HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 2282/2025

Jasaram Pander S/o Nemaram Pander, Aged About 44 Years, R/o Ward No. 44, P.s. Ladnun, Dist. Didwan-Kuchaman, Raj.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Jhumarram S/o Rawatmal, Aged About 59 Years, R/o Naiyo Ki Bhagichi Ke Pass, Tehsil Ladnun, Dist. Didwana-Kuchaman

----Respondents

Connected With

S.B. Criminal Misc(Pet.) No. 6206/2024

Abdul Haiyat S/o Kavirudeen Shekh, Aged About 21 Years, R/o Ward No. 3, Khana Tola, Manulahpatti, Ps Bhargava, Dist. Araiya, Bihar, At Present Ratan Lal Khatik's House, Biliya Khurd, Ps Pratapnagar, Bhilwara.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Smt. Jagmati Devi W/o Bharat Prasad, R/o Sardar Ji House, Biliya Chowk, Riico, Bhilwara.

----Respondents

S.B. Criminal Misc(Pet.) No. 7786/2024

Abdul Haiyat S/o Kavirudeen Shekh, Aged About 21 Years, R/o Ward No. 3, Khan Tola, Manulahpatti, Police Station Bhargava, District Arariya, Bihar, At Present Ratan Lal Khatiks House, Biliya Khurd, Ps Pratapnagar, Bhilwara.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Smt. Jagmati Devi W/o Bharat Prsad, R/o Sardar Ji House, Biliya Chowk, Riico, Bhilwara.

----Respondents

For Petitioner(s)	:	Mr. Vineet Jain, Sr. Advocvate Mr. Abhishek Purohit Mr. Umesh Kant Vyas (Shirmali) Mr. Divik Mathur Mr. Gajendra Singh Butati Mr. Vichitra Singh Shri Krishan Chaudhary Mr. Tananjay Pramar Mr. B.S. Mertia Mr. Sanjay Bishnoi Mr. Naresh Rajpurohit Mr. Ramprakash Dudi Mr. Karmendra Singh Mr. Ankur Mathur Mr. Rajak Khan Haider
For Respondent(s)	:	Mr. Deepak Chaudhary ,AAG Mr. N.K.Gurjar, AAG Mr. Vikram Rajpurohit, Dy.G.A. Mr. Yuvraj Sonal Mr. Vishal Sharma Ms. Advaita Sharma Mr. Piyush Sharma Mr. Mrinal Khatri Ms. Deepti Sharma Ms. Sapna Vaishnav

HON'BLE MR. JUSTICE FARJAND ALI

Order

Reportable

ORDER RESERVED ON ::: 07/04/2025

ORDER PRONOUNCED ON ::: 27/*05*/2025

Grievance and Facts Of S.B. Criminal Misc(Pet.) No. 2282/2025

1. By way of filing this instant petition, the petitioner has assailed the order dated 07.02.2025 passed by the learned Sessions Judge, Special Court (Protection of Children from Sexual Offences Act), Nagaur, whereby the application filed by the petitioner seeking exemption from the requirement under Section 33(2) of the POCSO Act was dismissed.

2. The factual background of the case reveals that on 20.11.2023, the complainant, father of the minor victim, lodged a written complaint at Ladnun Police Station, District Didwana-Kuchaman, alleging that his 16-year-old daughter had gone missing on the night of 19.11.2023. According to the complaint, the daughter was later dropped off in the locality at around 1:00 AM, and upon inquiry, she disclosed the names of the present petitioner and two other individuals, who took her away and abused sexually.

Based on the complaint, FIR No. 402/2023 was registered at Ladnun Police Station under Sections 376(D) and 363 of the Indian Penal Code, 1860, and Sections 5(g)/6 of the Protection of Children from Sexual Offences Act, 2012. The petitioner was arrested on 21.11.2023 and subsequently remanded to judicial custody. After completion of the investigation, a chargesheet dated 27.12.2023 was filed, and cognizance was taken by the learned Special Court, Nagaur. The matter is presently at the stage of examination of prosecution witness and the trial is pending. During the course of trial, the petitioner moved an application seeking exemption from the mandatory procedure under Section 33(2) of the POCSO Act, 2012, contending that since the prosecutrix has attained the age of majority, the requirement of submitting cross-examination questions in writing to the Court before being posed to the victim was no longer warranted. The learned trial court, however, dismissed the said application by the impugned order dated 07.02.2025 and aggrieved by the same the petitioner approached this court.

Grievance and Factual Matrix of S.B. Criminal Misc. Petitions Nos. 6206/2024 and 7786/2024

3. These two petitions, arising out of the same Sessions Case No. 102/2023 pending before the learned Special Judge, Protection of Children from Sexual Offences Act, 2012 and Commissions for Protection of Child Rights Act, 2005, No. 2, Bhilwara, have been filed under Section 482 of the Code of Criminal Procedure, 1973 read with Sections 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, challenging distinct but interconnected judicial orders.

4. The factual substratum common to both petitions originates from an FIR bearing No. 562/2023 registered at the instance of the complainant, who alleged that her 17-year-old daughter had been missing since 29.06.2023. On 09.07.2023, the complainant received a phone call from her daughter, who alleged that she had been kidnapped, wrongfully confined at Miya Colony, Hyderabad, and subjected to repeated sexual

assault by Abdul Hayat, Akram, and others employed at Vijeta Factory. Pursuant to the investigation, a charge sheet was filed against the accused persons for offences punishable under Sections 363, 366A, 343, 376(2)(n), and 376D of the IPC and Section 5(l)/6 of the POCSO Act, 2012. Upon framing of charges, the matter proceeded to the stage of prosecution evidence.

5. In S.B. Criminal Misc. Petition No. 6206/2024, the petitioner has assailed the order dated 08.08.2024, whereby the learned trial court rejected an application filed by the petitioner seeking permission for direct cross-examination of the victim without disclosing the proposed questions in advance to the Court. It was specifically contended therein that since the prosecutrix had attained majority by the time of trial, the procedural safeguards under Section 33(2) of the POCSO Act were no longer applicable. Although the prosecution chose not to file a reply to the said application, the learned Special Judge dismissed the same. Aggrieved thereby, the petitioner has approached this Court seeking appropriate relief.

6. In S.B. Criminal Misc. Petition No. 7786/2024, the petitioner has challenged the subsequent order dated 10.09.2024, whereby the learned trial court declined to grant adjournment for cross-examination of the victim. It is submitted that after the conclusion of the victim’s chief examination on 08.08.2024, the case was posted for cross-examination on 09.09.2024 and 10.09.2024. However, on 10.09.2024, the

defence counsel, owing to personal constraints, moved an application seeking adjournment of the cross-examination, which was rejected, and the opportunity to cross-examine was consequently closed. It is also pertinent to note that the earlier order dated 08.08.2024 rejecting the petitioner's application for direct cross-examination without disclosure of questions is already under challenge in S.B. Criminal Misc. Petition No. 6206/2024. The present petition thus seeks redressal of the grievance arising from denial of a fair opportunity to conduct cross-examination, which is claimed to be essential for ensuring a just and proper defence.

Common Question of Law Involved

7. Upon a conjoint reading of the pleadings and impugned orders in S.B. Criminal Misc. (Pet.) No. 2282/2025, S.B. Criminal Misc. (Pet.) No. 6206/2024, and S.B. Criminal Misc. (Pet.) No. 7786/2024, this Court found that a substantial question of law arises for consideration:

"Whether the protective procedure prescribed under Section 33(2) of the POCSO Act, 2012, requiring that questions during examination-in-chief, cross-examination, or re-examination of a child be routed through the Special Court, continues to apply once the victim attains the age of majority during the pendency of trial?"

8. In light of the recurring nature of this issue across multiple

cases and its wider implications on the conduct of trials under the POCSO Act, this Court deemed it appropriate to seek the assistance of the learned members of the Bar through order dated 27.02.2025. The order is reproduced hereunder-

"1. The petitioner in this case is an accused under the POCSO Act, and the matter is currently at the stage of recording statements of the witnesses. Over the period, the victim has attained the age of majority and no longer falls within the definition of a "child" as provided under Section 2(d) of the POCSO Act. Consequently, a prayer has been made that now adherence to the procedure outlined under Section 33(2) of the POCSO Act should not be deemed mandatory.

2. This Court has raised crucial questions regarding the permissibility of direct cross-examination and re-examination of a victim under the POCSO Act if, during the trial, the victim transits from childhood to adulthood. In other words, this Court is pondering whether the trial court is still required to adhere to the procedural safeguards mandated under Section 33(2) of the Act, when the victim has attained the age of majority.

