HIGH COURT AT ALLAHABAD

Through e-mail

209

From,

Manjeet Singh Sheoran, HJS
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

No. 1721 **/Admin G-II** **Dated** 06/02 **/2026**

Sub: Compliance of the order dated **09.01.2026** passed by **Hon'ble Supreme Court of India** in **Criminal Appeal No. 163 of 2026 (@Petition for Special Leave to Appeal (Crl.) No. 10656 of 2025), The State of Uttar Pradesh V/s Anurudh & Anr.**

Madam/Sir,

During the course of hearing of aforesaid Criminal Appeal, Hon'ble Supreme Court, vide order dated **09.01.2026 (pdf copy enclosed)**, framed the key issue as to whether, in exercise of powers under Section-439 of the Code of Criminal Procedure, the High Court could have issued directions mandating the conduct of age determination tests in all cases involving offences under the **POCSO Act.**

Hon'ble Supreme Court has held that ***the Court could not have passed directions that go against clearly stated legislative intent under Section 94 of the JJ Act. The determination of the age of the victim is a matter for trial, and the presumption which is accorded to the documents enumerated under the Section, has to be rebutted there, for that is the appropriate forum to do so, not the bail Court. If the question of age is raised at the stage of bail, it is only open for the Court to, from the perusal of the documents, take a prima facie view as to the age of the victim, not one on the correctness of the documents since that would amount to a mini trial.***

In this regard, I am directed by Hon'ble Court to send the pdf copy of the aforesaid order dated **09.01.2026** passed by Hon'ble Supreme Court to your goodself for onward circulation of the same amongst all the Judicial Officers of your judgeship for their information and strict compliance.

Encl:- As above

With Regards,

Yours faithfully,

5.2.26

Registrar General

No. **/Admin G-II** **Dated** **/2026**

copy to **The Director, Judicial Training and Research Institute,** U.P., Lucknow for information.

Registrar General

Seen Circulate amongst all the Judicial Officers for strict compliance in letter & spirit. Upload this order on official website of D.C. Kasganj. Put up in monthly meeting. I/C Nodal Office Trg to do [illegible],

DJKSJ
07/2/2026

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2026 INSC 47

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO…… OF 2026
(@ Petition for Special Leave to Appeal (Crl.) No.10656 of 2025)

THE STATE OF UTTAR PRADESH … **APPELLANT(S)**

VERSUS

ANURUDH & ANR … **RESPONDENT(S)**

Signature Not Verified
Digitally signed by NAVEEN D
Date: 2026.01.09 18:02:18 IST
Reason:

J U D G M E N T

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For ease of reference, this judgment is divided into the following parts:

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SANJAY KAROL J.,

Leave Granted.

THE APPEAL

2. The State of Uttar Pradesh, in this appeal by special leave, challenges the correctness of final judgment and order dated 29th May 2024 in CRMBA No. 4880 of 2024 passed by the High Court of Judicature at Allahabad, whereby the learned Single Judge granted bail to Respondent No.1 in connection with the First Information Report[1] No.622 of 2022, PS Kotwali, Orai, District Jalaun, dated 24th November 2022 and issued a number of directions.

3. The question presented in this appeal, however, is not one of relative ease as an appeal against grant of bail and instead hinges on the scope of Section 439 of the Code of Criminal Procedure, 1973[2]. In the High Court's own words- "*The question of law which arises for consideration in this bail application is the nature of the legal duty cast on the police to draw up a medical report determining the*

[1] FIR
[2] CrPC

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age of a victim while investigating POCSO Act offences. The jurisdiction of this Court to determine this question will predicate the discussion on the merits of the bail."

FACTS AND PREVIOUS PROCEEDINGS

4. The facts, in a nutshell, are that Respondent no. 1 is accused of having committed offences under Sections 363, 366 of the Indian Penal Code, 1860[3] and Sections 7 and 8 of the Protection of Children from Sexual Offences Act, 2012[4] in the subject FIR, lodged at the instance of the mother of the victim, where the allegation is that her 12-year old girl had been abducted from her home. The Trial Court rejected bail by order dated 29th September 2023. In the proceedings for bail before the High Court, by order dated 22nd April 2024 the Chief Medical Officer, Jalaun was directed to constitute a medical board for determination of the age of the victim. On 8th May 2024 the Court then released the accused on interim bail, observing that there was wide inconsistency in the age of the victim as in the school records, or as stated by her in her statement under Sections 161 and 164 CrPC regarding age/intimacy with the accused among other factors. In terms of the impugned judgment, the Court confirmed the

[3] IPC
[4] POCSO Act

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said order, while adjudicating on the issue indicated above.

The Impugned Judgment

5. The observations of the High Court can be summarised thus:

5.1 The Court began by affirming that the jurisdiction exercised under Section 439 CrPC engages constitutional protection under Article 21. The right to bail has evolved beyond a purely statutory entitlement into a constitutionally safeguarded right. On this basis, the Court reiterated that when issues affecting personal liberty arise, such as legality of investigative procedures, they must be addressed directly within bail adjudication.

5.2 In assessing the age of the victim, the Court evaluated prior precedents of the High Court which collectively prescribe that medical determination of age under Section 164-A CrPC read with Section 27 POCSO Act is mandatory and is often a more reliable indicator than documentary entries. Reliance on ***Pradeep Kumar Chauhan & Anr. v. State Of U.P & Ors.***[5] *(passed by a learned Single Judge of that High Court)* is rejected as misplaced due to its *habeas*

[5] Habeas Corpus Writ Petition No. - 733 Of 2020

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corpus context and its non-examination of statutory medical-age provisions.

5.3 The statutory scheme was analysed to conclude that Sections 164-A CrPC and 27 POCSO Act obligate police to obtain the victim's medical age report at the commencement of investigation. Section 94 of the Juvenile Justice (Care and Protection) Act 2015[6] supplements this mechanism. Failure to secure such a report rendered the statutory framework futile and opens scope for false implication *via* manipulated age claims.

5.4 On the factual matrix, the Court noted recurring systemic lapses wherein the police failed to obtain medical age reports, Trial Courts ignored scientifically assessed age, and consensual adolescent relationships were criminalised under the POCSO Act due to falsified age records. This systemic malfunction, according to the Court, necessitated corrective judicial directives.

[6] JJ Act

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5.5. Finally, applying law to fact, the Court accepted the medically determined age of the prosecutrix as above 18 years and consequently, allowed bail subject to conditions.

5.6 The directions issued are extracted *in toto*, as under:

> "I) The police authorities/investigation officers shall ensure compliance of the directions rendered by this Court in Aman (supra) and ensure that the medical report determining the age of the victim is drawn up by the competent medical authority at the commencement of the investigations of POCSO Act offences in accordance with the provisions of the Section 164-A CrPC read with Section 27 of the POCSO Act.
>
> II) The medical report of the victim determining her age and drawn up under Section 164-A CrPC. read with Section 27 of the POCSO Act shall be produced by the police authorities/investigation officers before the court hearing the bail application. The learned courts while hearing bail applications shall make due enquiries about the compliance of these directions and Aman (supra) during the bail proceedings.
>
> III) The judgement of this Court rendered in Monish (supra), Aman (supra) as well as this case have to be read together and not in isolation. The directions in Aman (supra) as well as this case will be of little avail, if not examined and implemented in light of the directions made in Monish (supra).
>
> IV) The age of the victim in bails arising out of POCSO Act offences has been determined by a composite reading of Section 94 of the Juvenile Justice (Care and Protection of Children) Act and Section 164-A of CrPC. read with Section

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> 27 of the POCSO Act in light of the judgements rendered in Monish (supra), Aman (supra) and this case.
>
> V) The court hearing the bail application has to accord full weight to the medical age determination report of the victim and also carefully examine all other documents relating to the victim's age. The court has to determine the credibility of the respective age related documents while deciding the bail application in the facts of the case. In appropriate facts and circumstances as in the instant case, the age determined by the competent medical authority under Section 164-A of CrPC. read with Section 27 of the POCSO Act can prevail over other agerelated documents (including school records)."

