

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal Nos 1408-1409 of 2022**

(Arising out of SLP(Crl) Nos 9992-9993 of 2016)

**XYZ**

**.... Appellant**

**Versus**

**Abhisheik & Anr**

**...Respondents**

**J U D G M E N T**

**Dr. Dhananjaya Y. Chandrachud, J**

- 1 Leave granted.
- 2 The appeals arise from the judgments of a Single Judge of the High Court of Madhya Pradesh dated 22 August 2016 in Criminal Revision No 278 of 2016 and Misc Criminal Case No 5495 of 2016. The High Court, while allowing a revision against the decision of the 4th Additional Sessions Judge, Satna dated 21 December 2015 came to the conclusion that the first respondent

was a juvenile on the date of the incident. We hold, for the reasons to follow, that the High Court has erred in its findings and that the plea of juvenility of the first respondent is based on fabricated documents.

- 3 On 24 July 2015, FIR No. 433/2015 was registered on the basis of information provided by the appellant at PS City Kotwali, Satna for the commission of offences punishable under sections 363, 366A, 376, 506, and 120B of the Indian Penal Code 1860<sup>1</sup> and sections 3 and 4 of the Protection of Children from Sexual Offences Act 2012<sup>2</sup>. The appellant, who was a minor at the time of commission of the offence, alleged that she had been subjected to gang rape by the first respondent and other persons. The alleged offence is stated to have taken place about three to four months prior to the registration of the FIR on 24 July 2015. During the course of the investigation, the first respondent was arrested along with other accused alleged to be involved in the commission of the offences.
- 4 On 6 August 2015, the first respondent was produced before the Court of the Judicial Magistrate First Class, Satna<sup>3</sup>. The first respondent took the plea that he was a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000<sup>4</sup> on the date of the alleged offence. The counsel appearing on his behalf filed an application for bail, together with a certificate purported to have been issued by the Madhyamik Siksha Mandal, Madhya Pradesh pertaining to the appearance of the first respondent at the high school examination. The

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<sup>1</sup> "IPC"

<sup>2</sup> "POCSO Act"

<sup>3</sup> "JMFC"

<sup>4</sup> "2000 Act"

certificate indicated that the date of birth of the first respondent was 30 January 1999.

- 5 The JMFC conducted an inquiry and found that the certificate produced by the first respondent was fabricated. Therefore, the JMFC directed the police to register FIR No. 292/2015 dated 20 August 2015 in PS Civil Lines, Satna under sections 193, 465, 466, 468, and 471 of IPC against the first respondent for intentionally using fabricated documents in judicial proceedings.
  
- 6 The 4th Additional Sessions Judge, Satna was directed to conduct an inquiry by an order dated 4 September 2015 of the Sessions Judge. The 4th Additional Sessions Judge conducted an inquiry, during the course of which the statements of witnesses were recorded. An inquiry report dated 21 December 2015 was submitted to the Sessions Judge. The inquiry report arrived at a specific finding that:
  - (i) PW-1 Maya Singh, the mother of the first respondent, had stated that the first respondent had not appeared for any examination after class 9;
  
  - (ii) The forged matriculation mark sheet was produced on behalf of the accused at the stage of the remand;
  
  - (iii) The first school which was alleged to have been attended by the first respondent was being conducted by a relative;
  
  - (iv) The admission form was not available in the school and the month of

the birth had been incorrectly recorded; and

- (v) The extract from the birth register was found to be interpolated and there were no signatures of a competent officer on the corrections and overwriting.

7 Due to the non-availability of a document confirming the age of the first respondent, the 4th Additional Sessions Judge decided to seek a medical opinion in accordance with rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007<sup>5</sup>. Accordingly, the 4th Additional Sessions Judge sought the opinion of the District Medical Board, which examined the first respondent. The District Medical Board opined that the approximate age of the first respondent was between 17 to 21 years based on medical evidence and literature. The 4th Additional Sessions Judge calculated the approximate age of the first respondent as 19 years. Thus, the 4th Additional Sessions Judge came to the conclusion that the first respondent was not a juvenile on the date of the incident.