3. This Court, after due deliberation, is of the view that the legislative intent behind the use of the term "child" must be interpreted in a manner consistent with its definition under Section 2(d) of the POCSO Act. It is a well-established principle of law that the procedural safeguards enshrined in the Act are designed to protect victims from the trauma associated with sexual abuse, ensuring that they are not subjected to undue distress during cross-examination. The primary objective of these provisions is to create a safe and non-intimidating environment for child victims to testify without fear or pressure. Therefore, if the victim no longer falls within the definition of a "child" under Section 2(d) of the Act upon attaining majority, there would be no necessity to conduct cross-examination in the same manner as prescribed for a child victim.

4. The another aspect of the issue would be that perhaps rationale behind Section 33(2) of POCSO Act is that the trauma and psychological impact of the incident persist beyond childhood, and the protective mechanisms under Section 33(2) should continue to be observed to ensure that the victim is not further exposed, perturbed *or distressed or be confronted with the horrific incident. Thus, this Court questions whether even after attaining the majority, the procedural safeguards under Section 33(2) of POCSO must be adhered to during the trial or not.*

5. For a better understanding, the relevant provisions of the POCSO Act are reproduced below:

Section 33(2) of the POCSO Act:

"33. Procedure and powers of Special Court.

(2) The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the ***questions to be put to the child*** *to the Special Court which shall in turn put those questions to the child."*

Definition of "Child" under Section 2(d) of the POCSO Act:

"2. Definitions.

(d) "child" means any person below the age of eighteen years;"

From a plain reading of Section 33(2), it is evident that the provision explicitly refers to ***"questions to be put to the child,"*** *thereby reinforcing the requirement to consider the definition of "child" as per Section 2(d) of the Act. Provided that a child is defined as a person below the age of eighteen years, the crucial question arises that now the questions are not to be put to the child but to an adult as the victim has attained the age of majority and transposed to the status of child to an adult, so, now he/she can directly be cross-examined by the defense counsel or whether the protective procedure prescribed under Section 33(2) must still be followed.*

6. Learned senior counsel Shri Vineet Jain and learned counsel Shri Vishal Sharma were requested and they graciously and generously shown their willingness to assist the Court on the question involved in this case as discussed in the preceding paragraphs. The counsels may argue orally or file written submissions.

7. Any other members of the Bar here, who are willing to make submission on this issue are also welcomed.

8. List the matters on 19.03.2025.

9. A copy of this order be circulated to the learned members of the Bar by publishing the same in the cause list and a copy may be *displayed on the notice board.*

10. In the meanwhile, further proceedings pending in the Court of learned Special Judge, (POCSO Act No.2), Bhilwara in Sessions Case No.102/2023 shall remain stayed."

9. Accordingly, senior counsel and practitioners were invited to render submissions on the scope, interpretation, and application of Section 33(2) in circumstances where child had crossed the age threshold of 18 years after initiation of proceedings. Their submissions are noted hereunder.

Written Submissions Urging Inapplicability of Section 33(2) Post-Majority

10. The petitioner submits that the procedural safeguards under Section 33(2) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), are exclusively intended for a "child" as defined under Section 2(1)(d)—a person below 18 years of age—and cannot be extended to a witness who attains majority during the course of trial. Section 33(2) mandates that questions during examination-in-chief, cross-examination, or re-examination be routed through the Special Court only while the witness continues to be a child, as is evident from the use of the present tense in the provision. Once the child crosses the age of 18 years, the protective procedure ceases to apply, and the ordinary rules of criminal trial and evidence law must govern further proceedings.

11. This interpretation is grounded in legislative intent and reinforced by case law. In ***Eera v. State [2017 (15) SCC 133]***,

the Hon’ble Supreme Court held that “child” in the Act refers strictly to biological age and cannot be interpreted broadly. The distinction in the Act between “child” and “victim” also suggests that procedural protection is age-bound. In ***Mahammad Ali Akbar v. State of Karnataka [2022 SCC OnLine Kar 1048] and S. Ganeshan v. State [2022 LiveLaw (Mad) 116],*** the Karnataka and Madras High Courts respectively held that the rigours of Section 33(5) dilute once the witness attains majority. These decisions uphold that procedural privileges meant for children under the POCSO framework are not perpetuated beyond the child’s 18th birthday.

12. Further, the petitioner highlights that Section 37 (requiring parental presence) also applies only to children, demonstrating that the procedural architecture of the POCSO Act is strictly child-centric. Applying these protections post-majority would amount to judicial legislation, which is impermissible under principles of statutory interpretation—particularly in the domain of criminal law, which must be strictly construed. The petitioner invokes the Golden Rule of interpretation, which allows courts to depart from literal readings to avoid unjust or illogical results. The theory of "once a child, always a child" cannot be sustained once the rationale behind the special procedural protection—limiting trauma to a child—ceases to exist. This is also supported by the maxim *cessante ratione legis, cessat lex ipsa*—when the reason for a law ceases, the law itself ceases.

13. The petitioner respectfully submits that while the POCSO Act is a beneficial legislation grounded in constitutional and international mandates—aimed at criminalizing sexual offences against children and ensuring child-friendly procedures—it must also be interpreted in a manner that harmonizes its protective purpose with constitutional guarantees of fair trial. The Act confers upon victims, who were below 18 years at the time of offence, enduring substantive protections that do not extinguish upon attainment of majority. However, the procedural safeguards under Section 33 are not absolute or unqualified; they must be interpreted purposively—not rigidly—so as to ensure that the child's need for protection from secondary trauma does not unjustly curtail the accused's right to fair and effective cross-examination under Article 21 of the Constitution.

14. The counsels for the petitioner asserts that age has a close correlation with prudence—encompassing wisdom, foresight, caution, sagacity, and intelligence—and that this relationship must be consistently recognized for all individuals, whether accused, victim, or witness. Sections 118 of the Indian Evidence Act and Sections 82 and 83 of the IPC reflect this principle by recognizing diminished capacity in cases of tender years or immaturity. Therefore, a person who is no longer a child, and has attained majority, must be presumed to possess the requisite prudence and maturity to face standard modes of cross-examination. Retaining child-specific protections post-majority

would compromise the fairness of proceedings, particularly when Section 29 of the POCSO Act shifts the burden of proof onto the accused. Requiring the accused to pre-disclose their line of cross-examination through a Special Court, in such circumstances, gives an unfair strategic advantage to a now-prudent witness, who may adapt their responses accordingly, thereby violating the principles of natural justice and the right to a fair defence.

15. It is further contended that presumptions of post-majority trauma or accusations of tactical delay by the defence are unfounded. Section 35 of the POCSO Act mandates that a child's evidence be recorded within 30 days and that the trial conclude within one year, thereby vesting the Court with sufficient control over the pace of proceedings. Adherence to these timelines is essential, but must not override fairness. The possibility of misuse or false implication further underscores the necessity of effective cross-examination to safeguard the integrity of the process.

16. Finally, the petitioner submits that in line with comparative jurisprudence and constitutional principles under Articles 14 and 21, once a victim turns 18, they fall into a distinct legal category and must be treated accordingly. Extending Section 33(2)'s procedural mechanism post-majority would disrupt legislative balance, infringe upon the accused's right to a fair trial, and contravene binding judicial precedent. Accordingly, the petitioner prays that this Court declare that the safeguards under Section

33(2) cease to apply upon a witness attaining majority, and that any further accommodation must be governed by ordinary rules of evidence, subject to case-specific judicial discretion and constitutional constraints.

Written submissions of Learned Counsels appeared in support of continuous application of the safeguard

17. These submissions collectively underscore that the Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted to ensure a child-centric, trauma-minimizing legal process through special procedural safeguards such as child-friendly courts, protective cross-examination norms, and mechanisms to prevent re-traumatization. Section 33(2) mandates that during cross-examination, questions to a child must be put only through the Special Court. The core legal issue is whether this procedural safeguard continues to apply when a child victim—defined under Section 2(d) as a person below 18 years—attains majority during the pendency of trial.

18. It is submitted that the determinative factor for applying Section 33(2) must be the victim’s age at the time of the offence or the initiation of proceedings—not at the time of trial. Courts including in ***Anujith v. State of Kerala and C.R. Ref. 2/2024 (Delhi High Court)*** have clarified that protections under Section 33(2) do not lapse upon the victim turning 18. The rationale is that emotional trauma, psychological vulnerability, and the risk of secondary victimization do not dissipate merely with the

attainment of majority.