QUESTION TO BE DETERMINED

6. The question that this Court is called upon to consider is whether under Section 439, CrPC the High Court could have issued directions, mandating age determination test to be conducted in all cases involving the POCSO Act. This larger question involves twin considerations, *one* on the aspect of jurisdiction and the *other* on the aspect of law i.e., the postulate of the act regarding determination of age, and how the directions issued in the impugned judgement correspond to or are in contravention of the same.

ANALYSIS AND DETERMINATION

7. We have heard the learned senior counsel and learned counsel for the parties.

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Relevant Provisions

8. Before proceeding further, the provisions of law involved in this appeal must be referred to.

8.1 Section 27 of the POCSO Act

> "27. Medical examination of a child.—(1) The medical examination of a child in respect of whom any offence has been committed under this Act, shall, notwithstanding that a First Information Report or complaint has not been registered for the offences under this Act, be conducted in accordance with section 164A of the Code of Criminal Procedure, 1973 (2 of 1973).
> (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
>
> (3) The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence.
>
> (4) Where, in case the parent of the child or other person referred to in sub-section (3) cannot be present, for any reason, during the medical examination of the child, the medical examination shall be conducted in the presence of a woman nominated by the head of the medical institution."
>
> (emphasis supplied)

8.2 Section 164 of the CrPC

> "[164A. Medical examination of the victim of rape.—
> (1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a medical expert, such examination

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shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the woman and of the person by whom she was brought;
(ii) the age of the woman;
(iii) the description of material taken from the person of the woman for DNA profiling;
(iv) marks of injury, if any, on the person of the woman;
(v) general mental condition of the woman; and
(vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in section 173 as part

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of the documents referred to in clause (a) of sub-section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf. Explanation.—For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53.]"

(emphasis supplied)

8.3 Section 94 of the Juvenile Justice (Care & Protection) Act 2015

"94. (1) Where, it is obvious to the Committee or the Board, based on the appearance of the person brought before it under any of the provisions of this Act (other than for the purpose of giving evidence) that the said person is a child, the Committee or the Board shall record such observation stating the age of the child as nearly as may be and proceed with the inquiry under section 14 or section 36, as the case may be, without waiting for further confirmation of the 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

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> 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.
>
> (3) The age recorded by the Committee or the Board to be the age of person so brought before it shall, for the purpose of this Act, be deemed to be the true age of that person.
>
> (emphasis supplied)

8.4 Section 29 of the POCSO Act

> "29. Presumption as to certain offences.—Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved."

What were the bases for the High Court's Conclusions and Directions?

9. Although we have, in earlier paragraphs of this judgement, summarised the reasoning of the High Court, let us now unpack the same with reference to the earlier judgements of the Court in ***Aman@Vansh v. State of UP***[7] and ***Monish v. State of U.P***[8]**.** Both

[7] 2024:AHC:62260
[8] 2023:AHC:32270

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these judgments as also the judgment impugned before us, have been passed by the very same learned Single Judge. Since ***Monish*** (supra) was earlier in point of time, we will take that up first.

9.1 The learned Single Judge in ***Monish*** (supra) held in substance, as follows:

> The Court examined two key questions of law: ***(i)*** whether the age of a victim under the POCSO Act should be determined as per Section 94 of JJ Act at the stage of bail, and ***(ii)*** whether the presumption of culpable intent under Section 29 of the POCSO Act applies at that stage. After extensive review, the Court held that Section 94 of the JJ Act, 2015 which prescribes a conclusive method for age determination does not apply strictly to bail proceedings. Instead, the documents enumerated in Section 94 (*such as school certificates or birth certificates*) may be considered as evidence, but their correctness can be challenged by the accused at the bail stage. The Court emphasized that such an assessment of age during bail proceedings is tentative, meant only for evaluating the *prima facie* case and not conclusive for trial purposes.
>
> The High Court had examined and synthesized the leading authorities of this Court, including ***Abuzar Hossain @ Gulam***

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Hossain v. State of West Bengal[9]; ***Parag Bhati (Juvenile) through Legal Guardian–Mother–Rajni Bhati v. State of U.P.***[10]; ***Sanjeev Kumar Gupta v. State of U.P.***[11]; ***Rishipal Singh Solanki v. State of U.P.***[12]; and ***Mukarrab v. State of U.P.***[13]. The collective import of these judgments is that the presumption of correctness attached to age-related documents under Section 94 of JJ Act, is not absolute but rebuttable, and that a Court may consider other credible materials or order further inquiry, whenever contradictions or doubts arise about the recorded age. The Court further observed that accused persons have the right to question the veracity of age-related documents relied on by the prosecution. It clarified that bail courts must independently assess the credibility of such documents and may consider corroborative materials like medical reports or other records to resolve doubts regarding the victim's age. The Court frowned upon a rigid or formulaic approach to bail under the POCSO Act, stressing that decisions must be based on the specific facts and circumstances of each case .

[9] (2012) 10 SCC 489
[10] (2016) 12 SCC 744
[11] (2019) 12 SCC 370
[12] (2022) 8 SCC 602
[13] (2017) 2 SCC 210

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Regarding the presumption of culpable intent under Section 29 of the POCSO Act, the Court held that such presumption does not apply at the pre-trial bail stage. The presumption becomes operative only once the trial begins and foundational facts are established through evidence. The right of the accused to contest this presumption and present a defence cannot be curtailed at the bail stage. The Court reaffirmed that constitutional and evidentiary principles must govern bail decisions, ensuring fairness and due process.

From a constitutional perspective, the Court reiterated that grant of bail is the rule and refusal the exception, aligning with settled principles under Article 21 of the Constitution of India. It noted that while the POCSO Act is a special statute aimed at protecting minors, it does not exclude the operation of standard bail principles under Section 439 CrPC. The Court, therefore, emphasized judicial discretion, proportionality, and individual case assessment as central to deciding bail. The Court held:

> "78. The discussion then proceeded to probe the effect of Article 21 of the Constitution of India on the offending provisions for grant of bail. This enquiry was overlaid with a consideration of authorities "on the concept of due process in our constitutional jurisprudence whenever the court has to deal with a question affecting life and liberty of citizens".

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> …
> 85. In view of the constitutional moorings of the right of bail, curtailment of the said right cannot be permitted in absence of an express statutory mandate or contrary to the constitutional scheme. Nor can restrictions of on right of bail be readily inferred from a statute if other interpretations are possible."

The Court also discussed parameters of bail under the POCSO Act, holding that the nature and gravity of the offence, likelihood of conviction, chances of tampering with evidence, or absconding must be assessed in the light of constitutional protections. No additional restrictions on bail can be read into the POCSO Act beyond those under the general law. It was observed:

> "88. Bails under POCSO Act offences have to be considered under Section 439 Cr.P.C. and in accordance with the settled parameters of grant of bail which include nature and gravity of the offences, and the likelihood of an accused having committed the offence. The possibility of the accused reoffending, influencing witnesses and tampering with evidence or being a flight risk are also relevant factors to be considered while deciding a bail application.
> 89. In POCSO Act related offences the age of a victim is a critical factor which will influence the decision to grant bail.
> 90. No provisions circumscribing the right of bail can be distilled from the scheme of POCSO Act. The existing norms of bail jurisprudence are sufficient to effectively implement the POCSO Act and to serve justice. Of course, the threshold of satisfaction of the Court while granting bail may vary in the facts and circumstances of each case."

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In conclusion, the Court found inconsistencies in the age-related evidence of the victim and the existence of a *prima facie* defence by the accused that the victim was a major. The prosecution's reliance on unverified documents could not justify continued detention, particularly when material contradictions were apparent. Bail was therefore granted on legal and constitutional grounds.

9.2 Now, let us examine ***Aman*** (supra).

The Court noted a recurring problem in POCSO cases: frequent contradictions in the recorded age of victims and false depiction of majority as minority, often leading to the weaponisation of the legislation against young couples in consensual relationships. Medical determinations of age, drawn per the latest scientific protocols, were deemed more reliable and essential to prevent injustice.