8 In the meantime, the police completed the investigation in FIR No. 433/2015 and submitted a charge sheet before the competent court dated 02 November 2015 against the first respondent and six other co-accused persons for offences punishable under sections 363, 366, 376(2)(vi), 120-B and 506 of IPC. Thereafter, the police also completed the investigation in FIR No. 292/2015 and filed a charge sheet dated 03 December 2015 against the first

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<sup>5</sup> "2007 Rules"

respondent and his counsel for offences punishable under sections 193, 465, 466, 468, 471, and 120B of IPC.

- 9 The first respondent moved the High Court of Madhya Pradesh in a criminal revision against the report of the 4th Additional Sessions Judge dated 21 December 2015. The Single Judge, by an order dated 22 August 2016, allowed the revision and accepted the plea of the first respondent that he was a juvenile at the time of the lodging of the FIR on 24 July 2015.
- 10 In support of the above conclusion, the High Court observed that a matriculation or equivalent certificate, if it is available, and, in its absence the date of birth from the school first attended would have to be accepted in the determination as to whether the first respondent was a juvenile on the date of the incident. The High Court has proceeded on the basis that the first respondent was admitted to Class 1 where his date of birth is mentioned as 30 June 1999, which was corroborated by PW-4, the Director of Guardian and Guide Public School, Satna. The High Court noted that the birth certificate issued by the Municipal Corporation on 18 April 2002 indicated the date of birth as 30 January 1999. In this context, the High Court has held:

“17. As per birth and death register a certificate was issued by dispatch No.284 on 18.4.2002 in regard to birth of Abhishek Singh which is recorded as 30.1.1999 at S. No.1545. Copy of the certificate is filed as Ex. A. 7. The same was issued with the signature and seal of Harimangal Singh, Registrar, Birth and Death, Municipal Corporation, Satna. These two documents have been discarded by the trial Court on the ground that the Director of Guardian and Guide School Mr. Chandra Mouliya is related to family of the accused. The admission form of the accused is not available in the record. The trial Court has also discarded the certificate issued by the Municipal Corporation on the ground that there is some overlapping in the register. It is further observed by the trial Court that certificate was issued after a period of two years and Municipal Corporation was not eligible to issue certificate after a period of two years. The

trial Court has not considered the fact that certificate was issued in the year 2002 much prior to the date of incident. The report of the offence was lodged at the concerning P.S. on 24.7.2015.”

11 The High Court noted that the birth certificate issued by the Municipal Corporation in 2002 was valid as it was signed by the competent authority and was accompanied by a dispatch number, namely, entry no. 1545. The High Court observed that there was no reason for the accused to obtain a false document in 2002 for an incident which took place in 2015. Further, the High Court noted that the trial court has not recorded any finding that the birth certificate is forged or that it is not genuine. On this basis, the High Court reversed the findings of the 4th Additional Sessions Judge, Satna in the exercise of its revisional jurisdiction.

12 Notice was issued in these proceedings on 15 December 2016. During the course of the hearing, an order was passed on 18 April 2022 in the following terms:

“1 In order to enable the Court to form a correct view on the issue of juvenility, it is necessary that the State of Madhya Pradesh produces the original record of the Municipal Corporation, Satna pertaining to the alleged birth certificate of the accused Abhishek Singh.

2 The Standing Counsel shall communicate the aforesaid direction and call the original record which shall be produced before this Court within a period of four weeks.

3 List the Special Leave Petitions on 17 May 2022.”

13 In pursuance of the above directions, an affidavit has been filed on behalf of the State of Madhya Pradesh by the Additional Superintendent of Police, Satna. The affidavit indicates that a committee of five officials was constituted

on 16 May 2022 to retrieve the records. A report has been submitted on 30 May 2022 by the five-member committee. The relevant part of the report is in the following terms:

