IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.67 of 2018

Arising Out of PS. Case No.-44 Year-1993 Thana- SISWAN District- Siwan

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1. Shiv Jee Singh @ Sheo Jee Singh and Ors S/o Late Ramjatan Singh,
2. Hirdya Singh @ Hirdeya Narayan Singh S/o Shiv Jee Singh,
3. Jitendera Singh @ Jitendra Singh S/o Late Ram Suresh Singh,
4. Ajai Singh S/o Late Ram Suresh Singh,
5. Raj Kishore Singh S/o Late Yamraj Singh,
6. Budh Narayan Singh S/o Late Dharam Nath Singh,
7. Kameshwar Singh S/o Late Lal Babu Singh,
8. Subh Narayan Singh S/o Shiv Jee Singh,
   All R/o Village- Bhaisaura, P.S.- Siswan, District- Siwan.

... ... Appellant/s

Versus

The State Of Bihar

... ... Respondent/s

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Appearance :
For the Appellant/s : Mr. Dewendra Narayan Singh, Advocate
For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL ORDER

15 31-07-2025 The present criminal appeal has been preferred by the Appellants against the impugned order of conviction and order of sentence dated 12.12.2017 and 13.12.2017 respectively passed by learned Additional District and Sessions Judge, Fast Track Court-1, Siwan in Sessions Trial No. 11 of 1995, whereby all the appellants have been found guilty under Sections 307, 148, 149 and 326 of the Indian Penal Code and they have been sentenced to Rigorous Imprisonment for 5 years under Sections 307 and 326 each of the Indian Penal Code and 2 years under Sections 148 and 149 of the Indian Penal Code. All the

sentences have been directed to run concurrently.

Plea of Juvenility Taken

2. However, during pendency of this criminal appeal, the Appellant no.8/ Subh Narayan Singh, has filed one Interlocutory Application bearing No. 01 of 2022, whereby the appellant no.8 has raised his plea of juvenility for the first time. In support of his application, he has annexed a copy of his Matriculation Certificate, issued by Bihar School Examination Board, along with the application, as per which, his date of birth is 15.06.1975 and accordingly, his age on the date of occurrence i.e. on 01.06.1993 is 17 years 11 months and 15 days. He further submits that for want of knowledge and proper advice, he could not raise his plea of juvenility during the trial before the Trial Court. Hence, he has raised his plea during pendency of this appeal.

3. He further submits that though as per the Juvenile Justice Act, 1986, which was in operation on the date of occurrence, juvenility of a boy-Accused is only up to 16th years of age. But the Act of 1986 was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000 as per which, after its amendment in the year 2006, it was operative retrospectively and according to this Act, the Appellant, who was below 18

years of age at the time of the alleged occurrence, is entitled to get all the benefits as provided to a juvenile in conflict with the law under the Act of 2000. He further submits that the Act of 2000 has been repealed in the year 2015 but the new Act of 2015 is not operational retrospectively and the application of the Act of 2000 to all the pending cases is protected by the Act of 2015. He further submits that in view of the application of J.J. Act of 2000 to the Appellant, the impugned judgment is liable to be quashed and set aside.

Objection by Learned APP for the State

4. However, learned APP for the State opposes the prayer of the Appellant submitting that on the date of the alleged occurrence, the appellant was above 16 years of age and as per the J.J. Act, 1986 which was in operation on the date of occurrence, he was not juvenile. He also submits that the definition of juvenility as per J.J. Act, 2000 cannot be applied in case of the Appellant, because the same could not be applied retrospectively.

5. I considered the submissions advanced by both the parties and considered all the material on record.

Legal Provisions

6. At the outset, it is pertinent to note that at the time

of the alleged occurrence, the Juvenile Justice Act, 1986 was in operation. Hence, the Appellant was governed by the Act of 1986. However, the Juvenile Justice Act, 1986 was repealed by the Juvenile Justice Act of 2000 which came into effect from 01.04.2001. However, Section 20 of the Act of 2000, as stands after amendment in 2006, clearly provides for application of the Act of 2000 in all pending cases which were earlier governed by the Juvenile Justice Act of 1986. The application of the Act is not only in pending trial proceedings, but even in pending revisional and appellate proceedings. Section 20 of the Act of 2000 reads as follows:-

