

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1548 OF 2026
IN
INTERIM APPLICATION NO. 3138 OF 2025
IN
CRIMINAL APPEAL NO. 186 OF 2017**

Habibulla Karim Khan ... Applicant
Versus
The State of Maharashtra ... Respondent

Mr. Faisal F. Shaikh a/w Mrs. Farhana Shah, Mr. Sultan Khan, Mr. Bhavesh Ameta, Mr. Omar Shah, Mr. Zaman Shaikh, Mr. Adnan Shemle, Ms. Uma Nemlekar, Mr. Rashid Sayyed, Ms. Bushra Shaikh, Ms. Sharvari Kulkarni, Ms. Khaliqua Khan, Ms. Khyati Shah, Mr. Naqui Hasware and Ms. Amna Khan for Applicant.

Ms. Sharmila S. Kaushik, APP for Respondent-State.

**CORAM : MANISH PITALE AND
SANDESH D. PATIL, JJ.
DATE : 10th SEPTEMBER 2026**

P.C. :

- . Heard learned counsel for the applicant.
2. By this application, the applicant is seeking recall of an order dated 18.09.2025 passed in Interim Application No. 3138 of 2025 in Criminal Appeal No. 186 of 2017.
3. This application is filed in the light of an order dated 20.02.2026 passed by the Hon'ble Supreme Court in Special Leave Petition (Criminal) Diary No. 4088 of 2026. The applicant by the said Special Leave Petition, challenged the aforesaid order

dated 18.09.2025 passed in Interim Application No. 3138 of 2025. Having considered the Special Leave Petition, the Supreme Court, without expressing opinion on the merits of the submissions on behalf of the applicant, disposed of the Special Leave Petition, as withdrawn, with liberty to move a recall application before this Court. It was further observed that if such a recall application is submitted, the same shall be decided on its own merits.

4. Before appreciating the contentions raised on behalf of the applicant, it would be necessary to refer to the chronology of events.

5. The applicant filed Criminal Appeal No. 186 of 2017 for challenging a judgment and order dated 16.11.2016 passed by the Sessions Court, Greater Bombay, in Sessions Case No. 853 of 2014, whereby the applicant was convicted under Section 302 of the Indian Penal Code, 1860 (IPC) and sentenced to suffer rigorous imprisonment for life.

6. Aggrieved by the same, the applicant filed Criminal Appeal No. 186 of 2017 before this Court. During the pendency of the said appeal, the applicant filed the aforesaid Interim Application No. 3138 of 2025. Although, a copy of the said application has not been annexed to the present application, it is evident from the submissions made by the learned counsel for the applicant that the said interim application was filed to raise the plea of juvenility before this Court in the pending appeal. When the said application

came up for consideration before the Division Bench of this Court (Coram: Revati Mohite Dere, J., as she then was, and Sandesh D. Patil, J.) on 18.09.2025, on a statement made by the learned counsel appearing for the applicant, the following order was passed :

“1. The learned counsel appearing for the Applicant seeks leave to withdraw this Application. The Application is accordingly disposed of as withdrawn.

2. We make it clear that we have not gone into the merits of the said Application.”

7. Thereafter, the appeal itself came up for hearing on merits. By judgment and order dated 03.11.2025, passed by another Division Bench of this Court (Coram: Bharati Dangre and Shyam C. Chandak, JJ.), the contentions raised on behalf of the appellant were considered and the appeal was dismissed on merits and the judgment and order of the Sessions Court was confirmed. It is relevant to note that no ground was raised concerning the juvenility when the said appeal was heard on merits and dismissed by the aforesaid Division Bench of this Court.

8. We find that instead of challenging the aforesaid judgment and order dated 03.11.2025 passed by the Division Bench of this Court, dismissing Criminal Appeal No. 186 of 2017 on merits, the applicant chose to file the aforesaid Special Leave Petition before the Supreme Court, to challenge only the order dated 18.09.2025 passed by the aforesaid Division Bench of this Court, whereby the application, seeking to raise plea of juvenility, bearing Interim

Application No. 3138 of 2025 was withdrawn.

9. On 20.02.2026, the Supreme Court disposed of the Special Leave Petition as withdrawn and passed the following order :

“1. Delay condoned.

2. The learned counsel for the petitioner submits that under some misconception the application claiming juvenility was withdrawn. Therefore, he may be given opportunity to move a recall application before the High Court.

3. Having regard to the above, without expressing any opinion on the merits of the above submissions, we deem it appropriate to dispose of this petition as withdrawn with liberty to move a recall application before the High Court.

4. If any such recall application is submitted, the same shall be decided on its own merits.

5. Pending application(s), if any, shall stand disposed of.”

10. It is in this backdrop that the present application, seeking recall of the order dated 18.09.2025, has come up for consideration.

11. The learned counsel for the applicant contends that there was a ‘misconception of fact’ on the basis of which Interim Application No. 3138 of 2025, seeking to raise plea of juvenility, was withdrawn, as recorded in the order dated 18.09.2025. It was contended that, what was proposed to be withdrawn was another Interim Application bearing No. 3639 of 2024 filed in the appeal.

12. It was submitted that since the prayer for withdrawing Interim Application No. 3138 of 2025 was made on such misconception of fact, a good ground is made out for recalling the

order dated 18.09.2025, to which one of us (Sandesh D. Patil, J.) was a party.