Referring to Sections 164-A CrPC and 27 POCSO Act, the Court held that a medical report determining the victim's age is a mandatory component of investigation in every POCSO case. Such reports assist Courts in making accurate findings, preventing false implication, and ensuring fair application of law.

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Accordingly, the Court issued directions:

> "1. The police authorities/investigation officers shall ensure that in every POCSO Act offence a medical report determining the victim's age shall be drawn up at the outset under Section 164A of the Criminal Procedure Code read with Section 27 of the Protection of Children from Sexual Offences Act, 2012. The report may be dispensed with if medical opinion advises against it in the interests of the victim's health.
> 2. The medical report determining the age of the victim shall be created as per established procedure of law and in adherence to latest scientific parameters and medical protocol.
> 3. The medical report determining the age of the victim shall be submitted under Section 164-A of the Code of Criminal Procedure to the Court without delay.
> 4. The Director General (Health), Government of Uttar Pradesh, Lucknow shall also ensure that the doctors who comprise the Medical Board are duly trained and follow the established medical protocol and scientific parameters for determining the age of the victims in such cases. Constant research shall be done in this field to keep the reports in line with the latest scientific developments. A copy of this order be communicated by the learned Government Advocate to the Director General of Police, Lucknow, Uttar Pradesh for compliance and Director General (Health), Government of Uttar Pradesh,"

9.3 Although it did not place reliance on ***Pradeep Kumar Chauhan*** (supra) a significant portion of the judgement was devoted to answering its application, as contended by the advocate for the State; hence, it is important to refer thereto. The Court undertook a detailed examination of the

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applicability of ***Pradeep Kumar Chauhan*** (supra) and ultimately distinguished its ratio. The Court observed that while ***Pradeep Kumar Chauhan*** (supra)had been invoked in several bail applications to argue that the age recorded in school certificates is conclusive under Section 94 JJ Act, such reliance was misplaced. The Court relied almost entirely on an earlier Full Bench decision ***Chandrapal Singh v. State of U.P.***[14] which had already undertaken a comprehensive analysis of the governing law on age determination under Section 94 of the JJ Act.

Relying on the reasoning in ***Chandrapal Singh*** (supra) the learned single Judge reaffirmed that ***Pradeep Kumar Chauhan*** (supra) did not correctly reflect this settled legal position. That decision had treated documentary proof of age such as school or matriculation certificates as final and conclusive, thereby excluding the possibility of further scrutiny. It held that such a restrictive view was inconsistent with the this Court's liberal and contextual interpretation of Section 94 JJ Act. Accordingly, ***Pradeep Kumar Chauhan*** (supra) was distinguished and held to be inapplicable. The Court concluded that the determination of age, whether of a

[14] 2022 SCC OnLine All 934

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victim or an accused - must rest on the totality of credible evidence, and that the statutory presumptions under Section 94 JJ Act,though significant, are rebuttable and subject to judicial verification to ensure fairness and prevent miscarriage of justice.

The Jurisdictional Question

10. The High Court, while exercising bail jurisdiction issued the directions reproduced *supra*. One of the issues raised by the Appellant-State is that the same was beyond the scope of jurisdiction. The question of jurisdiction to issue these directions also confronted the learned Single Judge who answered the same stating that while exercising statutory jurisdiction, the High Court is not denuded of its constitutional status and, therefore, it is entirely open, to consider questions of law as in the present case. Observations in this regard are extracted hereunder:

> "10. While sitting in bail determination, this Court is not denuded of its constitutional status. The High Court is a court of record and a constitutional court irrespective of the nomenclature of the jurisdiction it is exercising. Needless to add that the High Court always exercises its jurisdiction as per law. While deciding bail applications the High Court exercises a composite jurisdiction of statutory powers and constitutional obligations. At times legal issues which directly impinge on the fair administration of justice arise in bail jurisdiction. The

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High Court cannot neglect consideration of such issues on the footing that they are beyond the scope of bail jurisdiction. The High Court always possesses the necessary powers to decide such issues for dispensing fair justice and to realize the fundamental rights of an accused in bail jurisdiction. Refusal to decide the said issues would amount to abdication of constitutional obligations of this Court. Issues arising in the instant case (and those referred in the judgment) directly impact the right of a prisoner to seek bail. They have to be decided by this Court with clarity in lawful exercise of bail jurisdiction and in the interests of equal justice."

11. Let us now, independently examine this issue.

11.1 Section 439 CrPC reads as under:

"**439. Special powers of High Court or Court of Session regarding bail**.—(1) A High Court or Court of Session may direct—

(*a*) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of Section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;

(*b*) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice:

[1][Provided further that the High Court or the Court of Session shall, before granting bail to a person who is accused of an offence triable under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860), give

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notice of the application for bail to the Public Prosecutor within a period of fifteen days from the date of receipt of the notice of such application.]

[2][(1-A) The presence of the informant or any person authorised by him shall be obligatory at the time of hearing of the application for bail to the person under sub-section (3) of Section 376 or Section 376-AB or Section 376-DA or Section 376-DB of the Indian Penal Code (45 of 1860).]

(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.

11.1.1 In ***State of U.P. v. Amarmani Tripathi***[15]**, it was held:**

"18. It is well settled that the matters to be considered in an application for bail are (*i*) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (*ii*) nature and gravity of the charge; (*iii*) severity of the punishment in the event of conviction; (*iv*) danger of the accused absconding or fleeing, if released on bail; (*v*) *character, behaviour, means, position and standing of the accused*; (*vi*) likelihood of the offence being repeated; (*vii*) *reasonable apprehension of the witnesses being tampered with*; and (*viii*) *danger, of course, of justice being thwarted by grant of bail* [see *Prahlad Singh Bhati* v. *NCT, Delhi* [(2001) 4 SCC 280 : 2001 SCC (Cri) 674] and *Gurcharan Singh* v. *State (Delhi Admn.)* [(1978) 1 SCC 118 : 1978 SCC (Cri) 41 : AIR 1978 SC 179]]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused…"

[15] (2005) 8 SCC 21

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11.1.2. ***Vaman Narain Ghiya v. State of Rajasthan***[16]**,** held thus**:**

> **"11.** While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See *Niranjan Singh* v. *Prabhakar Rajaram Kharote* [(1980) 2 SCC 559 : 1980 SCC (Cri) 508 : AIR 1980 SC 785] .) Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the larger interest of the public. (See *State of Maharashtra* v. *Anand Chintaman Dighe* [(1990) 1 SCC 397 : 1990 SCC (Cri) 142 : AIR 1990 SC 625] and *State* v. *Surendranath Mohanty* [(1990) 3 OCR 462] .)"

11.1.3 In ***State v. M. Murugesan***[17], a two Judge bench of this Court analysed various judgements wherein it was concluded that the Court had overstepped the bounds of Section 439, viz., ***State of Punjab v. Davinder Pal Singh Bhullar***[18] wherein the concerned High Court had continued to pass orders with respect to offenders not connected with the instant case; ***Sangitaben Shaileshbhai Datanta v. State of Gujarat***[19] wherein the Court, in a bail application had directed the

[16] (2009) 2 SCC 281
[17] (2020) 15 SCC 251
[18] (2011) 14 SCC 770
[19] (2019) 14 SCC 522

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accused and his family to undergo a narco-analysis test and a brain mapping test; ***RBI v. Coop. Bank Deposit A/C HR. Sha***[20] once again in a bail application, issued directions to the concerned bank to begin disbursing the amount thus far recovered from the accused in the case. Having referred to these judgements, it was held as under:

> "**11.** We find that the learned Single Judge [*M. Murugesan* v. *State*, 2019 SCC OnLine Mad 12414] has collated data from the State and made it part of the order after the decision [*M. Murugesan* v. *State*, Criminal Original Petition No. 1618 of 2019, order dated 18-2-2019 (Mad)] of the bail application, as if the Court had the inherent jurisdiction to pass any order under the guise of improving the criminal justice system in the State. The jurisdiction of the court under Section 439 of the Code is limited to grant or not to grant bail pending trial. Even though the object of the Hon'ble Judge was laudable but the jurisdiction exercised was clearly erroneous. The effort made by the Hon'ble Judge may be academically proper to be presented at an appropriate forum but such directions could not be issued under the colour of office of the court.
>
> (emphasis supplied)

11.1.4 In ***Union of India v. Man Singh Verma***[21], this Court through one of us, (Sanjay Karol J.,) set aside an order, passed while exercising bail jurisdiction, granting compensation to the extent of Rs. 5,00,000/- for wrongful confinement, as being

[20] (2010) 15 SCC 85
[21] 2025 SCC OnLine SC 456

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without the authority of law.