> **“ 20.Special provision in respect of pending cases.** —Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence:
> **Provided that** the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile.
> **Explanation.**—In all pending cases including trial, revision, appeal or any other criminal proceedings in respect of a juvenile in conflict with law, in any court, the determination of juvenility of such a juvenile shall be in terms of clause (l) of Section 2, even if the juvenile ceases to be so on or before the date of

> commencement of this Act and the provisions of this Act shall apply as if the said provisions had been in force, for all purposes and at all material times when the alleged offence was committed."
>
> (Emphasis Supplied)

7. The Juvenile Justice Act of 2000 was again repealed in 2015 by enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015, but the Act of 2015 is not applicable in pending cases which were earlier governed by Juvenile Justice Act of 2000, because Section 25 of the Act of 2015 protects and affirms the application of the Juvenile Justice Act of 2000 in the pending cases. As per Section 25 of the Act of 2015, notwithstanding anything contained in the Act of 2015, all the proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or Court on the date of commencement of this Act are required to be continued in that Board or Court as if the Act of 2015 had not been enacted. The word "proceedings" includes not only trial proceedings but even revisional and appellate proceedings. Section 25 of 2015 reads as follows:

> **"25. Special provision in respect of pending cases.**—Notwithstanding anything contained in this Act, all proceedings in respect of a child alleged or found to be in conflict with law pending before any Board or court on the date of commencement of this Act, shall be continued in that Board or court as if this Act had not been enacted."

8. As such, it is the Juvenile Justice Act of 2000 which is applicable to the facts and circumstances of the present case. It is also evident from the relevant judicial precedents pronounced on the subject by Hon'ble Supreme Court.

9. In **Hari Ram Vs. State of Rajasthan, (2009) 13 SCC 211, Hon'ble Supreme Court** has observed as follows:

> "38……The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1-4-2001, where a juvenile, who was below 18 years at the time of commission of the offence, was involved.
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> 39. The Explanation which was added in 2006, makes it very clear that in all pending cases, which would include not only trials but even subsequent proceedings by way of revision or appeal, the determination of juvenility of a juvenile would be in terms of clause (l) of Section 2, even if the juvenile ceased to be a juvenile on or before 1-4-2001, when the Juvenile Justice Act, 2000, came into force, and the provisions of the Act would apply as if the said provision had been in force for all purposes and for all material times when the alleged offence was committed. In fact, Section 20 enables the court to consider and determine the juvenility of a person even after conviction by the regular court and also empowers the court, while maintaining the conviction, to set aside the sentence imposed and forward the case to the Juvenile Justice Board concerned for passing sentence in accordance with the provisions of the Juvenile Justice Act, 2000.
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> .....
> **68.** Accordingly, a juvenile who had not completed eighteen years on the date of commission of the offence was also entitled to the benefits of the Juvenile Justice Act, 2000, as if the provisions of Section 2(*k*) had always been in existence even during the operation of the 1986 Act.
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> **69.** The said position was re-emphasised by virtue of the amendments introduced in Section 20 of the 2000 Act, whereby the proviso and Explanation were added

> to Section 20, which made it even more explicit that in all pending cases, including trial, revision, appeal and any other criminal proceedings in respect of a juvenile in conflict with law, the determination of juvenility of such a juvenile would be in terms of clause (*l*) of Section 2 of the 2000 Act, and the provisions of the Act would apply as if the said provisions had been in force when the alleged offence was committed".
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> (Emphasis supplied)

10. Hon'ble Supreme Court in **Daya Nand Vs. State of Haryana, (2011) 2 SCC 224** has again observed as follows:

> "9. In the Juvenile Justice Act, 1986, a "juvenile" was defined under Section 2(h) to mean a boy who has not attained the age of 16 years or a girl who has not attained the age of 18 years. On the basis of the finding of the Sessions Judge that on the date of occurrence, the appellant was over 16 years of age, he did not come within the definition of "juvenile" under the 1986 Act.
> 10. The Juvenile Justice Act, 1986 was replaced by the Juvenile Justice (Care and Protection of Children) Act, 2000 that came into force on 1-4-2001. The 2000 Act defined "juvenile or child" in Section 2(k) to mean a person who has not completed eighteen years of age. Section 69 of the 2000 Act, repealed the Juvenile Justice Act, 1986. The 2000 Act, in Section 20 also contained a provision in regard to cases that were pending when it came into force and in which the accused at the time of commission of offence was below 18 years of age but above sixteen years of age (and hence, not a juvenile under the 1986 Act) and consequently who was being tried not before a Juvenile Court but a regular court."