19. The legislative intent of Section 33(2) is to shield victims from adversarial and aggressive cross-examination that could result in re-traumatization. International jurisprudence and reforms from jurisdictions such as the UK, Australia, Canada, and Germany, along with Supreme Court guidelines in ***Alakh Alok Srivastava v. Union of India,*** affirm the necessity of child-sensitive procedures that include restrictions on improper questioning and the use of intermediaries. Empirical studies have shown that suggestive, repetitive, and accusatory questioning severely undermines both the mental well-being of victims and the reliability of their testimony.

20. Three timelines are relevant:

1. Victim remains a child throughout: Full POCSO protections undisputedly apply.

2. Victim attains majority during trial: Protective procedures under Section 33(2) should continue. Emotional maturity does not occur instantly at 18, and removing safeguards mid-trial could encourage delay tactics by the defense. The provision is a balancing mechanism that preserves the right of cross-examination while protecting the victim.

3. Victim is already an adult at the time of complaint: POCSO protections, including Section 33(2), may not apply, as the complainant is presumed to have legal and emotional maturity.

Further, limiting protections strictly by age at trial would negatively impact other key provisions like Sections 22, 23, 24, 33(4)-(7), 35, 36, and 37, as well as the POCSO Rules, 2020. The Preamble and Section 33(7) of the Act stress protection "through all stages of a judicial process." Therefore, a purposive interpretation must be adopted to extend procedural safeguards until the conclusion of trial if the victim was a child at the time of offence or registration.

21. This interpretation finds further support in ***Jarnail Singh (2013) 7 SCC 263,*** JJ Act Rule 12(4), and the Puducherry Guidelines framed under Section 39, which use the expression "child victims and witnesses" in a purpose-driven context. Moreover, Section 33(2), being mandatory in nature due to the use of "shall," reflects legislative intent that admits no exception based on subsequent attainment of majority.

22. Applying principles of statutory interpretation such as *generalia specialibus non derogant, casus omissus*, and the mischief rule, it is submitted that the procedural safeguards under Section 33(2) are not extinguished upon the victim crossing the threshold of majority. To hold otherwise would defeat the very object and spirit of the POCSO Act.

Court's Observation

23. Before delving into the judicial analysis, it is apposite to reproduce the relevant statutory provisions for clarity and

contextual understanding.

Section 33(2) of the Protection of Children from Sexual Offences Act, 2012 reads as follows:

"The Special Public Prosecutor, or as the case may be, the counsel appearing for the accused shall, while recording the examination-in-chief, cross-examination or re-examination of the child, communicate the questions to the Special Court, which shall in turn put those questions to the child."

Further, Section 2(d) of the Act, which defines the term "child," states:

"'Child' means any person below the age of eighteen years."

24. This Court is called upon to examine a nuanced but pivotal issue emerging from the scheme of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), i.e., whether the protective procedural mandate under Section 33(2) of the said Act continues to apply even after child attains the age of majority during the pendency of trial. The question assumes significance in light of the competing interests of safeguarding the dignity of a child witness on one hand, and upholding the fundamental right of the accused to a fair trial on the other.

Purpose and Constitutional Ethos Underpinning the POCSO Act

25. The Protection of Children from Sexual Offences Act, 2012

(hereinafter referred to as the "POCSO Act") stands as a sui generis legislative instrument crafted to address the acute vulnerability of children—recognized as a distinct and susceptible class within society—to sexual abuse, harassment, and exploitation, including through pornographic mediums. This act was enacted pursuant to the constitutional mandate under Article 15(3) of the Constitution of India, the statute exemplifies the State's affirmative duty to adopt specialized legal measures for the protection and advancement of children, taking cognizance of their inherent developmental and psychological susceptibilities.

26. The enactment must be contextualized against India's vast and demographically diverse landscape, home to over 1.4 billion people, of whom approximately 39% are under the age of 18. These children inhabit urban conglomerates, rural hinterlands, tribal regions, and conflict-prone zones, each presenting unique obstacles to the realisation of child rights. The POCSO Act thus embodies a comprehensive response tailored to bridge systemic gaps in safeguarding children, particularly those exacerbated by socio-economic disparities, lack of legal awareness, cultural inhibitions, and entrenched gender biases.

27. It bears emphasis that the POCSO Act is not merely a domestic legislative initiative but also a reflection of India's solemn obligations under international law, notably the United Nations Convention on the Rights of the Child, 1989 (UNCRC), ratified by India in 1992. The UNCRC obligates State Parties to

adopt all necessary legislative, administrative, and social measures to protect children from sexual abuse and exploitation and mandates that the "best interests of the child" must be a primary consideration in all actions concerning them—a principle that forms the bedrock of POCSO's procedural and substantive provisions.

28. Furthermore, the Act’s preambular objectives and structural provisions—including the establishment of child-sensitive Special Courts—underscore the legislature’s intention to secure not only conviction for child-related sexual offences but also to ensure that the criminal justice process itself does not inflict secondary trauma upon child victims. It is this dual focus on accountability and protection that renders the POCSO framework both remedial and progressive in character.

29. In summation, the POCSO Act is not to be viewed as an ordinary penal statute but as a constitutional and international rights-based instrument that synthesizes India’s legal, moral, and institutional commitment to the protection of its children. It fortifies the jurisprudential evolution of child rights in India and seeks to ensure that every child—irrespective of caste, class, gender, or geography—is embraced within the protective ambit of the law.

Judicial Interpretation of Section 33(2), POCSO Act: Age-Contingent Procedural Safeguard and the Limits of

Statutory Construction

30. At the outset, a purposive reading of the Preamble of the POCSO Act reveals its bifurcated intent. The first limb is substantive in character, aiming "to protect children from offences of sexual assault, sexual harassment and pornography." The second limb pertains to the procedural domain, namely the establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. It is within the contours of this second limb that Section 33(2) is situated. It is trite that procedural law is the vehicle of justice, not its destination, and must not be interpreted in a manner that frustrates the ends of substantive justice or impinges upon the foundational rights of the accused. The procedural safeguard under Section 33(2), which mandates that all questions posed to the child witness during examination be routed through the Special Court, is thus procedural in nature and not intrinsic to the ascertainment of guilt or innocence.

31. Furthermore, a plain and grammatical construction of Section 33(2) underscores that the legislature has deliberately and restrictively used the term "child" — defined under Section 2(d) of the Act as "any person below the age of eighteen years." This lexical choice is neither accidental nor interchangeable with the term "victim," which is used elsewhere in the Act wherever a broader ambit is intended. The principle of e*xpressio unius est exclusio alterius* — the express mention of one thing implies the

exclusion of others — squarely applies. Where the legislature intended to confer procedural protection irrespective of age, it employed the term "victim"; conversely, where protection was age-specific, as under Section 33(2), it used the term "child." Courts are not at liberty to legislate from the bench or broaden the legislative canvas under the guise of purposive interpretation. To do so would violate the principle of separation of powers and the judicial restraint doctrine *(in claris non fit interpretatio)* — where the text is clear, no interpretation is warranted.

32. The necessity of the protection under Section 33(2) stems from the unique vulnerability of children during judicial proceedings. However, once the individual crosses the statutory threshold of eighteen years and becomes an adult, the very rationale underpinning the procedural shield falls away. It would be a legal incongruity to extend the benefit of Section 33(2) to a person who no longer qualifies as a “child” under the Act. The transposition from the status of a child to that of an adult during trial is not merely biological but has juridical consequences, including the capacity to withstand the adversarial process of direct cross-examination, which is a core component of fair trial principles under Article 21 of the Constitution of India.

33. It is also germane to note that while the POCSO Act envisions a child-friendly process, it cannot be construed to eclipse the cardinal principles of criminal jurisprudence. The right

to cross-examine a witness is a critical right vested in the accused, forming part of the due process guarantee. The procedural routing of questions through the Court, though salutary in intent, cannot be imposed rigidly once its statutory preconditions cease to exist. In such a scenario, continuing to insist upon judicial intermediation under Section 33(2) for an adult witness would amount to procedural overreach, and in effect, superfluous formalism divorced from the statutory mandate.

