reason is the opening sentence of Section 2 which says - **"In this Act, unless the context otherwise requires"** and thereafter, the definitions including clause-(23) of Section 2 have been given. Section 9 is a context different from what is referred in clause -(23) of Section 2 as offences are not tried by civil court which has jurisdiction in matters of adoption and guardianship. Therefore, the word 'court' used in sub-Section (2) of Section 9 has necessarily to be understood as a court having criminal jurisdiction to try such an offence and it cannot possibly mean a civil court which has jurisdiction in matters of adoption and guardianship as defined under Section 2(23) of the Juvenile Justice Act, 2015 as the question of an offence being tried is not the subject matter of adoption or guardianship.

8. We further notice that as per sub-Section (2) of Section 9, **reference is to a court other than a Board** where the claim of juvenility is raised or the said court forms an opinion as referred therein that the person was a child on the date of

commission of the offence. Therefore, it necessarily refers to a court other than a board. Board is defined in the Juvenile Justice Act, 2015 as Juvenile Justice Board constituted under Section 4. Thus, the scheme of Section 9 is very clear. Under sub-Section (1) thereof, it is **Board** which is empowered to undertake proceedings with reference to a juvenile. However, under sub-Section (2), it is the **court other than a Board** which has to take a call so far as juvenility of the offender is concerned.

9. We may in this context consider Section 8 of the Act 2015 relating to powers, functions and responsibilities of the Board. The said provision reads as under:

"8. Powers, functions and responsibilities of the Board. - (1) Notwithstanding anything contained in any other law for the time being in force but save as otherwise expressly provided in this Act, the Board constituted for any district shall have the power to deal exclusively with all the proceedings under this Act, relating to children in conflict with law, in the area of jurisdiction of such Board.

(2) The powers conferred on the Board by or under this Act may also be exercised by the High Court and the Children's Court, when the proceedings come before them under section 19 or in appeal, revision or otherwise.

(3) The functions and responsibilities of the Board shall include--

(a) ensuring the informed participation of the child and the parent or guardian, in every step of the process;

(b) ensuring that the child's rights are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation;

(c) ensuring availability of legal aid for the child through the legal services institutions;

(d) wherever necessary the Board shall provide an interpreter or translator, having such qualifications, experience, and on payment of such fees as may be prescribed, to the child if he fails to understand the language used in the proceedings;

(e) directing the Probation Officer, or in case a Probation Officer is not available to the Child Welfare Officer or a social worker, to undertake a social investigation into the case and submit a social

investigation report within a period of fifteen days from the date of first production before the Board to ascertain the circumstances in which the alleged offence was committed;

(f) adjudicate and dispose of cases of children in conflict with law in accordance with the process of inquiry specified in section 14;

(g) transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection at any stage, thereby recognizing that a child in conflict with law can also be a child in need of care simultaneously and there is a need for the Committee and the Board to be both involved;

(h) disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, including follow up by the Probation Officer or the District Child Protection Unit or a member of a non-governmental organisation, as may be required;

(i) conducting inquiry for declaring fit persons regarding care of children in conflict with law;

(j) conducting at least one inspection visit every month of residential facilities for children in conflict with law and recommend action for improvement in quality of services to the District Child Protection Unit and the State Government;

(k) order the police for registration of first information report for offences committed against any child in conflict with law, under this Act or any other law for the time being in force, on a complaint made in this regard;

(l) order the police for registration of first information report for offences committed against any child in need of care and protection, under this Act or any other law for the time being in force, on a written complaint by a Committee in this regard;

(m) conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and take immediate measures for transfer of 1[that child to an observation home or place of safety, as the case may be]; and

(n) any other function as may be prescribed. "

Sub-Section (1) of Section 8 of the Act 2015 very clearly provides that though the powers vested on the Board are notwithstanding contained in any other law for the time being in force, **but, they are subject to other express provision otherwise in the Act 2015.** Thus, it is evident from the words - "but save as otherwise expressly provided in this act" that