11. In **Abdul Razzaq Vs. State of U.P., (2015) 15 SCC 637, Hon'ble Supreme Court** has observed as follows:

> " 9. The legal position on the subject is well settled. A person below 18 years at the time of the incident can claim benefit of the Act any time. Reference may be made to Sections 7-A and 20 of the Act and Rule 12 of

> the Juvenile Justice (Care and Protection of Children) Rules, 2007
> ……...
> 10. The above provisions clearly show that even if a person was not entitled to the benefit of juvenilities under the 1986 Act or the present Act prior to its amendment in 2006, such benefit is available to a person undergoing sentence if he was below 18 on the date of the occurrence. Such relief can be claimed even if a matter has been finally decided, as in the present case."
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> (Emphasis supplied)

12. Hon'ble Supreme Court in the case of **Raju Vs. State of Haryana, (2019) 14 SCC 401** has held as follows:-

> " 10**.** It is by now well settled, as was held in *Hari Ram* v. *State of Rajasthan* , (2009) 13 SCC 211 , that in light of Sections 2(*k*), 2(*l*), 7-A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act …. It is equally well settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7-A of the 2000 Act….
>
> 11**.** In light of the above legal position, it is evident that the appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the trial court, in light of Section 7-A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the appellant."
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> (Emphasis supplied)

13. Hon'ble Supreme Court in the case of **Ashok Kumar Mehra v. State of Punjab, (2019) 6 SCC 132** has held as under:-

" 9. When we examine the facts of the case of Appellant 2 in the light of law laid down in *Raju* v. *State of Haryana*, (2019) 14 SCC 401 , we find that Appellant 2 was born on 14-6-1980 whereas the date of commission of the offence is 4-1-1998.

10. It is, therefore, an admitted fact that Appellant 2 was a juvenile (he was below the age of 18 years i.e. he was 17 years and 5 months) on the date of the commission of the offence (4-1-1998). In other words, Appellant 2 had not completed the age of 18 years on the date of commission of the offence i.e. on 4-1-1998.

11. Though this fact was neither brought to the notice of the Sessions Judge and nor the High Court and was brought to the notice of this Court for the first time by Appellant 2 in this appeal, yet in the light of law laid down by this Court in several decisions referred to in para 10 of the decision in *Raju* v. *State of Haryana*, (2019) 14 SCC 401, Appellant 2 is entitled to raise this plea even in this appeal."

(Emphasis supplied)

14. Hon'ble Supreme Court in **Satya Deo Vs. State of UP, (2020) 10 SCC 555,** has also held as follows:

" 9. **Section 20** of the 2000 Act, which provides a special provision in respect of pending cases, post the amendment vide Act 33 of 2006,……..

10. Section 20 is a special provision with respect to pending cases and begins with a limited non obstante or overriding clause notwithstanding anything contained in the 2000 Act. Legislative intent clearly expressed states that all proceedings in respect of a juvenile pending in any court on the date on which the 2000 Act came into force shall continue before that court as if the 2000 Act had not been passed. Though the proceedings are to continue before the court, the section states that if the court comes to a finding that a juvenile has committed the offence, it shall record the finding but instead of passing an order of sentence, forward the juvenile to the Juvenile Justice Board ("the Board") which shall then pass orders in accordance with the provisions of the 2000 Act, as if the Board itself had conducted an inquiry and was satisfied that the juvenile had committed the offence. The proviso, however, states that the Board, for any adequate and special reasons, can review the case and pass appropriate order in the interest of

the juvenile.