Judicial Construction of "Child" and the Relevance of Biological Age: Analysis of Ms. Eera through Dr. Manjula Krippendorf v. State (2017) 15 SCC 133

34. In illuminating the statutory contours of the term "child" under the POCSO Act, the Supreme Court's authoritative pronouncement in ***Ms. Eera through Dr. Manjula Krippendorf v. State*** serves as a crucial interpretive milestone. The Apex Court, in unequivocal terms, held that the word "child," as defined under Section 2(d) of the POCSO Act, must be construed strictly to denote biological or chronological age, and not mental or intellectual age. The decision arose in the context of a prosecutrix who, though chronologically a major, was claimed to have the mental faculties of a child. The Court, however, rejected the invocation of mental age as a basis for application of the Act, underscoring that the legislative mandate is confined to persons below the age of eighteen years as per their date of birth, and

not any subjective or psychological construct of vulnerability.

35. The jurisprudential import of *Eera* lies in its reaffirmation of the principle of strict interpretation of penal statutes, particularly where special criminal enactments like POCSO are concerned. The Court cautioned against judicial overreach by infusing expansive or equitable meanings into clearly defined statutory terms, especially when such expansion would impinge upon the rights of the accused or compromise the certainty of legal standards. The Court held that while the POCSO Act is indeed a benevolent legislation, designed to safeguard children from sexual offences, the protective mechanisms embedded therein cannot be extended to adults—irrespective of any putative psychological incapacity—since such an approach would subvert the legislative intent and distort the statutory scheme.

36. In the present legal context, this precedent has significant bearing. The principle laid down in *Eera* mandates that "child" must be understood in its precise, biological sense, both for determining the applicability of the Act and for invoking its special procedural protections, including those under Section 33(2). Therefore, when a victim, who was biologically under eighteen at the time of the offence, attains majority during trial, Eera (supra) supports the view that he or she ceases to be a "child" for purposes of procedural application under the Act—unless the statute expressly provides otherwise. While the prosecution of the offence itself remains tenable due to the

victim's age at the time of commission of offence, the continuation of procedural protections meant exclusively for children—such as judicial intermediation of questions—requires purposive justification, lest the court be seen as judicially engrafting mental or psychological criteria into a definition that the legislature has consciously restricted to biological parameters.

37. Furthermore, *Eera* stands as a cautionary guidepost against the doctrine of "once a child, always a child" being mechanically or indefinitely applied in procedural contexts. The Court in *Eera* emphasized the need for coherence between legislative language and judicial interpretation, thereby rejecting interpretations driven solely by sympathetic considerations or extra-statutory factors. In the same vein, it must be recognised that the procedural safeguards under Section 33(2), while crafted to mitigate trauma to children, must yield to evolving circumstances —particularly when the witness, now an adult, possesses full prudential maturity and cognitive capacity, and where the accused is burdened with a reverse presumption under Section 29. To rigidly apply such protections beyond their natural and legislative scope, would amount to judicial legislation, diluting both the sanctity of fair trial guarantees and the principled limits of statutory construction.

38. Thus, *Eera* decisively reinforces the interpretive premise that biological age is the sole determinative criterion for invoking

protections under the POCSO framework, and this clarity must equally inform the temporal scope of procedural entitlements under Section 33(2) when the witness ceases to be a child in the eyes of the law.

Legislative Intent Behind Section 33(2): A Balancing of Competing Rights

39. This Court is deeply cognizant of the noble legislative purpose underlying the Protection of Children from Sexual Offences Act, 2012 (hereinafter "POCSO Act"), a special statute enacted to remedy the lacunae in existing penal laws and to provide a comprehensive mechanism for protection, redressal, and rehabilitation of children subjected to sexual offences. The inclusion of Section 33(2) — requiring the Special Court to interpose itself between the accused and the child during cross-examination — is emblematic of the State's obligation to safeguard the child's mental and emotional well-being, particularly in traumatic and adversarial judicial proceedings.

40. However, it must be observed that the protective layer introduced by Section 33(2) is not a carte blanche ouster of the rights of the accused. Rather, it is a constitutionally mindful, calibrated curtailment — aimed at securing the *parens patriae* interest of the State towards a minor. The mechanism under Section 33(2) thus seeks to balance the statutory rights of the child-victim under the POCSO Act with the fundamental rights of the accused, particularly those arising under Articles 21 (right to

fair trial), 14 (equality before law), and procedural safeguards enshrined in the Indian Evidence Act, 1872 and the Bharatiya Nagarik Suraksha Sanhita, 2023 (or the Code of Criminal Procedure, 1973). This curtailment of the defence's right to direct cross-examination is therefore neither absolute nor unbounded, but rather a context-specific procedural exception justified by the bona fide incapacity or vulnerability of the child during his/her minority.

41. A compelling analogy can be drawn from Sections 82 and 83 of the Indian Penal Code, which embody the principle of *doli incapax.* Section 82 confers absolute immunity upon children below seven years of age, and Section 83 extends conditional immunity to children between the ages of seven and twelve, contingent upon demonstrable immaturity of understanding. Further,it is pertinent to note that the Juvenile Justice (Care and Protection of Children) Act, 2015 has been enacted to address offences committed by juveniles during their adolescence through a distinct rehabilitative and reformative framework, separate from the conventional criminal justice system. These provisions reflect a jurisprudential recognition that legal culpability must align with cognitive and intellectual development, thereby affirming the doctrine that prudence and age are juridically interconnected. The calibration of criminal liability in such contexts hinges not merely on biological age but also on psychological capacity, yet only within clearly demarcated

statutory limits. Hence, jurisprudential coherence demands that the attainment of biological majority must also serve as a cut-off point for child-specific procedural privileges, unless a statute explicitly provides otherwise. Section 33, being primarily aimed at shielding the vulnerabilities of childhood, loses its functional justification once those vulnerabilities cease to exist with the passage into adulthood. The law, as consistently applied across statutes, does not permit a retrospective resurrection of childhood once the individual steps into legal adulthood; and to permit otherwise would be to dilute the doctrinal rigour of age-based legal classifications and introduce subjectivity into a domain that demands exactitude.

Protective Intention Not a Justification for Perpetual Curtailment of Fair Trial Rights

42. This Court also finds that while Section 33(2) was undoubtedly enacted with a salutary and benevolent object — namely to insulate a psychologically fragile child from the trauma of hostile cross-examination — the rationale for such insulation ceases to hold force once the witness attains the age of majority and thereby acquires the legal, emotional, and cognitive status of an adult. To perpetuate the curtailment of the accused’s right to direct cross-examination merely because the incident occurred during the witness’s childhood, would amount to procedural overprotection bordering on unconstitutionality. Such an approach would infringe upon the *audi alteram partem* principle

and the right of the accused to confront their accuser — a right which is not only sacrosanct under domestic law but also under international human rights jurisprudence.

43. The object of Section 33(2) is not to create an impenetrable procedural wall around the witness but to prevent the re-traumatization of a child during trial. The legislative design inherently assumes that this vulnerability is coextensive with the period of minority. Once the child becomes a major and is, therefore, presumed to have the legal competence and maturity to participate in standard adversarial proceedings, the special procedure under Section 33(2) no longer survives. Any contrary interpretation would amount to conferring a perpetual procedural privilege, which is neither contemplated by the POCSO Act nor consistent with principles of fair trial and evidentiary parity.

Preserving Fair Trial Rights in POCSO Cases: Reconciling Reverse Burden, Age-Based Prudence, and Procedural Safeguards

44. It is axiomatic that justice must not only be done but must also be manifestly seen to be done. Nowhere is this more critical than in the domain of criminal law, where the presumption of innocence is the bedrock of constitutional and international human rights jurisprudence. Section 29 of the POCSO Act, however, introduces a statutory presumption of guilt for specific offences, thereby placing a reverse burden upon the accused. In such a statutory regime, the right to effective and direct cross-

examination of the prosecution witness becomes the principal tool for dislodging the presumption and asserting innocence. Curtailing or proceduralizing this right through mandatory judicial intermediation—even after the witness has attained majority—imperils the fairness of the trial.