11.2 The upshot of the above discussion is that a Court's jurisdiction, i.e., either the Court of Sessions or the High Court under Section 439 CrPC is limited to adjudicating the question of the person concerned being released into society pending trial or whether they should continue to be incarcerated.

11.3 It is unquestionable that High Court is a constitutional Court. However, in the instant case the error of jurisdiction by the High Court was in exercise of a statutory power and not under the Constitution. The powers arising from the Constitution and those flowing from a statute are distinct and separate. A constitutional power is the one which emanates directly from the text and spirit of the Constitution of India, the supreme and fundamental charter of governance, and inheres in those institutions or functionaries whose existence and competence are defined by it. Such powers are self-sustaining; they are not contingent upon any act of the Legislature, nor can they be abridged or extinguished except through a formal amendment under Article 368. For example, the President's power to dissolve the Lok Sabha under Article 85(2)(b); the Governor's authority to reserve a bill for the consideration of

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the President under Article 200, or the jurisdiction of the Supreme Court under Article 32 are all in exercise of constitutional power. These powers represent the apex of the legal hierarchy, deriving their legitimacy not from the will of the people as expressed by Parliament, but from the sovereignty of the Constitution itself.

In contrast, a statutory power is derivative and conditional, drawing its vitality from a law duly enacted by the Parliament or a State Legislature. Such power exists only within the four corners of the enabling statute and is circumscribed by its language, purpose, and legislative intent. Illustratively, the powers conferred upon the Central Government under the Environmental (Protection) Act, 1986, to frame rules, issue directions, or regulate industrial operations are purely statutory in nature, as are the regulatory functions vested in the Securities and Exchange Board of India under the SEBI Act, 1992, or those entrusted to the Competition Commission of India under the Competition Act, 2002. The exercise of these powers must conform strictly to the parameters laid down by the statute; any transgression beyond its express or implied authority is rendered *ultra vires* and, therefore, void in the eyes of law.

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The essential distinction between these two species of power lies not merely in their origin but also in their constitutional status and susceptibility to control. Constitutional powers are sovereign, foundational, and insulated from the vicissitudes of ordinary legislation; they can neither be curtailed nor expanded by parliamentary enactment. Statutory powers, by contrast, are subordinate and mutable, existing at the pleasure of the Legislature, which may at any time amend, restrict, or repeal them through the ordinary legislative process. Judicial review, while applicable to both, assumes different contours in each case: in relation to constitutional powers, the Courts examine whether their exercise conforms to constitutional limitations including the protection of fundamental rights and the inviolable tenets of the basic structure whereas, in the case of statutory powers, the inquiry is confined to whether the authority has acted within the scope and purpose of the statute from which its power is drawn.

The constitutional power cannot overshadow the statutory power, enlarging its scope beyond what has been envisaged by the statute. In other words, while both powers rest with the High Court, one power cannot usurp the ambit of another,

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unless otherwise permitted by law.

11.4 Let us understand this by way of an example. Suppose a dispute arises between the Government of State 'A' and the Government of the Union of India, concerning a statutory scheme. The State files a suit in the Supreme Court under Article 131 claiming the Union has over-stepped its power. Because Article 131 deals with original jurisdiction and involves questions of fact and law between governments, the Supreme Court may frame issues, permit evidence, summon and examine witnesses, and make findings of fact as part of its adjudication.

In the same case, imagine if a private party (*or even the State*) tries to approach the Supreme Court under Article 136, claiming injustice in a judgment of a High Court or Tribunal in the same matter. While Article 136 gives the Court the power to grant leave to appeal, the Court cannot treat its jurisdiction under Article 136 as though it were a suit under Article 131.

If the Court were to proceed under Article 136 but adopt the full evidentiary/litigation machinery of Article 131 (*leading fresh evidence, summoning witnesses, conducting trial proceedings*), it would step into the turf of Article 131 and thereby blur the distinction between the two powers. That

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would amount to an improper exercise of jurisdiction.

11.5 On the aspect of jurisdiction, consequent to the discussion above, we have no hesitation in holding that the High Court had erred in undertaking such an exercise of issuing directions and getting the age of the victim examined in an application seeking grant of bail .

Whether the impugned directions rest on sound legal grounds?

12. Let us now turn our attention to the provisions of law involved. The purpose of doing so is to examine whether the directions issued by the High Court to mandatorily conduct a test for age verification at the inception of the investigation is sustainable in law, if this question of law is examined as divorced from the aspect of jurisdiction.

13. At the outset of this analysis, it is important to delve into the scope and ambit of the POCSO Act. Pardiwala J, writing for the Court in ***Just Rights for Children Alliance v. S. Harish***[22], examined

[22] 2024 SCC OnLine SC 2611

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in detail, the objects, reasons and scope of the legislation. Relevant paragraphs of the decision are extracted hereinbelow:

> "**43.** The Statement of Objects and Reasons for the enactment of the POCSO makes it abundantly clear that since the sexual offences against children were not adequately addressed by the existing laws and a large number of such offences were neither specifically provided for nor were they adequately penalized, the POCSO has been enacted to protect the children from the offences of sexual assault, sexual harassment and pornography and to provide for establishment of Special Courts for trial of such offences and for matters connected therewith and incidental thereto.
> **44.** It further states that the POCSO is a 'self-contained comprehensive legislation' for the purpose of enforcing the rights of all children to safety, security and protection from sexual abuse and exploitation countered through commensurate penalties as an effective deterrence for sexual offences and pornography and has been enacted keeping in mind Articles 15 and 39 of the Constitution respectively and the United Nations Convention on the Rights of the Children. …
> **45.** The primary legislative intent behind the enactment of the POCSO was to create a comprehensive legal framework that would not only punish offenders but also provide a child-friendly system for the recording of evidence, investigation, and trial of offenses. The POCSO was designed to cover all forms of sexual abuse against children, including sexual harassment, child pornography, and aggravated sexual assault, among others. It aimed to ensure the safety and dignity of child victims during the legal process, with specific provisions that mandate in-camera trials, the presence of a trusted adult during the proceedings, and the prohibition of aggressive questioning of child victims.

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(emphasis in original)

Determination of the age of the victim - At what stage and by whom

13.1 Section 2(d)of the POCSO Act defines a child as any person below eighteen years. So, for the provisions of this Act to be applied, the person against whom the offence in question has been perpetrated must necessarily be below 18 years of age. This is the *sine qua non.* The natural question which then arises is how the age of victim is to be determined. ***Jarnail Singh v. State of Haryana***[23] put this question to rest as follows:

> **"23.** Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even of a child who is a victim of crime. For, in our view, there is hardly any difference insofar as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW, PW 6. The manner of determining age conclusively has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained by adopting the first available basis out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available would conclusively determine the age of a minor. In the scheme of

[23] (2013) 7 SCC 263

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> Rule 12(3), matriculation (or equivalent) certificate of the child concerned is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3) envisages consideration of the date of birth entered in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the child concerned, on the basis of medical opinion."
>
> (emphasis supplied)

Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007[24] it must be noted, provides the same hierarchy of documents as has been provided by Section 94 of the JJ Act. The same is reproduced below for felicity of reference:

[24] Rules 2007

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"12.*Procedure to be followed in determination of age*.—(1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be, the Committee referred to in Rule 19 of these Rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining—

(*a*)(*i*) the matriculation or equivalent certificates, if available; and in the absence whereof;

(*ii*) the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;

(*iii*) the birth certificate given by a corporation or a municipal authority or a panchayat;

(*b*) and only in the absence of either (*i*), (*ii*) or (*iii*) of clause (*a*) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year,and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (*a*)(*i*), (*ii*), (*iii*) or in the absence whereof, clause (*b*) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

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> (4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these Rules and a copy of the order shall be given to such juvenile or the person concerned.
> (5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of Section 7-A, Section 64 of the Act and these Rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this Rule.
> (6) The provisions contained in this Rule shall also apply to those disposed of cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub-rule (3) and the Act, requiring dispensation of the sentence under the Act for passing appropriate order in the interest of the juvenile in conflict with law."