11. The **Explanation** added to Section 20 vide Act 33 of 2006, which again is of significant importance, states that the court where "the proceedings" are pending "at any stage" shall determine the question of juvenility of the accused. The expression "all pending cases" includes not only trial but even subsequent proceedings by way of appeal, revision, etc. or any other criminal proceedings. Lastly, the 2000 Act applies even to cases where the accused was a juvenile on the date of commission of the offence, but had ceased to be a juvenile on or before the date of commencement of the 2000 Act. Even in such cases, provisions of the 2000 Act are to apply as if these provisions were in force for all purposes and at all material time when the offence was committed

12. Thus, in respect of pending cases, Section 20 authoritatively commands that the court must at any stage, even post the judgment by the trial court when the matter is pending in appeal, revision or otherwise, consider and decide upon the question of juvenility. Juvenility is determined by the age on the date of commission of the offence. The factum that the juvenile was an adult on the date of enforcement of the 2000 Act or subsequently had attained adulthood would not matter. If the accused was juvenile, the court would, even when maintaining conviction, send the case to the Board to issue direction and order in accordance with the provisions of the 2000 Act.

(Emphasis supplied)

15. **Hon'ble Supreme Court** in the case of **Ashok Vs. State of Madhya Pradesh, (2023) 15 SCC 251** has held as follows :

"**6.** The Juvenile Justice Act, 1986, which was in force on the date of commission of the offence as also the date of the judgment and order of conviction and sentence by the Sessions Court was repealed by the Juvenile Justice (Care and Protection of Children) Act, 2000. The 2000 Act received the assent of the President of India on 30-12-2000 and came into force on 1-4-2001. The 2000 Act defined juvenile in conflict with the law to mean a juvenile, who was alleged to have committed an offence and had not completed 18th year of age as on the date of commission of such an offence.

……...

9. Even though the offence in this case may have been committed before the enactment of the 2000 Act, the petitioner is entitled to the benefit of juvenility under Section 7-A of the 2000 Act, if on inquiry it is found that he was less than 18 years of age on the date of the alleged offence.

(Emphasis supplied)

16. Now coming to the statutory provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000, as it stands after amendment in the year 2006, it is found that as per Section 2(k) and 2(l) of the Act of 2000, a juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed 18 years of age on the date of commission of such offence. As such, as per the claim, the Appellant is juvenile in the terms of Act of 2000, because he is 17 years 04 months and 08 days old on the alleged date of occurrence and hence, he is entitled to all benefits and protections as provided in the Act of 2000, if the Appellant is found to be juvenile after inquiry.

17. Moreover, as per Section 7A of the Act of 2000, the claim of juvenility may be raised before any Court at any stage of the proceeding and such claim is required to be determined in terms of the provisions of the Act of 2000 and rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act on

01.04.2001. Section 7A of the Act of 2000 reads as follows:

> **"7A. Procedure to be followed when claim of juvenility is raised before any Court.-** (1)Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:
>
> Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.
>
> (2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section(1), it shall forward the juvenile to the Board for passing appropriate orders and the sentence, if any, passed by a court shall be deemed to have no effect."
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> (Emphasis Supplied)

18. Even the judicial precedents as pronounced by Hon'ble Apex Court on the subject, clearly hold that the plea of juvenility could be raised at any stage before any Court. In other words, the plea of juvenility could be raised before the Appellate Court during pendency of the appeal.

19. Hon'ble Supreme Court in **Hari Ram Case (Supra)** has held as follows:

> 49. The effect of the proviso to Section 7-A introduced by the amending Act makes it clear that the claim of juvenility may be raised before any court which shall be recognised at any stage, even after final disposal of the

case, and such claim shall be determined in terms of the provisions contained in the Act and the Rules made thereunder which includes the definition of "juvenile" in Sections 2(k) and 2(l) of the Act even if the juvenile had ceased to be so on or before the date of commencement of the Act.

.....

57. As will, therefore, be clear from the provisions of the Juvenile Justice Act, 2000, as amended by the Amendment Act, 2006 and the Juvenile Justice Rules, 2007, the scheme of the Act is to give children, who have, for some reason or the other, gone astray, to realise their mistakes, rehabilitate themselves and rebuild their lives and become useful citizens of society, instead of degenerating into hardened criminals.

.....

67. Section 7-A of the Juvenile Justice Act, 2000, made provision for the claim of juvenility to be raised before any court at any stage, as has been done in this case, and such claim was required to be determined in terms of the provisions contained in the 2000 Act and the Rules framed thereunder, even if the juvenile had ceased to be so on or before the date of commencement of the Act."