45. Indeed, compelling the accused to pre-disclose his line of defence by routing questions through the Special Court—particularly when the prosecution witness has attained majority and thus possesses mature faculties of prudence—effectively allows such a witness to anticipate, pre-empt, and accordingly tailor responses. This procedural intermediation vitiates the core adversarial essence of cross-examination, which is not a mere formality but a juridical instrument of immense forensic significance. Cross-examination serves the indispensable purpose of shaking the credibility of the witness, eliciting concealed truths, and bringing on record facts hitherto undisclosed in the chief-examination. It is through cross-examination that the defence seeks to probe into the surrounding circumstances of the incident, expose contradictions, omissions, or embellishments, and thereby test the reliability, veracity, and trustworthiness of the witness. It enables the accused to confront the witness with alternate narratives, subtly or directly, thereby introducing the defence theory without prematurely disclosing strategic contours. This process is not only a procedural right but a substantive safeguard woven into the fabric of criminal jurisprudence. It

embodies the right to rebut, the right to confront one's accuser, and the right to impeach credibility, which are core to the adversarial model. Judicially enforced mediation of this process, especially when the witness is no longer within the protective threshold of statutory "childhood," disables the spontaneity and unpredictability essential for testing truth. The filtering of questions through the judicial conduit precludes spontaneous reactions and gives rise to curated, cautious replies, thereby neutralizing the probative efficacy of inconsistencies and stifling the emergence of unrehearsed or suppressed material facts. In a statutory regime such as the POCSO Act, where Section 29 imposes a reverse burden of proof upon the accused, the stakes are constitutionally heightened. The accused is compelled to disprove guilt rather than merely raise reasonable doubt. In such a context, curtailing or proceduralizing the right of cross-examination by invoking Section 33(2) protections for a now-adult witness—who no longer retains the psychological or cognitive vulnerabilities of a child—constitutes a grave procedural asymmetry. It not only impairs the effectiveness of the defence but also risks violating the principle of *audi alteram partem,* thereby encroaching upon the fundamental right to a fair trial under Article 21 of the Constitution of India. The accused is entitled to a trial where procedural advantages do not unduly tilt in favour of the prosecution, and where the truth is allowed to emerge through robust, adversarial confrontation, rather than be concealed beneath the veil of overextended procedural paternalism. The situation becomes all the more precarious in light of Section 29 of the POCSO Act, which imposes a reverse burden of proof upon the accused. In such a framework, the art of cross-examination emerges not merely as a forensic formality, but as the linchpin of procedural justice. Cross-examination is an adversarial craft—an interactive and strategic technique wherein the sequence, tenor, and phrasing of questions are often contingent on the witness's preceding answers. The elasticity of questioning, calibrated in real-time based on the demeanour, hesitation, or elaboration of the witness, forms the bedrock of truth-extraction and credibility assessment. It is through this dynamic process that defence counsel seeks to pierce the veil of rehearsed testimony, unveil omissions, expose contradictions, and elicit previously undisclosed surrounding circumstances that may either support the defence theory or discredit the prosecution's narrative.

46. Sections 231 and 242(3) of the Code of Criminal Procedure offer critical procedural safeguards by permitting the deferment of cross-examination where multiple witnesses speak to the same subject matter. This discretionary latitude serves a pivotal function: to forestall the premature disclosure of the defence strategy, particularly in instances where witnesses are interrelated or share convergent narratives. The jurisprudential logic behind such deferment lies in the recognition that a prudent and mature witness, once privy to the defence posture, may

recalibrate or tailor testimony in a manner that neutralizes factual inconsistencies and undermines the adversarial balance. This risk becomes especially pronounced when adult witnesses—who no longer embody the vulnerabilities of childhood—continue to enjoy the procedural cloaking afforded by Section 33 of the POCSO Act, which was designed exclusively to shield children from the psychological trauma of courtroom participation. To extend these child-centric protections to a now-adult witness under the guise of continued vulnerability effectively warps the procedural equilibrium that undergirds a fair trial. While it is constitutionally permissible—indeed, necessary—to provide calibrated procedural protection to vulnerable witnesses under the aegis of Article 15(3) of the Constitution, such accommodation must remain proportionate and temporally confined to the period during which vulnerability exists. The legal system cannot afford to perpetuate procedural insulation beyond the age of majority, especially where such protection encroaches upon the core rights of the accused, including the right to a meaningful and effective cross-examination. Any curtailment of this right beyond its intended statutory or constitutional mandate not only undermines the adversarial structure of the trial but also raises serious concerns under Article 21 of the Constitution, which guarantees the right to a fair and just procedure. A fair trial, as enshrined under Article 21 of the Constitution, is not a one-sided entitlement but a symmetrical guarantee owed equally to both parties to the lis. Integral to this notion is the accused's right to confront and challenge the testimony of the prosecution's witnesses through the mechanism of cross-examination. This right is not a mere procedural formality but a substantive tool designed to test the veracity, credibility, and reliability of the witness's deposition. For this purpose, it is ordinarily impermissible to insist upon advance disclosure of cross-examination questions, as the formulation of subsequent queries often hinges upon the tenor, substance, and internal consistency of replies elicited in response to earlier questions. One of the cardinal objectives of cross-examination is the revelation of truth through spontaneous and unanticipated inquiry—a process inherently frustrated when the defence is compelled to script its examination in advance. Judicial responsibility, therefore, does not lie in shielding adult witnesses from such engagement but in facilitating a process that best uncovers the factual substratum of the case. Indeed, the judiciary is vested with a proactive mandate to aid in the discovery of truth—a duty reflected in statutory provisions such as Section 311 of the Code of Criminal Procedure and Section 165 of the Indian Evidence Act, which empower the court to summon or recall any witness and to pose any question, at any stage, necessary to elicit a just adjudication. These provisions reinforce the inquisitorial facet of an otherwise adversarial process and impose a positive obligation on the court to ensure that justice is not merely done but is seen to be done. This obligation becomes all the more imperative in prosecutions under the POCSO Act, which prescribes exceptionally stringent penalties—including rigorous imprisonment for twenty years, life imprisonment, and even incarceration for the remainder of the natural life of the convict. In such cases, where the liberty of the accused is at grave risk, procedural shortcuts and evidentiary insulation beyond what the statute authorizes cannot be justified under the garb of benevolence. Therefore, the continued application of Section 33 procedural mechanisms to witnesses who have outgrown the category of "child" risks not only diluting the evidentiary efficacy of cross-examination but also jeopardizing the fairness of trial in a legal regime already skewed by presumptions against the accused. Judicial prudence, hence, demands a doctrinally coherent and constitutionally balanced approach that restricts such special protections to the temporally and biologically defined class for whom they were originally intended.

Differential Protection under the POCSO Act: Scheme under General Law and related provision for recording statement of a witness

47. The analogy being discussed here finds further strength when viewed through the lens of comparative hypotheticals that expose the inherent limitations of statutory protection under POCSO, and caution against overextending the protective procedural framework beyond what the law itself contemplates. A compelling instance is that of a child witness — say, a minor aged 11 years — who witnesses a harrowing and gruesome

incident wherein her mother, aged 25 years, is subjected to a brutal sexual assault by an intruder and who slits throat after ravishing the lady. The psychological trauma, emotional turmoil, and the lasting impact upon such a child-witness may well mirror, or even exceed, the trauma of victims falling within the statutory definition of "child" under the POCSO Act. Yet, because the primary offence in such a case is not against the child herself but against her adult mother, the offence does not fall within the ambit of the POCSO Act, and consequently, the special procedure under Section 33(2) would be legally inapplicable to her deposition during trial.

48. This illustration is not merely theoretical. It underscores a critical doctrinal point — that trauma, fear, and vulnerability are not confined to the statutory boundaries of the POCSO Act, and the protective mechanism of indirect cross-examination under Section 33(2) is not a universal panacea available to all minor witnesses irrespective of the nature of the offence. The legislature, while crafting the POCSO Act, made a conscious and deliberate choice to extend the exceptional procedural protection of Section 33(2) only to a “child” as defined in Section 2(d) and only in relation to proceedings governed under the Act. Had the intent been to craft a universally applicable rule of child-witness protection across all categories of criminal prosecution, the legislature would have incorporated such provisions within the broader framework of the Code of Criminal Procedure , The

Indian Evidence act or through a separate enactment. In this context, it is pertinent to note that the Indian Evidence Act already contemplates and addresses the competency of child witnesses through Section 118. This provision, in its post-amendment form, underscores a foundational safeguard by vesting the court with the duty to assess, on a case-specific basis, whether a witness—by reason of age, intellectual maturity, or cognitive development—is capable of comprehending questions and furnishing rational answers thereto. Thus, the statutory scheme does not operate in a vacuum; it equips the trial court with the discretion and responsibility to evaluate, at the threshold, the testimonial competence of a minor or otherwise vulnerable witness. This judicial gatekeeping mechanism serves as an adequate and individualized protective filter, obviating the need for a blanket application of procedural deviations like those enshrined under Section 33(2) of the POCSO Act in situations where their statutory prerequisites no longer subsist.

49. This Court, therefore, is unable to endorse any interpretative approach that seeks to broaden the ambit of Section 33(2) based on emotive analogies or policy-based arguments. The casus omissus principle squarely applies here: where the legislature has not included a certain class of persons (e.g., minor witnesses in non-POCSO cases) within a protective provision, the courts cannot fill in the blanks under the guise of

purposive interpretation. To do so would amount to legislating under the robe of adjudication — a transgression that the doctrine of separation of powers strictly prohibits.