14. The High Court held that since the presumption of correctness attached to age-related documents under Section 94 JJ Act is rebuttable, challenge to the same would be open at the stage of bail and the view taken by the Court in such a challenge, would be "*tentative*". Analysis of the judgments referred to by the Court would be apposite.

14.1 In ***Abuzar Hossain*** (supra) a bench of three judges held as under:

> **"39.3.** As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial

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> burden cannot be catalogued nor can it be laid down as to what weight should be given to a specific piece of evidence which may be sufficient to raise presumption of juvenility but the documents referred to in Rules 12(3)(*a*)(*i*) to (*iii*) shall definitely be sufficient for prima facie satisfaction of the court about the age of the delinquent necessitating further enquiry under Rule 12. The statement recorded under Section 313 of the Code is too tentative and may not by itself be sufficient ordinarily to justify or reject the claim of juvenility. The credibility and/or acceptability of the documents like the school leaving certificate or the voters' list, etc. obtained after conviction would depend on the facts and circumstances of each case and no hard-and-fast rule can be prescribed that they must be prima facie accepted or rejected. In *Akbar Sheikh* [(2009) 7 SCC 415 : (2009) 3 SCC (Cri) 431] and *Pawan* [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in *Jitendra Singh* [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes of Section 7-A and order an enquiry for determination of the age of the delinquent."

14.2 In ***Parag Bhati*** (supra) a co-ordinate bench held as under:

> **"34.** It is no doubt true that if there is a clear and unambiguous case in favour of the juvenile accused that he was a minor below the age of 18 years on the date of the incident and the documentary evidence at least prima facie proves the same, he would be entitled to the special protection under the JJ Act. But when an accused commits

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> a grave and heinous offence and thereafter attempts to take statutory shelter under the guise of being a minor, a casual or cavalier approach while recording as to whether an accused is a juvenile or not cannot be permitted as the courts are enjoined upon to perform their duties with the object of protecting the confidence of common man in the institution entrusted with the administration of justice.
> **35.** The benefit of the principle of benevolent legislation attached to the JJ Act would thus apply to only such cases wherein the accused is held to be a juvenile on the basis of at least prima facie evidence regarding his minority as the benefit of the possibilities of two views in regard to the age of the alleged accused who is involved in grave and serious offence which he committed and gave effect to it in a well-planned manner reflecting his maturity of mind rather than innocence indicating that his plea of juvenility is more in the nature of a shield to dodge or dupe the arms of law, cannot be allowed to come to his rescue.
> **36.** It is settled position of law that if the matriculation or equivalent certificates are available and there is no other material to prove the correctness of date of birth, the date of birth mentioned in the matriculation certificate has to be treated as a conclusive proof of the date of birth of the accused. However, if there is any doubt or a contradictory stand is being taken by the accused which raises a doubt on the correctness of the date of birth then as laid down by this Court in *Abuzar Hossain* [*Abuzar Hossain* v. *State of W.B.*, (2012) 10 SCC 489 : (2013) 1 SCC (Cri) 83] , an enquiry for determination of the age of the accused is permissible which has been done in the present case."
>
> (emphasis supplied)

14.3 In ***Sanjeev Kumar Gupta*** (*supra*) the question was whether the accused was entitled to claim the benefit of juvenility for an offence committed on 18th August 2015. The

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Juvenile Justice Board[25] at first allowed the plea but then on demand, eventually decided otherwise and rejected the said having considered evidence in that regard. The High Court reversed holding that the matriculation certificate issued by the CBSE would be given precedence over the opinion of the Medical Board. The former recorded his date of birth as 17th December 1998 whereas the latter recorded that on 9th November 2016, he was approximately 19 years of age. This Court set aside the findings of the High Court and restored the rejection of the plea of juvenility as returned by the JJB, having considered evidence on affidavit and arriving at the conclusion that his age would be determined as per the date of birth - 17th December 1995.

14.4 In ***Rishipal Singh Solanki*** (supra) this Court while dealing with an appeal filed by the father of the deceased noted the difference between the Rules 2007 and the JJ Act 2015. It was observed:

> **"29.** The difference in the procedure under the two enactments could be discerned as under:
> **29.1.** As per the JJ Act, 2015 in the absence of requisite documents as mentioned in clauses (*i*) and (*ii*) of Section 94(2), there is provision for determination of the age by an ossification test or any other medical age related test to be

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conducted on the orders of the Committee or the JJ Board as per Section 94 of the said Act; whereas, under Rule 12 of the JJ Rules, 2007, in the absence of relevant documents, a medical opinion had to be sought from a duly constituted Medical Board which would declare the age of the juvenile or child.

29.2. With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under sub-section (2) of Section 94 of the JJ Act, 2015 as a substantive provision.

29.3. Under Section 49 of the JJ Act, 2000, where it appeared to a competent authority that a person brought before it was a juvenile or a child, then such authority could, after making an inquiry and taking such evidence as was necessary, record a finding as to the juvenility of such person and state the age of such person as nearly as may be. Sub-section (2) of Section 49 stated that no order of a competent authority shall be deemed to have become invalid merely by any subsequent proof that the person in respect of whom the order had been made is not a juvenile and the age recorded by the competent authority to be the age of person so brought before it, for the purpose of the Act, be deemed to be the true age of that person.

30. But, under Section 94 of the JJ Act, 2015, which also deals with presumption and determination of age, the Committee or the JJ Board has to record such observation stating the age of the child as nearly as may be and proceed with the inquiry without waiting for further confirmation of the age. It is only when the Committee or the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, it can undertake the process of age determination, by seeking evidence.

31. Sub-section (3) of Section 94 states that the age recorded by the Committee or the JJ Board to be the age of the persons so brought before it shall, for the purpose of the Act, be deemed to be the true age of that person. Thus, there is a finality attached to the determination of the age recorded and it is only in a case where reasonable grounds exist for doubt as to whether the person brought before the

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> Committee or the Board is a child or not, that a process of age determination by seeking evidence has to be undertaken."

Then further, it was held-

> **"33.1.** A claim of juvenility may be raised at any stage of a criminal proceeding, even after a final disposal of the case. A delay in raising the claim of juvenility cannot be a ground for rejection of such claim. It can also be raised for the first time before this Court.
> **33.2.** An application claiming juvenility could be made either before the court or the JJ Board.
> **33.2.1.** When the issue of juvenility arises before a court, it would be under sub-sections (2) and (3) of Section 9 of the JJ Act, 2015 but when a person is brought before a committee or JJ Board, Section 94 of the JJ Act, 2015 applies.
> **33.2.2.** If an application is filed before the court claiming juvenility, the provision of sub-section (2) of Section 94 of the JJ Act, 2015 would have to be applied or read along with sub-section (2) of Section 9 so as to seek evidence for the purpose of recording a finding stating the age of the person as nearly as may be.
> **33.2.3.** When an application claiming juvenility is made under Section 94 of the JJ Act, 2015 before the JJ Board when the matter regarding the alleged commission of offence is pending before a court, then the procedure contemplated under Section 94 of the JJ Act, 2015 would apply. Under the said provision if the JJ Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Board shall undertake the process of age determination by seeking evidence and the age recorded by the JJ Board to be the age of the person so brought before it shall, for the purpose of the JJ Act, 2015, be deemed to be true age of that person. Hence the degree of proof required in such a proceeding before the JJ Board, when an application is filed seeking a claim of

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juvenility when the trial is before the criminal court concerned, is higher than when an inquiry is made by a court before which the case regarding the commission of the offence is pending (vide Section 9 of the JJ Act, 2015).