कार्यालय के आदेश क्रमांक-103/स्टेनो/न.पा.नि./2022 सतना, दिनांक 16.05.2022 द्वारा अभिषेक सिंह का जन्म प्रमाण पत्र से संबंधित अभिलेख तलाशे जाने हेतु समिति का गठन किया गया समिति के सदस्यों द्वारा आदेश के परिपालन में अभिलेख तलाशे गए किन्तु अभिलेखागार एवं जन्म-मृत्यु शाखा में रखे पंजीयन अभिलेख में उक्त नाम से संबंधित अभिलेख तथा पंजीयन प्राप्त नहीं हुआ निगम अधिवक्ता श्री अखिलेश गुप्ता जी से सम्पर्क किया गया तो उनके द्वारा बताया गया की मध्यप्रदेश शासन विरुद्ध अभिषेक सिंह का प्रकरण जिला न्यायालय सतना में प्रकरण क्रमांक ST/129/2016 विचाराधीन है जिसकी आगामी सुनवाई दिनांक 26.05.2022 को नियत है उक्त नियत तिथि को प्रकरण में संलग्न अभिलेखों के अवलोकन हेतु निगम पैनल अधिवक्ता श्री अखिलेश गुप्ता, श्री गौरव श्रीवास्तव सहायक विधि अधिकारी एवं श्री संतोष कुमार सेन सहायक ग्रेड-03 द्वारा प्रकरण की केस डायरी में केवल जन्म प्रमाण पत्र की प्रतिलिपी संलग्न पायी गई, जिसकी जानकारी नोट की गई जो निम्नानुसार है:-

- जन्म होने वाले का नाम – अभिषेक सिंह
- पिता का नाम – श्री राजेश प्रताप सिंह
- माता का नाम – श्रीमती माया सिंह
- जन्म तिथि – 30.01.1999
- जन्म स्थान – भरहुत नगर सतना
- रजिस्ट्रीकरण क्रमांक – 1545 एवं दिनांक 18.04.2002
- जावक क्रमांक – 246 दिनांक 18.04.2002

उक्त जानकारी के आधार पर जन्म-मृत्यु शाखा में रखे अभिलेख (माह अप्रैल 2002 एवं मई 2002 के पंजीयन बुकलेट), वर्तमान में कार्यरत श्री ऋषि कुमार पटेल लिपिक जन्म-मृत्यु में मॉगे जाने पर माह अप्रैल 2002 का पंजीयन उपलब्ध कराया गया जिसका अवलोकन किए जाने पर न्यायालय में संलग्न जन्म प्रमाण पत्र के पंजीयन क्रमांक (रजिस्ट्रीकरण क्रमांक) क्रमांक -1545 दिनांक 18.04.2002 की प्रविष्टि अंकित नहीं पाई गई, बल्कि निगम कार्यालय में उपलब्ध माह अप्रैल 2002 के पंजीयन में अंतिम पंजीयन 1544 तक ही हैं। तथा आगामी माह मई 2002 का पंजीयन बुकलेट तथा जारी रजिस्टर भी कार्यालय में उपलब्ध नहीं है, कि जानकारी जन्म-मृत्यु शाखा के लिपिक श्री ऋषि कुमार पटेल द्वारा बताया गया।

अतः वांछित प्रतिवेदन सादर प्रेषित है।

#### 14 The translation of the relevant paragraph is extracted below:

“[...] On the basis of the aforesaid information the record kept in the Birth-Death Branch (Registration Booklet of April, 2002 and May, 2002) is submitted by the present clerk Sh. Rishi Kumar. Upon perusal of record it is found that the registration No. 1545 dated 18.04.2002 submitted before the court is not found marked in the register. The last entry made in the available record for the month of April 2002 is 1544 and the registration booklet and the issuing register for the next month of May, 2002 is also not available in the office. This information is given by Clerk Sh. Rishi Kumar Patel posted in Birth-Death branch.”

- 15 While setting aside the report of the 4th Additional Sessions Judge, the High Court has placed reliance on the extract from the birth register according to which the entry pertaining to the date of birth of the first respondent dated 30 January 1999 at entry no. 1545 has been adverted to. Upon inquiry, as the above extract indicates, it has emerged that there is no entry at entry no. 1545 dated 18 April 2002 in the birth register pertaining to the month of April 2002. The 4th Additional Sessions Judge conducted a detailed inquiry on the plea of juvenility. The report of the 4th Additional Sessions Judge contains cogent reasons for coming to the conclusion that a fabricated record was produced in support of the plea of juvenility.
- 16 In a counter filed on behalf of the first respondent, it was submitted that the trial court could not have sought the opinion of the medical board under rule 12(3) of the 2007 Rules without giving a clear finding against the birth certificate and the school certificate produced before it. It was urged that the birth certificate issued by the Municipal Corporation in 2002 is a valid document. Further, it was urged that the entry in the register of the school in which the first respondent was admitted to the first standard mentioning the first respondent's date of birth as 30 June 1999 has been corroborated by a competent witness – the Director of Guardian and Guide Public School, Satna.
- 17 Before proceeding with our analysis, it is necessary to consider the relevant legal provisions. The Juvenile Justice (Care and Protection of Children) Act, 2015 is a sequel to the now repealed 2000 Act. Section 7-A of the 2000 Act



provided the procedure to be followed when a claim of juvenility is raised before any court:

**“7-A 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 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 on 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.”