50. It is evident that the trauma of a witness, however grave, cannot itself justify the importation or perpetuation of a procedural privilege not rooted in statutory text. The judicial system has long recognized that the adversarial process — including direct cross-examination — is not a mere technicality, but a substantive safeguard designed to prevent miscarriages of justice. To exclude the accused from directly confronting a now-adult witness would create an untenable asymmetry in trial rights, which is not contemplated even under the POCSO Act. Safeguards addressing witness vulnerability, including that of former child witnesses, are already embedded within the general procedural and evidentiary framework.

Nature and Purpose of Section 33(2): Limits of Judicial Innovation and the Inviolability of Legislative Intent

51. Counsel for the respondents have attempted to deflect the implications of direct cross-examination post-majority by asserting that Section 33(2) merely regulates the mode of putting questions to the child — that the substantive right of the accused to cross-examine remains untouched, and hence, no real prejudice is caused. However, such an argument, while superficially appealing, fails to withstand deeper legal scrutiny. It misapprehends both the purpose of the provision and the

permissible limits of judicial interpretation.

52. To begin with, Section 33(2) is not a mere procedural nicety but a substantive safeguard, designed to protect the psychological and emotional integrity of a child victim or witness during judicial proceedings. The legislative intent behind mandating that all questions be routed through the Special Court is to act as a buffer between the child and the adversarial rigours of the criminal trial process. It is neither a matter of judicial convenience nor an empty formalism. Rather, it is a legislative command rooted in principles of trauma-informed justice, and cannot be dismissed as a dispensable formality by invoking vague notions of efficiency or practicality.

53. The assertion that only the "mode" of cross-examination is being altered misses the forest for the trees. If one were to accept such logic, it would mean that the judiciary, under the guise of interpretation, could dilute any statutory protection simply by reducing it to a matter of "form" rather than "substance". *Lex non distinguit, nec nos distinguere debemus* — where the law does not distinguish, neither should the courts. The statute clearly distinguishes between a "child" and a "victim", and it is the child who is accorded this heightened procedural protection under Section 33(2).

54. This Court must emphasize that it is not within the judicial remit to add or subtract from a legislative text under the pretext of purposive interpretation. The doctrine of separation of powers,

a cornerstone of constitutional governance, requires courts to interpret law, not to legislate from the bench. The POCSO Act does not contain any transitional provision that allows for the continuation of Section 33(2) safeguards after the witness ceases to be a child under Section 2(d). It is thus impermissible for the court to "read into" the statute a category of "former child" or to extend procedural safeguards beyond their statutory expiry on equitable or humanitarian grounds.

55. It is imperative to draw a principled distinction between the substantive and procedural dimensions of the law. While the age of the victim at the time of the alleged offence indisputably governs the substantive applicability of the POCSO Act — including the classification of the offence and the corresponding penal consequences — the procedural regimen applicable to trial proceedings is calibrated with reference to the age of the witness at the time of testimony. Thus, even though a prosecutrix who was a minor at the time of the incident may trigger the application of substantive penal provisions under the Act, the procedural accommodations designed exclusively for a "child" under Section 2(d) — such as routing of questions under Section 33(2) — cannot continue once the individual ceases to satisfy that definition. This interpretive bifurcation is neither artificial nor hyper-technical; it reflects the deliberate legislative architecture whereby procedural privileges are contingent upon contemporaneous vulnerability, not past victimhood. To conflate

substantive eligibility with procedural entitlement would amount to juridical overreach, effectively effacing the temporal limits embedded in the statutory text.

56. Furthermore, the respondents' submission that the right to cross-examine is not being "denied" but merely "channelled" is of no avail. If the statutory condition—that the witness be a "child" as defined under Section 2(d) of the POCSO Act—ceases to subsist upon the attainment of majority, then the procedural entitlement under Section 33(2), which is inextricably linked to that definition, must also stand abrogated by operation of law. To contend otherwise would be to endorse a hybrid procedural regime that the legislature has neither contemplated nor codified, thereby transgressing the doctrine of casus omissus, which forbids judicial interpolation into the legislative scheme under the guise of interpretation. Once the statutory safeguard lapses with age, its artificial perpetuation amounts to judicial overreach and offends the principle of legal certainty. If the logic of continued procedural insulation is to be accepted on the sole basis of a past vulnerability that no longer exists, then the rationale behind restricting such special procedural protections only to cases under the POCSO Act, and not extending them uniformly across all cases of sexual offences under the IPC, becomes arbitrary and constitutionally suspect. If the object is to shield witnesses from the rigours of adversarial cross-examination owing to the sensitive nature of the offence,

then there exists no rational nexus for confining such insulation to POCSO cases alone. Such selective procedural privileging invites the vice of hostile discrimination and unequal treatment under Article 14, especially when adult victims in other rape prosecutions are subjected to full and unrestricted cross-examination in accordance with general criminal procedure. It is a cardinal principle of statutory interpretation that when a statute prescribes a particular mode for doing a thing, that mode alone must be adopted. Any deviation from this prescribed course is impermissible. The procedural mandate under Section 33(2) is not a general discretionary norm but a special, conditional exception, contingent upon the witness's status as a "child." To extend its operation beyond that legislative threshold is not only doctrinally untenable but also constitutionally infirm.

57. In this regard, the mischief rule (Heydon's Case, 1584) is apposite. The "mischief" that Section 33(2) seeks to remedy is the re-traumatization of child victims during cross-examination. Once the person is no longer a child, the mischief no longer subsists in its original form. The provision, therefore, must be interpreted strictly and temporally, not expansively or retrospectively.

Interpretation of the Term "Shall" in Section 33(2) of the POCSO Act: A Contextual and Purpose-Oriented Construction

58. A pivotal issue emerging in the present adjudication

pertains to the interpretation of the term "shall" as employed in Section 33(2) of the Protection of Children from Sexual Offences Act, 2012. The respondents have contended that the use of the term "shall" denotes a mandatory and non-derogable procedural requirement, such that even after the child attains majority during the pendency of trial, the protective modality of routing cross-examination through the Special Court cannot be waived. This submission, though attractive at first blush, fails to withstand a deeper contextual and purposive analysis of the statutory framework.

59. It is a well-settled canon of statutory construction that the word "shall", though prima facie mandatory in tone, does not invariably carry a compulsory connotation. The classification of "shall" as mandatory or directory must be discerned not in isolation, but in the context of the legislative scheme, the nature and object of the statute, and the consequences of construing it either way. The determination of whether "shall" imports compulsion depends upon the intention of the legislature gathered from the statute as a whole.

60. The provision thus lays down a procedural prescription applicable only when the witness qualifies as a "child", a term unequivocally defined under Section 2(d) of the POCSO Act. The word "shall" is used in reference to what the Court and prosecutor are obliged to do when dealing with a child, and not as a blanket, invariable directive that transcends the definitional

boundaries of the term "child."

61. It is crucial to appreciate that Section 33(2) must be read in *pari materia* with Section 2(d) of the Act, which demarcates the jurisdictional threshold for invoking the Act's protective procedures. To hold otherwise would be to render the term "child" redundant and to artificially extend the procedural protection beyond the scope intended by Parliament.

62. Therefore, the use of the term "shall" in Section 33(2) is mandatory only to the extent that the individual remains a "child" at the time of recording testimony. The legislative compulsion ceases the moment the statutory definition is no longer satisfied. This interpretation also harmonizes with the broader constitutional ethos under Article 21, which mandates a fair trial not only for the victim but also for the accused. Imposing judicial intermediation for cross-examination of an adult witness under the guise of child-protective procedures would unduly impair the right of the accused to effective confrontation, and would be procedurally indefensible.

63. In conclusion, this Court finds that the word "shall" as employed in Section 33(2) is to be construed as mandatory in application to a "child", and not as an immutable procedural command irrespective of the witness's age. It reflects a duty cast upon the Court and prosecution to protect child witnesses, not a perpetual entitlement to be asserted even after the statutory conditions for its invocation cease to exist. To interpret otherwise

would not only distort the text but would also subvert the underlying legislative intention and compromise the procedural fairness owed to the accused.