13. We are of the opinion that the aforesaid plea of the applicant cannot be considered as the appeal in which Interim Application No. 3138 of 2025 was filed i.e. Criminal Appeal No. 186 of 2027 itself has been heard and dismissed by the aforesaid judgment and order dated 03.11.2025. In other words, the applicant is seeking to pursue the present application in an appeal that is already dismissed and disposed of by the said judgment of this Court. It is to be noted that by the said judgment and order of the Division Bench of this Court dated 03.11.2025, the appeal was dismissed on merits and the conviction and sentence was confirmed. As noted hereinabove, no attempt was made on behalf of the applicant to raise the plea of juvenility, when the appeal was taken up for final hearing. If there was any substance in the plea of 'misconception of fact' on the part of the applicant or the Counsel, the first argument before the Division Bench, which heard and dismissed the appeal, ought to have been concerning the plea of juvenility. The Counsel appearing for the applicant could have proceeded on the basis that the aforesaid application raising the plea of juvenility was pending and that it was first required to be pressed before the appeal itself could be taken up for consideration. The judgment and order dated 03.11.2025 passed by the Division Bench of this Court, dismissing the appeal on merits, does not record any attempt made on the part of the

applicant or the Counsel to claim that a plea of juvenility in the form of the aforesaid Interim Application No. 3138 of 2025 was alive and pending, when the appeal was taken up for consideration. The appeal was argued without any attempt of raising the said plea of juvenility and the contentions raised on behalf of the applicant were accordingly considered and the appeal was dismissed on merits.

14. The argument pertaining to ‘misconception of fact’ is also not tenable for the reason that on the very same date on which the aforesaid Interim Application No. 3138 of 2025 pertaining to the question of juvenility was withdrawn i.e. 18.09.2025, Interim Application No. 3639 of 2024 was also withdrawn on behalf of the applicant. On the same day i.e. 18.09.2025, the Division Bench of this Court recorded that the learned counsel for the applicant did not press the said Interim Application No. 3639 of 2024, seeking suspension of sentence and enlargement on bail, as the appeal itself was fixed for final hearing. On this basis, the said application was disposed of as withdrawn and the appeal was fixed for final hearing. Thus, the fact that the Interim Application No. 3138 of 2025 was pertaining to the question of juvenility was very much in the knowledge of the Counsel, when the said application was withdrawn, as on the same day, the other application pertaining to suspension of sentence was also specifically withdrawn on the ground that the appeal itself was fixed for final hearing. This is an additional ground for rejecting the contention

on behalf of the applicant, while seeking recall of the order dated 18.09.2025 passed in Interim Application No. 3138 of 2025.

15. As noted hereinabove, instead of challenging the aforesaid judgment and order dated 03.11.2025 passed in Criminal Appeal No. 186 of 2017 and along with such a challenge raising the plea of juvenility, the applicant for some reason chose to challenge only the aforesaid order dated 18.09.2025 passed by the Division Bench of this Court, permitting withdrawal of the Interim Application No. 3138 of 2025. It is to be noted that even in the said order, the Division Bench was careful to give a clarification that it had not gone into the merits of the said application.

16. In such a situation, what the applicant, by way of this application, after seeking the liberty from the Supreme Court, is seeking to do is to call upon this Division Bench to pass an order that would, in effect, disturb the judgment and order dated 03.11.2025 passed by a coordinate Division Bench of this Court, while dismissing the appeal of the applicant on merits. Such a situation cannot be countenanced.

17. For the reasons recorded hereinabove, we are of the opinion that there is no substance in the contentions regarding ‘misconception of fact’ sought to be raised by the applicant to seek recall of the order dated 18.09.2025 passed in Interim Application No. 3138 of 2025. We are also of the opinion that it is procedurally impermissible to do so, for the reason that the said application was filed in Criminal Appeal No. 186 of 2017, which

was itself heard and dismissed on merits by the said judgment and order dated 03.11.2025.

18. As regards reliance placed on behalf of the applicant on the judgment of the Supreme Court in the case of *Mahavir alias Avnish vs. State of Madhya Pradesh*, **2026 SCC OnLine SC 1747**, we are of the opinion that there cannot be any quarrel with the proposition laid down in the said judgment by relying upon the settled position of law that the plea of juvenility can indeed be raised at any stage. In the said case, after the appeal of the convict was dismissed on merits by the High Court and a Special Leave Petition was filed challenging the same, the petitioner chose to withdraw the Special Leave Petition. Thereafter, the petitioner therein moved an application before the High Court, seeking recall of the judgment and order, whereby the High Court had dismissed the appeal on merits and confirmed the conviction and sentence imposed upon the convict. The High Court refused to entertain the application for recall of its judgment, only on the ground that since the Special Leave Petition filed by the convict had been dismissed as withdrawn and its judgment had already attained finality, there was no scope for entertaining the application for recall of the judgment and order. It is in the context of such facts that the Supreme Court in the said judgment referred to precedents and elaborated upon the power available to the Court under Section 362 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), concerning inherent powers

of the High Court and it was held that the application for recall of the judgment and order for raising the plea of juvenility ought to have been entertained by the High Court.

19. Such are not the facts in the present case. We have already noted hereinabove the procedural impossibility of consideration of the present application, seeking recall of the order dated 18.09.2025 passed by this Court, permitting the applicant to withdraw Interim Application No. 3138 of 2025, as the appeal in which it was filed itself had been dismissed by the judgment and order dated 03.11.2025.

20. Hence, the application is dismissed.

21. However, the applicant is at liberty to raise the plea of juvenility either in a challenge that he may choose to raise against judgment and order dated 03.11.2025 passed by the coordinate Division Bench of this Court in Criminal Appeal No. 186 of 2017 or in the light of the aforesaid judgment of the Supreme Court in the case of **Mahavir alias Avnish vs. State of Madhya Pradesh** (*supra*), he would be at liberty to seek recall of the order dated 03.11.2025 passed in Criminal Appeal No. 186 of 2017, in accordance with law.

22. We are not expressing any opinion on the merits of such a plea that may be raised by the applicant, if so advised.

(SANDESH D. PATIL, J.)

(MANISH PITALE, J.)