- 18 Rule 12(3) of the 2007 Rules provides the procedure for determining the age by a court or by the Juvenile Justice Board<sup>6</sup>. The rule is extracted below:

**“12. Procedure to be followed in determination of age – (1) (2) \* \* \***

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

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

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

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

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare

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<sup>6</sup> “Board”

the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses a(i), (ii), (iii) or in the absence whereof, clause (b) shall be conclusive proof of the age as regards such child or the juvenile in conflict with law.”

- 19 Rule 12(3)(a) of the 2007 Rules provides that for the purposes of the ‘age determination enquiry’ of a child or juvenile, evidence may be obtained by relying upon the following documents: (i) matriculation or equivalent certificates; (ii) date of birth certificate from school first attended; or (iii) birth certificate given by corporation or municipal authority or panchayat. At the end of sub-clauses (i) and (ii) of clause (a) the rule uses the expression “and in the absence whereof”. Moreover, in the absence of any of the abovementioned three documents, medical opinion could be sought from a duly constituted Medical Board.

- 20 In **Ashwani Kumar Saxena v. State of Madhya Pradesh**<sup>7</sup> a two-judge bench of this Court considered the provisions of Section 7-A of the 2000 Act along with rule 12(3)(a) of the 2007 Rules. The court held that it is only in cases where the documents stipulated under rule 12(3)(a) are found to be fabricated or manipulated that the court or the Board may direct a medical examination for age determination. The Court further laid down the guidelines for conducting the age determination inquiry:

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<sup>7</sup> (2012) 9 SCC 750

“32. “Age determination inquiry” contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.”

21 Thereafter, in **Abuzar Hossain v. State of West Bengal**<sup>8</sup> a three-judge bench of this Court observed that the credibility and acceptability of the documents stipulated under rule 12(3)(a) would depend upon the facts and circumstances of each case and no hard and fast rule as such could be laid down. The court held:

“**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 : (2009) 3 SCC (Cri) 431] and *Pawan* [(2009) 15 SCC 259 : (2010) 2 SCC (Cri) 522] these documents were not found prima facie credible while in *Jitendra Singh* [(2010) 13 SCC 523 : (2011) 1 SCC (Cri) 857] the documents viz. school leaving certificate, marksheet and the medical report were treated sufficient for directing an inquiry and verification of the appellant's age. If such documents prima facie inspire confidence of the court, the court may act upon such documents for the purposes

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<sup>8</sup> (2012) 10 SCC 489

of Section 7-A and order an enquiry for determination of the age of the delinquent.”

(emphasis supplied)

- 22 The decision in **Abuzar Hossain** (supra) has been considered in successive decisions of this Court. In **Parag Bhati v. State of Uttar Pradesh**<sup>9</sup> a two-judge bench of this Court held that an enquiry for the determination of the age of a juvenile is permissible if there is any doubt or a contradictory stand is being taken by the accused. In this case, the Board disregarded date of birth of the accused recorded by the school on the ground that it was based on a forged transfer certificate. This Court did not find any illegality in the decision of the Board. The court observed that courts should be wary of adopting a casual or cavalier approach while deciding the juvenility of an accused in circumstances where a grave and heinous offence is committed.
- 23 In **Sanjeev Kumar Gupta v. State of Uttar Pradesh**<sup>10</sup> this Court was called upon to decide the credibility and authenticity of a matriculation certificate for the purpose of an age determination enquiry of the accused. This Court observed that the matriculation certificate provided by the Central Board of Secondary Education was purely on the basis of records maintained by the Senior Secondary School, where the accused was a student from Class 5 to Class 10. It emerged that the records maintained by the school were without any underlying documents. The court held that the plea of juvenility could not be accepted because there was clear and unimpeachable evidence as to the

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<sup>9</sup> (2016) 12 SCC 744

<sup>10</sup> (2019) 12 SCC 370

date of birth of the accused which had been recorded in the records of another school.

