

vks

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1314 OF 2015
IN
CRIMINAL APPEAL NO.755 OF 2009**

Sakir Nanku Khan	... Applicant.
V/s.	
The State of Maharashtra	 Respondent

None present for the applicant.
Mr. H. J. Dedhia, APP for the Respondent-State.

**CORAM : SMT. V.K. THILRAMANI ACTING CJ &
DR. SHALINI PHANSALKAR-JOSHI, J.**

DATE : 17th NOVEMBER, 2015.

P.C. :

1. In this application the applicant is praying for expeditious hearing of his appeal being Criminal Appeal No.755 of 2009. However, the record shows that the applicant had earlier preferred Criminal Application No.574 of 2013, wherein he had claimed that he was juvenile in conflict with law on the date of offence, hence he should be given benefit of the same. In view of the claim of the applicant, by order dated 29.4.2013, the matter was sent for enquiry to the Sessions Court at Thane which is the concerned Sessions

Court, which conducted the trial in this case. As the relatives of the applicant are residing in Nepal and the certificates relied upon by the applicant are from Nepal and none of the relatives of the applicant appeared before the Sessions Court to give evidence nor any effort was made by any relatives of the applicant to substantiate his claim, hence it was necessary for the police officers to go to Nepal to verify the facts. For the police officers to go to Nepal, it requires a lot of permissions from concerned authorities including the Government of India which has caused delay in verifying the claim of the applicant.

2. As the applicant has raised claim that he was juvenile in conflict with law on the date the offence took place, we indicated to the applicant by order dated 28th October, 2015 that if the applicant is willing to give up his claim of juvenility, it will be possible to take up the appeal for final hearing. This order was communicated to the applicant, who is in Nashik Road Central Prison and he was asked to communicate whether he wants to pursue his claim that he is juvenile in conflict with law or he wants to give up his claim about juvenility and pray for early hearing of his appeal.

Pursuant to the said order, statement of the applicant has been recorded by jail authorities. The said statement has been tendered by learned APP before this Court. The said statement is taken on record and marked "X" for identification. From the said statement it is seen that the applicant is not willing to give up his claim of being juvenile in conflict with law. Therefore, in that event till the claim of applicant's juvenility is dealt with, the appeal cannot be heard. Hence the appeal cannot be taken up for early hearing.

3. It is seen that in the statement the applicant has also prayed that he may be granted interim bail. Looking to the evidence on record and looking to the fact that the applicant is from Nepal, we are not inclined to grant this prayer for interim bail more especially in view of the fact that the application of applicant for release on bail has been rejected by this Court by order dated 24th January, 2012.

4. In view of this the application to expedite the hearing of appeal is rejected. So also prayer of applicant for interim bail is rejected.

5. Application is disposed of in above terms.
6. This order be communicated to the applicant who is in jail.

[ACTING CHIEF JUSTICE.]

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

Certified to be true and correct copy of the
original signed order.