(Emphasis Supplied)

20. Hon'ble Supreme Court in **Abuzar Hossain Case (Supra)** has again held as follows:

39. Now, we summarise the position which is as under:

39.1. A claim of juvenility may be raised at any stage even after the final disposal of the case. It may be raised for the first time before this Court as well after the final disposal of the case. The delay in raising the claim of juvenility cannot be a ground for rejection of such claim. The claim of juvenility can be raised in appeal even if not pressed before the trial court and can be raised for the first time before this Court though not pressed before the trial court and in the appeal court.

39.2. For making a claim with regard to juvenility after conviction, the claimant must produce some material which may prima facie satisfy the court that an inquiry into the claim of juvenility is necessary. Initial burden has to be discharged by the person who claims juvenility.

39.3. As to what materials would prima facie satisfy the court and/or are sufficient for discharging the initial 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 and Pawan (2009) 15 SCC 259 these documents were not found prima facie credible while in Jitendra Singh (2010) 13 SCC 523 857 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.

39.4. An affidavit of the claimant or any of the parents or a sibling or a relative in support of the claim of juvenility raised for the first time in appeal or revision or before this Court during the pendency of the matter or after disposal of the case shall not be sufficient justifying an enquiry to determine the age of such person unless the circumstances of the case are so glaring that satisfy the judicial conscience of the court to order an enquiry into determination of the age of the delinquent.

39.5. The court where the plea of juvenility is raised for the first time should always be guided by the objectives of the 2000 Act and be alive to the position that the beneficent and salutary provisions contained in the 2000 Act are not defeated by the hypertechnical approach and the persons who are entitled to get benefits of the 2000 Act get such benefits. The courts should not be unnecessarily influenced by any general impression that in schools the parents/guardians understate the age of their wards by one or two years for future benefits or that age determination by medical examination is not very precise. The matter should be considered prima facie on the touchstone of preponderance of probability.

39.6. Claim of juvenility lacking in credibility or frivolous claim of juvenility or patently absurd or inherently im-

probable claim of juvenility must be rejected by the court at the threshold whenever raised."

(Emphasis supplied)

21. Hon'ble Supreme Court in Satya Deo Case (Supra) has again held as follows:

"13. By Amendment Act 33 of 2006, Section 7-A was inserted in the 2000 Act setting out the procedure to be followed by the court to determine the claim of juvenility. Section 7-A, which came into effect on 22-8-2006, …..

14. The proviso of Section 7-A is important for our purpose as it states that the claim of juvenility may be raised before "any court" "at any stage", even after the final disposal of the case. When such claim is made, it shall be determined in terms of the provisions of the 2000 Act and the Rules framed thereunder, even when the accused had ceased to be a juvenile on or before commencement of the 2000 Act. Thus, it would not matter if the accused, though a juvenile on the date of commission of the offence, had become an adult before or after the date of commencement of the 2000 Act on 1-4-2001. He would be entitled to benefit of the 2000 Act."

(Emphasis Supplied)

22. **Hon'ble Supreme Court** in the case of **Ashok case (supra)** has held as follows :

"8…….The claim of juvenility can thus be raised before any court, at any stage, even after final disposal of the case and if the court finds a person to be a juvenile on the date of commission of the offence, it is to forward the juvenile to the Board for passing appropriate orders, and the sentence, if any, passed by a court, shall be deemed to have no effect."

Finding and Order of this Court in the Present Case

23. Now coming to the case on hand, I find that the alleged date of occurrence is 01.06.1993, whereas as per the Matriculation Certificate as annexed by the Appellant No.8, his

date of birth is 15.06.1975. Hence, his age on the date of occurrence comes to 17 years, 11 months and 15 days. As such, *prima facie* it appears that the Appellant No.8 is below 18 years of age and hence, inquiry into his juvenility is imperative before I proceed in this appeal.

24. Hence, allowing the application of the appellant, J.J. Board is directed to conduct enquiry regarding juvenility of the Appellant No.8 and send his report within three months. The enquiry should start from 18th August, 2025. The Appellant No.8 is directed to participate in the enquiry by reporting to the Juvenile Justice Board on 18th August, 2025. Further dates for inquiry may be fixed by learned J.J. Board as per his convenience and send a report of the enquiry to this Court within three months without fail.

25. List this case on 31.10.2025 awaiting the enquiry report from the Juvenile Justice Board, Siwan.

(Jitendra Kumar, J.)

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