Section 8 is subject to Section 9, especially sub-Section (2) thereof. Sub-Section (2) further clarifies scope of the said provision of Section 8 by providing that powers conferred on the Board by or under the Act 2015 may also be exercised by the High Court and the Children Court's when the proceedings come before them under Section 19 (Children Court) or in appeal, revision or otherwise. Thus, clearly there is no conflict between Section 8 and Section 9 of the Act and on a conjoint reading of both the provisions also, it is evident that Legislative mandate as per Section 9(2) is for the Court other than a Board to decide the claim of juvenility, if such claim is raised before such Court. The exclusive jurisdiction given to the 'Board' under Section 8(1) of the Act, 2015 is qualified and circumscribed by sub-Section 2 thereof which empowers the High Court and Children Court to examine all the powers conferred upon the Board by or under the Act, 2015.

10. In view of the aforesaid discussion especially in view of the proviso to sub-Section (2) to Section 9, a claim of juvenility can be raised before a court other than the Board and it shall be recognized at any stage even after final disposal of the case and such a claim shall be determined in accordance with the provisions contained in Juvenile Justice Act, 2015 and the Rules made thereunder, even if, the person has ceased to be a child on or before the commencement of the Act.

11. Now, from the said provision what comes out is that it is this Court, exercising its powers under Section 374 (2) Cr.P.C. and other analogous and ancillary provisions of Cr.P.C., which is required to determine juvenility of the applicant/ appellant

no.6 as claimed by him in these appellate proceedings and this cannot be decided/ determined by the Board under the Juvenile Justice Act, 2015. As juvenility is being claimed in appellate proceedings before this Court, Section 9(1) does not come into play instead Section 9(2) applies.

12. In view of Section 9 of sub-Section (2), we cannot send the matter to the Board for determination of juvenility as such determination of the juvenility has to be done by the court where the proceedings are pending, but, this does not preclude us in exercising our appellate powers under the Code of Criminal Procedure to send the matter for limited inquiry in the form of taking of evidence by the 'Board' to facilitate a determination of juvenility by this Court.

13. We are of the opinion that the requirement under Section 9(2) of such a decision by this Court is coupled with powers and jurisdiction vested in this Court as a court of appeal under Section 374(2) Cr.P.C. read with Section 391 Cr.P.C., as, for the purposes of deciding this juvenility, we will have to take evidence in addition to what has already been led before the trial court for the reason that before the trial court neither such juvenility was claimed nor any evidence was led, therefore, such evidence will be in the nature of additional evidence as such the provision of Section 391 Cr.P.C. would be applicable for exercising our jurisdiction under Section 9 for the reasons given hereinabove. Section 391 Cr.P.C. reads as under:-

"391. Appellate Court may take further evidence or direct it to be taken.—

(1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

14. For reasons of convenience and as we are bound to consider the claim of juvenility of the appellant no.6 as per Section 9(2) of the Act, 2015 for which evidence is required to be collected, therefore, we exercise our power under Section 391 Cr.P.C. read with Section 9(2) of the Act, 2015 and refer the application of appellant no.6 to the Juvenile Justice Board, Sultanpur which is headed by a Magistrate for the purposes of taking evidence on the question of juvenility as claimed by the applicant/ appellant no.6 but not for determining the said juvenility which will have to be done by this Court under Section 9(2) of the Juvenile Justice Act, 2015 after the evidence has been taken by the Board and sent to this Court.

15. We, accordingly, direct the Juvenile Justice Board, Sultanpur to undertake the aforesaid exercise as per law by conducting an inquiry in the form of taking evidence and submit it to this Court by the next date.

16. For the aforesaid purpose, the application of appellant/applicant no.6 shall be treated as one submitted under Section 9 of the Juvenile Justice Act, 2015.

17. The matter shall now come up for hearing on **28.11.2023**.

18. A copy of this application shall be transmitted to the Juvenile Justice Board, Sultanpur along with the details of the informant and the accused.

19. Senior Registrar of this Court to do the needful in this regard.

(Ajai Kumar Srivastava-I,J.) (Rajan Roy,J.)

Order Date :- 20.9.2023

Shanu/-