- 24 In another recent decision in **Rishipal Singh Solanki v. State of Uttar Pradesh**<sup>11</sup>, this Court was tasked to decide the credibility of the matriculation certificate issued by the Board of High School and Intermediate Examination, Uttar Pradesh. The Court upheld the credibility of the matriculation certificate on the ground that the date of birth recorded in the matriculation certificate was corroborated by school admission records. Further, it was observed that no other document indicated that the date of birth of the accused was contrary to what was indicated in the matriculation certificate.
- 25 In the present case, the mother of the first respondent categorically stated during the course of the enquiry that the first respondent had not studied beyond Class 9, and therefore did not appear for his matriculation examinations. The first respondent's counsel submitted a matriculation certificate at the remand stage which was found to be forged by the JMFC after inquiry. This was specifically adverted to in the report of the 4th Additional Sessions Judge. In the absence of a matriculation certificate, it was the birth certificate from the school first attended which could have been relied upon.
- 26 The first respondent's mother stated that the first respondent was admitted to Class 1 of Guardian and Guide Public School, Satna. The 'scholar register' produced by the school mentions the date of birth of the first respondent as

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<sup>11</sup> 2021 SCC OnLine SC 1079

30 June 1999. During the course of cross-examination, PW-4, who is the Director of Guardian and Guide Public School, admitted that no document regarding date of birth of the first accused was filed at the stage of admission. The mother of the first respondent has also admitted in the cross-examination that the date of birth in the scholar register is wrong. Additionally, the occupation of the first respondent's father was initially mentioned as teacher, which was later corrected to service. However, the mother of first respondent has admitted during cross-examination that her husband was neither a teacher, nor did he do any service. It was also admitted that PW-4 is a relative of the first respondent. In view of the aforesaid circumstances, the 4th Additional Sessions Judge was right in doubting the credibility of birth certificate obtained from school.

- 27 In the absence of a credible birth certificate from school, the 4th Additional Sessions Judge examined the birth certificate given by the municipal authority. The birth certificate issued by the municipal authority is dated 18 April 2002 under entry no. 1545 wherein the date of birth of the first respondent is mentioned as 30 January 1999. The 4th Additional Sessions Judge doubted the credibility of the birth certificate issued by the municipal authority because the documents were improperly maintained by the staff and were also found to be tampered. It was found that the birth register was interpolated and there were no signatures of the competent authority on the corrections and overwriting. The 4th Additional Sessions Judge has specifically adverted to the reasons for doubting the genuineness of the birth

certificate issued by the municipal authority. There is no valid basis to discard the finding.

- 28 In terms of the order dated 18 April 2022 in these proceedings, a five-member committee was constituted by Municipal Corporation, Satna to search out the birth certificate of the first respondent. After due scrutiny, it has been found that there is no entry of registration bearing entry no. 1545 pertaining to the date 18 April 2002 and the last entry is entry no 1544. Hence, it is apparent that the documents placed before the High Court by the first respondent in support of his claim of juvenility are fabricated and manipulated. In the circumstances, we find that the High Court was in error in relying on a fabricated birth certificate issued by the municipal authority to determine the juvenility of the first respondent.
- 29 The finding which was arrived at by the 4th Additional Sessions Judge, Satna was borne out from the record of the inquiry conducted. The High Court has manifestly erred in reversing that conclusion and entering a finding of juvenility. Counsel appearing on behalf of the State of Madhya Pradesh has, it may be noted, also drawn the attention of the Court to the report of the medical board. It is evident from the report of the medical board that the first respondent was not a juvenile. The entire record which was sought to be relied upon by the first respondent in support of the plea of juvenility was fabricated. The High Court has erred in accepting the plea of juvenility.

- 30 We accordingly set aside the impugned judgments of the High Court dated 22 August 2016. The report of the 4th Additional Sessions Judge, Satna, rejecting the plea of juvenility shall accordingly stand sustained.
- 31 The appeals are allowed in the above terms.
- 32 The name of the appellant shall be redacted and reflected as 'XYZ' in the record.
- 33 Pending application, if any, stands disposed of.

.....J.  
[Dr Dhananjaya Y Chandrachud]

.....J.  
[Hima Kohli]

New Delhi;  
September 02, 2022  
-S-