Harmonious Construction with Fundamental Rights and Criminal Jurisprudence

64. It is axiomatic that a statute must be construed harmoniously with constitutional mandates. The right to fair trial, including the right to effective cross-examination, is a facet of Article 21 of the Constitution and a cornerstone of criminal jurisprudence.The Constitution does not recognize absolute rights — neither for victims nor for the accused — and any statutory curtailment must pass the test of proportionality, as evolved in modern constitutional jurisprudence.

65. Therefore, the statutory language of Section 33(2), its position within a procedural framework, and the constitutional necessity of preserving parity in the trial process compel this Court to hold that the protections under Section 33(2) are temporally limited to the period during which the witness qualifies as a "child" under Section 2(d) of the POCSO Act. Upon attaining majority, such procedural embargo stands automatically dissolved, and the accused is vested with the right to conduct direct cross-examination, subject to the trial court's supervisory discretion to prevent any form of harassment or intimidation.

Statutory Intent and Temporal Scope of Child-Centric

Protections under Section 37: Harmonizing Procedural Safeguards with the Definition Clause

66. The judicial enquiry into the applicability of Section 33(2) of the Protection of Children from Sexual Offences Act, 2012, post the attainment of majority , also necessitates a parallel evaluation of Section 37, which provides for in camera trials in the presence of the child's parents or any person in whom the child reposes trust or confidence. This provision, too, squarely reflects the transitory nature of protective procedural mandates intrinsically linked to the legally recognized status of the witness as a "child" under Section 2(d) of the Act.

67. Section 37, in its very structure, presupposes the existence of a child-victim, not merely by reference to chronological age but by recognizing the innate psychological dependence and emotional fragility that a minor naturally places in parental figures or other adults vested with trust. The statutory phrase —"in the presence of the parents of the child or any other person in whom the child has trust or confidence"—is not a ceremonial courtesy or a replicable procedural formality; rather, it is a legislative embodiment of trauma-informed jurisprudence that acknowledges the specific vulnerabilities of a minor navigating the adversarial system. This finely calibrated framework, however, becomes internally inconsistent and jurisprudentially incongruent when applied to a witness who has attained majority —let alone someone in their mid-twenties. Requiring such an

adult to testify under the aegis of protections meant for children not only borders on the absurd but patronizes their agency, while undermining the procedural symmetry owed to the accused. In this context, the constitutional doctrine of fair trial—rooted in Article 21 of the Constitution and reinforced by international human rights standards under Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR)—demands that the trial process be both procedurally just and substantively balanced. The principle of a fair trial is not confined to the rights of the victim alone; it is a dual-faceted entitlement that encompasses both the accused's right to effectively challenge the prosecution's case and the justice system's obligation to unearth the unembellished truth. One of the most critical tenets of this entitlement is that the witness must depose voluntarily and truthfully, without being subject to tutoring, prompting, or post facto influence—factors which often lurk when undue procedural cushioning is extended beyond necessity. When a witness who has crossed the threshold of legal majority is still surrounded by family members or "support persons" during deposition, the court must be vigilant about the possibility of suggestive cues, both overt and implicit, contaminating the spontaneity and independence of the testimony. Such courtroom configurations risk transforming the witness into a mouthpiece of familial or prosecutorial narratives, thereby eroding the credibility and forensic value of the deposition. The trial court's evidentiary determination should hinge on testimony that is the product of individual cognition and memory, not one sculpted by influence or reassurance. A testimony clothed in procedural insulation intended for children—but delivered by an adult—runs the risk of manufacturing an illusion of credibility rather than presenting a truth unfiltered by influence. Thus, the extension of Section 37 protections to adult witnesses not only undermines the doctrine of age-prudence proportionality, but also gravely endangers the core values of adversarial justice, where cross-examination and independent testimony operate as the chief mechanisms for truth-discovery. A fair trial is not a static slogan; it is a living constitutional commitment that insists on neutrality, symmetry, and forensic integrity. The judicial extension of child-centric accommodations to adult witnesses, therefore, must be carefully scrutinized against the touchstone of fairness—not only to prevent overreach but to safeguard the purity of fact-finding essential to the criminal adjudicatory process.

68. The principle of **expressio unius est exclusio alterius** — the express mention of one thing excludes others — must guide the Court’s interpretive endeavour. Section 37, read harmoniously with Section 2(d), confines its operation to instances where the witness continues to remain a "child" at the time of trial. The usage of the present tense (“the child has trust or confidence”) indicates contemporaneous child status, not a retroactive attribution. Extending such procedural benevolence to a witness who has since attained majority would require the

Court to judicially create a non-existent category of "former child" — a legislative fiction that finds no basis in the Act's text or purpose.

69. It must be emphasized that the POCSO Act is a special statute, operating in derogation of general criminal procedure, but its exceptional nature must not be misunderstood as being open-ended. The law, while prioritizing the best interest of the child, does not envision perpetual procedural hand-holding even after the child crosses the statutory age threshold of eighteen years. The legislative balance, thus, is precise and calibrated: it grants heightened protection during the period of minority and ceases such special procedural insulation the moment the witness no longer qualifies as a "child" under the Act.

70. To interpret otherwise would not only create an unsustainable dichotomy within the Act — for instance, requiring presence of parents during the trial of a 25-year-old prosecutrix — but also distort the very purpose of child-centric jurisprudence, which is premised on capacity, vulnerability, and dependency, all of which diminish or vanish with adulthood. The temporal limitation of such protections, therefore, is not a defect but a deliberate legislative design, guided by constitutional considerations of equality and fairness to all parties — including the accused.

Consider, for instance, the scenario of a 22-year-old prosecutrix alleging that she was induced or seduced by the accused four years prior, when she was a minor. While the alleged offence may indeed fall within the temporal sweep of the POCSO Act, the procedural question arises: should such a witness, now an adult with full cognitive and emotional maturity, be permitted to testify in the presence of her parents or a "support person" under Section 37? Extending such privilege would not only stretch the statutory text beyond its interpretive elasticity, but also infringe upon the adversarial architecture of a fair trial. To allow a 22-year-old to invoke the child-specific protections of the Act would amount to judicially engrafting a novel category of "retrospectively vulnerable adult", a classification wholly unknown to the statutory scheme. Such an approach would subvert both the legislative intent and the constitutional requirement of parity in procedural fairness, thereby reducing the courtroom into a space of therapeutic justice rather than forensic adjudication. The trial process must remain rooted in objective legal standards, not subjective invocations of past vulnerability that no longer have a bearing on present testimonial capacity.

71. In essence, Section 37, like Section 33(2), is firmly tethered to the contemporaneous status of the witness as a "child". Once the child attains majority, the procedural safeguard provided under Section 37 loses its efficacy and is rendered *functus officio.* To continue to extend such protections beyond the defined scope would not only be contrary to legislative

mandate, but would also unduly burden the rights of the accused, violating the fair trial guarantee under Articles 21 and 14 of the Constitution of India. The statutory scheme, therefore, must be allowed to operate within its precise contours, and not be judicially expanded in disregard of its definitional limits.

Differentiated Interpretative Approach to the Term "Child" under the POCSO Act: Reconciling Substantive Jurisdiction with Procedural Safeguards

72. The nuanced question that arises for adjudication is whether, upon the victim attaining majority during the pendency of trial, the applicability of other provisions of the POCSO Act and the POCSO Rules, 2020—including but not limited to Sections 22, 23, 24, 33(2), (4)-(7), 35, 36, 37—would also cease. This inquiry necessitates a bifurcated interpretative lens distinguishing the substantive jurisdictional foundation of the Act from its procedural architecture, each governed by distinct legislative objectives.

73. At the threshold, it is imperative to underscore that the definition of "child" under Section 2(d) of the POCSO Act—"any person below the age of eighteen years"—is the determinative factor for the triggering of the Act's penal machinery. The legal regime under POCSO is activated not based on the age of the victim at the time of trial or testimony, but based on the status of the victim as a "child" at the time of the alleged offence. The relevant age determination, for the purpose of invoking the Act's

substantive provisions and proceeding with prosecution, is thus fixed at the temporal point of commission of the alleged offence. This justifies the continued applicability of the penal provisions under POCSO, even if the victim subsequently attains majority. Accordingly, a strict and literal interpretation of the term "child" is warranted in this context, since it pertains to substantive criminal liability and jurisdictional validity of the prosecution under a special statute by a special constituted court.

74. Conversely, when the inquiry shifts to the applicability of procedural protections, such as those enshrined under Section 33(2) ,37 and related procedural safeguards—including courtroom modifications, intermediation during testimony, and restrictions on aggressive questioning—a purposive and contextual interpretation becomes imperative. The raison d'être of these provisions lies not in the mere biological age of the individual at the time of trial, but in the recognition of the child's psychological vulnerability, emotional immaturity, and inability to endure the rigors of adversarial cross-examination without trauma or re-victimization. These safeguards are not absolute or perpetual; they are calibrated to apply only so long as the individual remains a "child" at the time of procedural invocation.