33.3. That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the court to discharge the initial burden. However, the documents mentioned in Rules 12(3)(*a*)(*i*), (*ii*) and (*iii*) of the JJ Rules, 2007 made under the JJ Act, 2000 or sub-section (2) of Section 94 of the JJ Act, 2015, shall be sufficient for prima facie satisfaction of the court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

33.4. The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

33.5. That the procedure of an inquiry by a court is not the same thing as declaring the age of the person as a juvenile sought before the JJ Board when the case is pending for trial before the criminal court concerned. In case of an inquiry, the court records a prima facie conclusion but when there is a determination of age as per sub-section (2) of Section 94 of the 2015 Act, a declaration is made on the basis of evidence. Also the age recorded by the JJ Board shall be deemed to be the true age of the person brought before it. Thus, the standard of proof in an inquiry is different from that required in a proceeding where the determination and declaration of the age of a person has to be made on the basis of evidence scrutinised and accepted only if worthy of such acceptance.

33.6. That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.

33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in

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Section 94(2) of the JJ Act, 2015."

(emphasis supplied)

14.5 Now we proceed to examine the merits of this argument. It is clear from the above that all of these cases discuss the determination of age from the point of view of the offender and not the victim. Although the process to be followed therefor is the same as that for an offender as held by ***Jarnail Singh*** (supra), the question involved in the instant *lis* concerns the forum and the stage at which the determination of age is to be made. According to the High Court, the bail Court would, if a challenge is presented by the offender, entertain such challenge and take a *prima facie* view. Here, it becomes important to appreciate the difference between the JJ Act and the POCSO Act.

14.5.1 The JJ Act is primarily focused on dealing with children in conflict with law and children in need of care and protection**,** rather than victims of offences who are minors. The *Preamble* and Section 1(4) of the Act expressly state that its purpose is to provide for the care, protection, treatment, development, and rehabilitation of such children and for the adjudication of matters

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relating to children in conflict with law. The Act establishes the JJB (under Sections 4–9) to handle cases involving juvenile offenders, and the Child Welfare Committee[26] (under Sections 27–30) to deal with children who require care and protection. Neither of these bodies are vested with jurisdiction over cases concerning child victims of crime. The definitions provided under the Act, of a child in conflict with law and a child in need of care and protection, also clearly underscore this. The Act draws a fundamental distinction between two principal categories of children – *children in conflict with law* and *children in need of care and protection* each grounded in the philosophy of welfare, rehabilitation, and reintegration. A *child in conflict with law* refers to a person who has not completed eighteen years of age and is alleged or found to have committed an offence under any existing law. To fall under this category, the requirements are, first, that the person must be below eighteen years of age at the time of the commission of the alleged offence, and second, that there is an allegation or finding of

[26] CWC

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involvement in an act constituting an offence. The Act thus rejects the traditional punitive model of criminal jurisprudence and adopts a reformative, restorative approach, recognizing that a child's deviant conduct often arises from a coming together in an unfortunate array of circumstances, of structural neglect, social disadvantage, or exposure to adversity The focus, therefore, is on correction, guidance, and social reintegration through child-friendly processes before the JJB , ensuring that such children are treated not as offenders but as individuals in need of direction and support.

14.5.2 Conversely, a *child in need of care and protection* denotes a child whose condition of neglect, abuse, abandonment, or deprivation necessitates intervention by the State to secure their safety, welfare, and development. This classification embraces children *who are orphaned or abandoned*; *those found begging, working, or living on the streets; those who are victims of cruelty, exploitation, or trafficking; those who are physically or mentally challenged and without adequate family support; and those at imminent risk of*

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early marriage or neglect within the home ,(which in a given case, could also be a victim). The essence of this definition lies in the child's exposure to vulnerability and the corresponding necessity of care, protection, and rehabilitation through the mechanisms of the CWC. The Act's protective framework thus ensures that children who are deprived of a nurturing environment are restored to stability, dignity, and opportunity through institutional or family-based care.

14.5.3 While these two categories emerge from different factual matrices, one involving alleged delinquency and the other deprivation, they converge upon a shared humanitarian foundation. Both are guided by the principle that every child is entitled to protection, dignity, and development, and that the justice system must operate with sensitivity and compassion. This Court has many-a-time emphasised that the administration of juvenile justice must rest on care and rehabilitation rather than punishment, highlighting the State's duty to protect all children from circumstances that impede their growth and well-being.

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14.5.4 It is, however, imperative to recognise that neither of these statutory classifications - the child in conflict with law or the child in need of care and protection expressly includes within its ambit the category of child victims. Although both categories are designed to shield children from neglect and marginalisation, the Act does not explicitly address the position of children who are victims of offences, as those under POCSO Act. Unless such victims independently satisfy the definitional parameters of vulnerability or abandonment, they fall outside the direct purview of these classifications. This reveals a conceptual gap, as the legislative scheme, while comprehensive in its welfare orientation, does not formally integrate the rehabilitative and procedural rights of child victims within its framework. Nevertheless, the broader spirit of the Act, anchored in compassion, protection, and restorative justice demands that child victims, too, be accorded equivalent care, support, and rehabilitative attention, ensuring that every child, irrespective of circumstance, is empowered to reclaim their dignity and future.

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14.6 Having discussed thus, the two separate fields that these two legislations govern, we now turn back to the question of age determination. If the POCSO Act is examined, it can be found that the Act does not prescribe a manner for determination of the age of the victim. As we have already noticed, it is an established position in law that the procedure under Section 94 of the JJ Act is to be applied.[*See: Section 34 of the Act*] When the question of determination of age of a child in conflict with the law emerges for the first time before a Court, the concerned legislation provides the procedure as housed in its Section 9 of the Act lays down the procedure to be followed when a person is brought before a Magistrate who is not empowered under the Act**,** and there arises a claim or reasonable doubt that such person is a child**.** In such cases, the Magistrate must conduct an inquiry to determine the person's age in accordance with Section 94 of the Act, which prescribes the method for age determination. If, upon inquiry, the Magistrate finds that the person was a child at the time of commission of offence**,** the case must be immediately forwarded to the JJB having jurisdiction, which will thereafter deal with the matter as per the provisions of the JJ Act.

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Conversely, if the person is found not to be a child**,** the Magistrate proceeds with the case as per the regular criminal procedure**.** The object of Section 9 is to ensure that no juvenile offender is tried as an adult merely due to an initial misclassification and to safeguard the rehabilitative and welfare-oriented spirit of the juvenile justice system by ensuring that every child in conflict with law is tried by the appropriate forum, i.e., the JJB

14.7 As held in ***Rishipal Singh***, extracted (supra) the determination of the age when done by a Court stands differently to that done by the JJB. There are two possibilities provided for. There is no determination of age by a JJB - like body when it comes to the victim. If there is a question about the age, it has to be dealt with by the Court, as per the procedure of Section 94, JJ Act. It is when the Court is undertaking the exercise of determination, that the defense of an accused can challenge the veracity of these documents, since the presumption under this section is rebuttable.

14.8 As is obvious and as we have observed, the victim being a child is *sine qua non* for the application of the POCSO Act. If a charge-sheet is filed and it contains charges against a

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person under the POCSO Act, it is but obvious that such an accused would challenge the same at the first available instance in the Court concerned, or in other words, at the inception of trial, so as to ensure that the foundation of the trial is correctly in place before it proceeds further. The Court would then undertake the exercise as provided for, and in accordance with the result obtained therefrom, proceed further, either under the POCSO Act or under the provisions of the IPC, as the case may be. Should the accused be dissatisfied with the manner in which the result has been drawn by the Trial Court, an appeal from such determination would have to be filed and only when the question of age is set at rest can the trial proceed forward on firm footing.

14.9 Unlike an offender who can claim benefit of juvenility at any point in time, even after completion of proceedings given the beneficial nature of the JJ Act, a victim of a crime cannot claim to be a juvenile at any point in time, for the charges against which an offender is tried, are intrinsically tied to the age of the victim. If a victim of a sexual offence was allowed to claim juvenility at any stage of the proceedings, in the same manner that an offender can under Section 9 of the JJ Act, it would have serious procedural and substantive

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consequences. For instance, an accused may have been charged under Section 376 IPC which applies when the victim is an adult. However, if the victim is later determined to be below eighteen, the offence would fall under the POCSO Act, where consent is irrelevant and the punishments are more stringent. This would mean that the earlier trial, framing of charges, and recording of evidence were all conducted under an incorrect legal framework. The proceedings would therefore be vitiated, and the trial could be rendered a nullity, necessitating the reframing of charges and a fresh trial under the correct statute.

14.10 As can be seen from ***Mahadeo v. State of Maharashtra***[27], and ***Sanjeev Kumar Gupta*** (supra) the consideration of the documents enumerated in Section 94, JJ Act is a matter of consideration of evidence since it may involve the examination of witnesses to prove the veracity of the documents. That can only be done by the Trial Court. Contra evidence to challenge the documents, can also be presented only before the Trial Court. In our considered view, therefore, the High Court fell in error in holding that a Court in bail jurisdiction is empowered to entertain a challenge to the

[27] (2013) 14 SCC 637

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documents as Section 94 would not apply at the bail stage.

Mini Trial- Impermissible at the stage of Bail

15. There is an additional aspect which, if the proposition as posited by the impugned judgment is upheld, would fall foul of. Such aspect would be that a Court, at the stage of bail cannot conduct a mini trial. This position is trite in law. Reference to the judgments as under would reiterate the same-

15.1 In ***Union of India v. K.A. Najeeb***[28], it was held by a bench of three judges that the High Court could not at the stage of bail conduct a mini trial and adjudicate, for instance, the admissibility of certain evidence.

15.2 In ***Amlesh Kumar v. State of Bihar***[29], this Court observed that when a Court is exercising powers under Section 439 CrPC, such power does not permit the ordering of roving enquiries, or in the context of that case, the use of involuntary investigative techniques.

[28] (2021) 3 SCC 713
[29] 2025 SCC OnLine SC 1326

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15.3 Let us also understand this by juxtaposition. Section 482 CrPC empowers the High Court to prevent abuse of the process of law and secure the ends of justice, including quashing criminal proceedings or staying investigations. Even under these broad powers, courts are not permitted to re-examine witnesses or conclusively decide disputed factual issues. Section 439, by contrast, is limited to granting bail or anticipatory bail and requires the Court to consider only *prima facie* evidence, the risk of the accused absconding, tampering with evidence, or other relevant factors. Since Section 439 is narrower in scope, the Court cannot undertake a mini trial at the bail stage.

Medically Determining the Age of the Victim

16. Apropos the above discussion, it is clearly held that determination of age of the victim is a matter of trial and not at the stage of bail. If the age is under question, the bail Court may examine the documents produced to establish age, but it will not enter into the question of those documents being correct or not so. The mandate of Section 94 JJ Act is clear. The documents provided therein are to be utilized for determination of the age of the victim, and only in the absence thereof, will medical evidence be resorted

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to. The decisions in ***P. Yuvaprakash v. State***[30] and ***Rajni v. State of UP***[31] make this as evident as can be.

16.1 ***Yuvaprakash*** (supra) was a case involving the alleged kidnapping of one 'M', by the appellant, alleged forced marriage by tying a '*thali*' around her neck, and thereafter, repeated sexual intercourse over a period of time, before abandoning her when the accused persons came to know that M's loved ones had filed a complaint regarding her being kidnapped. On appeal from a judgment of conviction returned by the Madurai Bench of the High Court of Judicature at Madras, this Court examined the proper method for determining a victim's age under Section 94(2) of the JJ Act The statute established a clear hierarchy of documents: ***first,*** a matriculation or equivalent school certificate showing the date of birth; ***second***, a birth certificate issued by a municipal corporation or panchayat; and ***third*** only if these were unavailable could a medical or ossification test be relied upon. In the present case, the only document produced was a school Transfer Certificate indicating the date of birth as 11th

[30] 2023 SCC OnLine SC 846

[31] 2025 INSC 737

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July1997. However, this Certificate was not one of the documents prescribed by the Section. Moreover, the Transfer Certificate was produced by a court - summoned witness rather than the prosecution, and the Revenue official confirmed that official birth records for 1997 were missing. Consequently, the Transfer Certificate could not establish that the victim was under 18 years of age at the relevant time.

16.1.1 The Court cited precedents, including ***Rishipal Singh Solanki*** (supra) and ***Sanjeev Kumar Gupta*** (supra), to reaffirm the statutory hierarchy i.e., only in the absence of matriculation/school certificates or municipal birth records could medical age-determination be used. In the facts, it was observed, the headmaster (DW-2) admitted that the date of birth in the school record was based on a horoscope rather than an independent verification, and no official birth register existed to support it.

16.1.2 Since the documents presented did not fall within the first two categories under Section 94(2), the Court held that the prosecution should rely on the medical ossification test. The doctor (PW-9) conducted such a test,

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concluding that the victim's age was *"more than 18 years and less than 20 years,"* with cross-examination confirming the possibility of age being 19 years. The Court below had discounted this medical evidence, holding that the school record alone could determine age, but that reasoning was rejected, emphasizing that the Transfer Certificate did not meet the statutory standard.

16.1.3 Ultimately, the Court concluded that the only acceptable evidence on age was the medical ossification report, which indicated that the victim was above 18 years. As a result, the prosecution failed to prove that the victim was a "*child*" under the POCSO Act, meaning the statutory age requirement for the offence was not satisfied. He was, therefore, acquitted.

16.2 In ***Rajni***, the juvenility of her son, Respondent No.2, was the central question and arose in the context of his being made an accused in connection with Crime No. 80/2021 registered before the Medical College Police Station, Meerut under Sections 302/201/34 of the IPC as well as Crime Case No. 97/ 2021 registered before the same police station under Sections 3/25/27 of the Arms Act, 1959. Rajni's application to

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have her son dealt with as a minor was rejected by the JJB, and the case eventually made its way up the judicial hierarchy, to this Court.

16.2.1 The respondent produced a School Certificate from DPS Higher Secondary School, Parvesh Vihar, Meerut, showing his date of birth as 8th September 2003. This Certificate, along with the admission date of 4th April 2016 and the High School passing year 2018, suggested that the respondent was about 17 years and 3 months old at the time of the incident. Notably, an earlier proceeding (Miscellaneous Case No.9/2000) had already accepted the same date of birth.

16.2.2 However, the JJB was skeptic about these documents, noting that records from Class 4 to Class 8 had been destroyed in a fire, and the respondent's mother could not recall the school's name. The school principal confirmed that original records for those classes were missing. In addition, the JJB rejected the municipal birth certificate from the concerned municipal corporation, which also indicated 8th September 2003, on the grounds that it had been issued on 8th June 2020 that is, after the

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incident. As a result, a medical examination of the respondent was ordered to determine his age.

16.2.3 The Court held this approach to be incorrect in view of the clear stipulation under Section 94(2) of the JJ Act. Here, both the municipal birth certificate and the school certificate were available, and both corroborated the earlier JJB decision. By disregarding these documents and relying on a medical test, the JJB had erred. The Additional District & Sessions Judge rightly reversed the JJB's decision, giving precedence to the school certificate and declaring the respondent a juvenile.

16.2.4 The Court also emphasized that the JJB could not challenge its earlier acceptance of the date of birth simply because the mother or informant was not a party in the prior proceeding. The JJB does not have the power to review its earlier decision under the JJ Act, and the earlier acceptance of 8th September 2003 should be binding. Consequently, the High Court upheld the Additional District & Sessions Judge's ruling and affirmed the date of birth reflected in the school certificate.

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16.2.5 The Court referred to precedents such as ***Rishipal Singh Solanki*** (supra) which clarified that juvenility can be claimed at any stage, and that initial burden lies on the claimant. Documents like school certificates or municipal birth certificates are *prima facie* sufficient to establish juvenility, while medical tests cannot serve as the sole criterion. When evidence is borderline, Courts are to lean in favor of juvenility, although misuse must be guarded against.