75. This dual-track interpretive approach—strict construction for determining the applicability of penal provisions based on the age of the child at the time of offence, and purposive interpretation for extending procedural protections only while the

victim remains a child—strikes a judicious equilibrium. It harmonizes the statutory text, legislative intent, and the constitutional imperative to protect both the dignity of child victims and the rights of the accused to a meaningful cross-examination.

76. Accordingly, this Court is of the considered view that the victim, having been a child at the time of commission of the offence, shall continue to be entitled to the substantive protections and procedural safeguards contemplated under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), notwithstanding the fact that she may have attained the age of majority during the pendency of trial. It is further clarified that the legal character of the offence, as defined under the POCSO Act, along with the prescribed penal consequences, remains unaltered by the subsequent attainment of majority by the victim, inasmuch as the offence is to be determined with reference to the age of the child on the date of its alleged commission. Thus, the prosecutorial trajectory, evidentiary standards, and statutory protections under the Act continue to apply with full vigour, unaffected by any subsequent change in the age status of the prosecutrix. However, as far as procedural safeguards under Sections 33(2), 33(4)-(7), 35, 36, and 37 and allied provisions of the POCSO Rules, 2020 are concerned, the entitlement to such child-specific protective measures must cease upon the victim attaining majority, unless the Court, for

recorded reasons, deems it necessary in the interests of justice and psychological welfare of the witness, without causing undue prejudice to the accused's fair trial rights. Accordingly, any judicial discretion to extend such procedural safeguards beyond the age of majority must be exercised judiciously and on a case-to-case basis, with a prior competency assessment under Section 118 of the Indian Evidence Act forming the evidentiary foundation for passing any such order.

It is apposite at this stage to underscore the legislative significance of the purposeful deployment of the term "child" in several provisions of the POCSO Act, as opposed to the more generic term "victim". Though both terminologies appear across the text of the statute, their contextual usage is not interchangeable. The term "child", as defined under Section 2(d) of the Act, denotes any person below the age of eighteen years and is used predominantly in those provisions which seek to extend specialized protective measures, procedural insulation, and victim-centric approaches tailored to the psychological vulnerabilities and developmental status of minors. The deliberate and consistent usage of the term "child" in provisions such as Section 33(2)—which mandates that the Special Public Prosecutor or counsel for the accused shall not put questions to the child during cross-examination that are humiliating or confusing—or Section 37, which provides for in-camera proceedings and child-friendly courtroom environments, clearly indicates that such provisions are intrinsically anchored in the age-specific vulnerability of the individual at the time of trial.

By contrast, the term “victim” is used in the POCSO Act in contexts where the focus is not primarily on the age-based procedural protection but rather on the person who has suffered harm as a result of the offence, regardless of their present age. Notably, the term “victim” finds expression in various statutory provisions including Section 6 of this act which prescribes “Punishment for aggravated penetrative sexual assault “, Section 4 provides for “Punishment for penetrative sexual assault” (states that The fine imposed shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.), and Section 27 provided “ Medical examination of a child “(sub-section (2) In case the victim is a girl child, the medical examination shall be conducted by a woman doctor). These sections emphasize the entitlement of the individual to reparative or remedial measures flowing from the offence itself, rather than being dependent on their current age. This statutory dichotomy in terminology—"child" versus "victim"—is not mere semantic variation but rather reflects a deliberate legislative calibration of procedural entitlements and protective mandates based on the evolving age and status of the prosecutrix. Therefore, the continuance of child-specific procedural mechanisms beyond the age of majority cannot be claimed as a matter of absolute right, but may be accorded as a matter of judicial discretion, to be exercised with due regard to the facts of each case, the needs of the witness, and the requirements of a fair adjudicatory process.

Final Disposition

77. In light of the foregoing analysis, this Court is of the considered view that the procedural safeguard embodied in Section 33(2) of the Protection of Children from Sexual Offences Act, 2012 is intrinsically age-contingent and must be confined to those witnesses who fall within the statutory definition of "child" as per Section 2(d) of the Act. Once a child attains the age of majority during the pendency of trial, he/she no longer retains the status of a "child," and hence, the mandatory requirement of routing questions through the Special Court ceases to apply.

78. Further, the procedural mandate of conducting trial in camera and in the presence of parents or any other person in whom the child has trust or confidence, as stipulated under Section 37 of the POCSO Act, is likewise contingent upon the witness continuing to qualify as a "child" under Section 2(d) of the Act. Once the witness crosses the threshold of majority, the application of Section 37 ceases ipso jure, and the trial must thereafter proceed in accordance with the general procedural framework under the Code of Criminal Procedure, unless the court independently finds compelling reasons, duly recorded, to continue such arrangements in the interest of justice or witness

welfare.

79. While the spirit of the POCSO Act mandates a child-friendly process, the Court cannot extend procedural protections in a manner that contravenes the express legislative scheme or dilutes the rights of the accused enshrined under Article 21 of the Constitution. Any contrary interpretation would amount to judicial legislation and would undermine the delicate balance between victim protection and fair trial rights as envisaged under the law.

80. Accordingly, all three petitions being:

(i) S.B. Criminal Misc. Petition No. 2282/2025,

(ii) S.B. Criminal Misc. Petition No. 6206/2024, and

(iii) S.B. Criminal Misc. Petition No. 7786/2024,

are allowed. The impugned orders dated 07.02.2025, 08.08.2024, and 10.09.2024 respectively, passed by the learned Special Courts, are hereby set aside. In Sessions case no. 03/2024, 102/2023 the victim shall be summoned again for subjecting her to cross-examination and re examination ,if any.

81. The trial courts concerned are directed to permit the petitioners to cross-examine the prosecutrix directly, subject to the regulatory powers of the Court to ensure decorum, dignity, and protection from any form of harassment during cross-

examination.

82. Needless to clarify, this judgment shall not be construed as a reflection on the merits of the prosecution's case or the defence, which shall be determined independently on the basis of the evidence on record.

83. A certified copy of this order shall be transmitted forthwith to the Registrar General of this Court, who shall ensure its expeditious circulation to all Presiding Officers of Special Courts constituted under the POCSO Act, as well as to all other courts presently seized with trials or proceedings under the said enactment, for strict adherence and compliance of this order.

84. It is further directed that, henceforth, all Special Courts constituted under the Protection of Children from Sexual Offences Act, 2012, and all other courts lawfully empowered to try cases arising under the provisions of the said statute—including those currently at the stage of trial or awaiting trial—shall permit the cross-examination of the prosecutrix, who seized to be child by efflux of time ,by the accused or their counsel in accordance with the standard rules of evidence and criminal procedure, subject always to the supervisory and regulatory authority of the court to prevent any misuse of such liberty and to safeguard the decorum and psychological dignity of the witness. It is also clarified that the procedural insulation afforded by Section 37 of the POCSO Act—including in camera trial and the presence of a parent or trusted person during testimony—

shall only extend until the prosecutrix remains under the age of 18. Upon attainment of majority, such safeguards lose statutory compulsoriness and shall not continue as a matter of right, unless specifically ordered by the Court based on case-specific exigencies.

88. For the removal of doubts, it is clarified that for the purposes of determining the procedural entitlements available under the POCSO Act, particularly in relation to protective mechanisms during trial, the age of the victim shall be reckoned as it is alleged and projected by the prosecution in the police report or charge-sheet, or as is the basis for framing of charges under the particular case. The age status of the prosecutrix at the time of the alleged offence shall thus continue to govern the applicability of the substantive provisions of the POCSO Act, irrespective of any subsequent change in age during the pendency of trial, unless the statute or the court directs otherwise in the interests of justice.

85. This Court further underscores that, at any stage of the proceedings, no adjournment shall be granted to the defence for purposes of cross-examination or otherwise, except upon disclosure of reasonable and bona fide cause. The legislative intent behind expeditious disposal of cases under the POCSO framework must not be defeated by dilatory tactics or strategic protraction of trial. Trial courts are accordingly enjoined to exercise strict judicial discipline in ensuring adherence to the

statutory time frames, and to discourage any endeavour—whether tacit or express—that impedes the prompt and effective administration of criminal justice.

86. The stay petitions and pending applications ,if any ,stands disposed of.

(FARJAND ALI),J

60-Mamta/