16.2.6 The discussion continued by distinguishing prior cases where medical tests were relied upon when documentary evidence was unreliable. In contrast, the present case involved consistent documentary evidence - the school certificate, municipal certificate, and earlier JJB decision - all supporting the date of birth as 8th September 2003. The JJB's reasoning that the informant was not a party in the earlier proceeding was found to be unsound. The Additional District & Sessions Judge had correctly reversed the JJB's approach, and the High Court had rightly affirmed that the respondent should be treated as a juvenile at the time of the incident.

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17. The necessary sequitur from the above exposition is that a medical determination of age of a victim cannot be resorted to as a matter of course, much less mandated. It can only be employed in a given circumstance when the other stipulations of Section 94 JJ Act are not/cannot be met. This direction, therefore, has to be set aside.

SUMMATION

18. In *fine*, our conclusions are that the High Court in bail jurisdiction was *coram non judice* for issuing directions mandating the investigating authorities within the State of Uttar Pradesh to necessarily have a medical examination of the victim conducted, with the particular intent to determine the age of the victim as also holding, that a bail Court would be empowered to entertain challenges to the documents produced to establish the age of the victim The importance of medical examination in the harrowing crimes of sexual assault cannot be overstated, *it is not merely a record of injury or a catalogue of biological traces; it is the voice of the body, speaking when words falter and memory trembles.* In cases where the victim's courage may be tested by stigma, shame, or the weight of societal scrutiny, medical evidence provides an impartial testament, grounding the pursuit of justice in the certainty of observable fact. It is, in essence, the bridge that links the personal

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suffering of the victim with the impartial adjudication of the law. But at the same time, its purpose, which is to gather essential evidence in a scientifically sound manner, with due regard to the principles of human dignity on one hand and evidence on the other, cannot be reduced to a common, matter of course step - especially when a procedure with a legislative imprimatur has been laid down. The Court could not have passed directions that go against clearly stated legislative intent under Section 94 of the JJ Act. The determination of the age of the victim is a matter for trial, and the presumption which is accorded to the documents enumerated under the Section, has to be rebutted there, for that is the appropriate forum to do so, not the bail Court. If the question of age is raised at the stage of bail, it is only open for the Court to, from the perusal of the documents, take a *prima facie* view as to the age of the victim, not one on the correctness of the documents since that would amount to a mini trial. It could also not have fused statutory jurisdiction with a constitutional one, lifting one to the other, or downgrading the higher to the lower in order to grant itself the wherewithal, in an otherwise fairly circumscribed jurisdiction, to do what could not be done.

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A NECESSITATED POST-SCRIPT

19. As the conclusions drawn above indicate the impugned judgment and order of the High Court has to be set aside on grounds of transgression of the jurisdiction present and thereby lacking the appropriate directions. It is to be set aside also because it goes against the statutory prescription under the JJ Act. Be that as it may, this Court has not lost sight of the well-intentioned purport of this order. The POCSO Act is one of the most solemn articulations of justice aimed at protecting the children of today and the leaders of tomorrow. Yet, when an instrument of such noble and one may even say basic good intent is misused, misapplied and used as a tool for exacting revenge, the notion of justice itself teeters on the edge of inversion. Courts have in many cases sounded alarm regarding this situation. Misuse of the POCSO Act highlights a grim societal chasm - on the one end children are silenced by fear and their families are constrained by poverty or stigma, meaning thereby that justice remains distant and uncertain, and on the other hand, those equipped with privilege, literacy, social and monetary capital are able to manipulate the law to their advantage. The impugned judgment is one amongst many where Courts have spoken out. Not only are instances rife where the age of the victim is misrepresented to make the incident fall under the stringent provisions of this law

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but also there are numerous instances where this law is used by families in opposition to relationships between young people. In Satish ***alias Chand v. State of U.P***.[32], the High Court, noted that on few occasions concern had been expressed by the Court with respect to application of the Act on consenting adolescence when it comes to consensual relationships between teenagers, four factors have been highlighted which, is crucial for the Courts to consider:

> "A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.
>
> B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.
>
> C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.
>
> D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect."

[32] Crl.Misc.Bail Appl.No.18596 of 2024

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[See also: ***Mrigraj Gautam @ Rippu v. State of U.P.***][33]

The Delhi High Court in ***Sahil v. the State NCT of Delhi***[34] the Court noted in para 11 of the order that POCSO cases filed at the behest of a girl's family objecting to romantic involvement with a young boy have become common place and consequent thereto these young boys languish in jails. Therein, reference is also made to an order of the Gujarat High Court[35], where the Court noted that considering the closeness in age of the prosecutrix and the accused as also the fact that she had left home of her own accord observed that the application deserved consideration.

This chasm between access and abuse is also mirrored in the misuse of Section 498-A IPC and the Dowry Prohibition Act, 1961. Amongst numerous examples, we may only refer to ***Rajesh Chaddha v. State of U.P***[36], where this Court lamented the use of these Sections without specific instances or relevant details, among other cases. It is also to be stated though that no amount of judicial vigilance against misuse can alone bridge this ever-widening gap. The first line of defence lies with the Bar i.e., the body that translates grievance into action and is the gatekeeper of justice at the point of

[33] 2023: AHC : 204171
[34] 2024: DHC: 6100
[35] Jayantibhai Babulbhai Alani v. State of Gujarat 2018 SCC Online Guj. 1223
[36] 2025 SCC OnLine SC 1094

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entry. When it comes to matters such as these, the responsibility of the advocate is profound – to examine the allegations with detachment and necessary discretion and to counsel restraint when grievance masks vengeance and to refuse participation in litigation when it can be seen that an ulterior motive is sought to be agitated under the guise of seeking protection of the law. It is only when the Bar takes a principled, proactive role, that the legislation intended as a shield can be stopped from being twisted into a weapon. A lawyer who tempers aggression with calm, reason and rationality, protects not only the opposing party from unwarranted harm but also the client from the long-term consequences of frivolous or malicious litigation, including adverse orders, and judicial censure. By taking a principled stand, the Bar acts as a crucial filter, preventing the legal system from being overwhelmed by abuse masquerading as enforcement. Such self-regulation strengthens public faith in the profession, ensures that judicial time is reserved for genuine disputes, and reinforces the foundational idea that law is a means of justice, not a weapon of convenience. In this sense, the ethical vigilance of lawyers is not ancillary to justice, it is indispensable to it. When they do not do so, the chasm alluded to above widens. Society also must match institutional reform with moral awakening. The intent and object of these legislations must be at the forefront

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when a person wishes to lodge a complaint thereunder. The misuse of these laws is a mirror to the opportunistic and self-centered view that pervades the application of law. It is only through discipline, integrity and courage that these problems can be remedied and rooted out. Any legislative amendment or judicial direction will remain lack-luster without this deeper change.

We have referred to certain instances of the High Courts noting the misuse/misapplication of the POCSO Act, somewhat in line with the indices appended to the impugned judgment as also its progenitors.

Considering the fact that repeated judicial notice has been taken of the misuse of these laws, let a copy of this judgment be circulated to the Secretary, Law, Government of India, to consider initiation of steps as may be possible to curb this menace *inter alia*, the introduction of a *Romeo – Juliet* clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores etc.

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20. In that view of the matter, we pass the following order:

(a) The appeal is allowed. The directions issued in the impugned judgment are set aside.

(b) In view of 'III)' as extracted in para 5.6 as also in view of their intrinsic connection, such effect will extend to ***Aman*** (supra) and ***Manish*** (supra)

(c) The bail granted in terms of these judgments and orders, is left undisturbed in view of the other factors considered by the learned Single Judge subject to judicial review, if any.

(d) Insofar as the cases listed in the appendices to these judgments are concerned, this Court refrains from making any comment. The effect of this judgment will be prospective and shall not therefore, impact negatively, any of those cases wherein, following the procedure laid down in the impugned judgment or its progenitors, bail has been secured.

(e) The Registrar (Judicial) is directed to dispatch forthwith a copy of this judgment to the learned Registrar General, High Court of Judicature at Allahabad, for necessary follow-up action, as also information to the Trial Courts.

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Pending applications, if any, stand disposed of.

…..……..……J.
(SANJAY KAROL)

..……..……..……J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
January 9, 2026