

Vidya

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 670 OF 2016
IN
CRIMINAL APPEAL NO. 250 OF 2009

Mohd. Sattarul Najrul Mulla	... Applicant
Vs.	
The State of Maharashtra	... Respondent

Mr. K.M. Sangani, Advocate for the applicant.
Mrs. A.S. Pai, APP for the Respondent/State.

CORAM: **SMT. V.K. TAHILRAMANI &**
MRS.MRIDULA BHATKAR, JJ.

DATE: **JUNE 23, 2016**

P.C.:

Heard both sides.

2. The case of the applicant is that he was below 18 years on the date on which the incident took place. Admittedly, the incident took place in the night between 12th and 13th August, 2007. The prayer of the applicant is that he should be given benefit of being a juvenile in conflict with law at the time of the incident. The applicant, by the judgment and order dated 10th February, 2009 passed by the Principal Judge, City Civil and Sessions Court, Greater Bombay in Sessions Case No. 868 of 2007, was convicted under section 302 r/w. 34 and sentenced to suffer life imprisonment and fine

of Rs.500, in default to suffer R.I. for 15 days. Being aggrieved thereby, the applicant preferred Criminal Appeal No. 250 of 2009. The said Appeal has been admitted and is pending before this Court. Thereafter this Application has been preferred by the applicant.

3. The applicant is praying that he be released on bail, as he is a juvenile. As far as this prayer is concerned, it is seen that the applicant has earlier preferred Criminal Application No.481 of 2013 wherein he has prayed for bail on the ground that he is a juvenile. Reliance was placed on certificate dated 20th June, 1996. In the said certificate, his date of birth was shown as 12th March, 1991. The said certificate was purportedly issued by the Government of West Bengal. This certificate was annexed at Exhibit A to Criminal Application No. 481 of 2013. As stated earlier, in the said certificate the date of birth of the applicant was given as 12th March, 1991. The date of issuance of the said certificate was 20th June, 1996. The said certificate was purportedly issued by Dhanyakutia B.P.H.C. Basirhat Block-II, North 24 Parganas. The prayer of the applicant for bail on the ground that he is a juvenile came to be rejected by this Court, as it transpired that the said certificate dated 20th June, 1996 was not issued by the authority which is said to have issued the said certificate. As it was made clear that the Court was not inclined to grant any relief by placing any reliance on the

certificate dated 20th June, 1996 showing the date of birth of the applicant as 12th March, 1991, the learned counsel for the applicant Mr. Sangani withdrew the said application. Criminal Application No. 481 of 2013 was disposed of as withdrawn by the order dated 23rd September, 2013. In the said order, this Court directed that the applicant shall not make use of the certificate dated 20th June, 1996 which was annexed to the Application No. 481 of 2013 as Exhibit A wherein the date of birth of the applicant was shown as 12th March, 1991.

4. Thereafter the applicant preferred another Application, being Criminal Application No. 178 of 2015 in which he produced another birth certificate issued on 3rd November, 2014 by the Sub-Registrar of Birth and Death Prodhan, Pifa Gram Panchayat, Basirhat I, North 24 Pgs. In the said certificate, the date of birth of the applicant was shown as 12th March, 1991. The learned APP relied on the affidavit filed by API Patel attached to Shivaji Nagar Police Station, Mumbai wherein it was stated that he was deputed to carry out inquiry in respect of genuineness of the birth certificate of the applicant which was annexed to Criminal Application No. 178 of 2015 at Exhibit B. Accordingly, on 10th March API Patel attached to Shivaji Nagar Police Station, Mumbai visited the office of Pifa Gram Panchayat, Basirhat-I North 24 Pgs. and met Smt. Nita Bhat who was working in the said office.

Smt. Nita Bhat stated that the present certificate was issued on the basis of the documents produced in that respect. She also handed over xerox copies of all the documents which were relied to procure the said birth certificate. On perusal of all the documents which were relied upon to procure the said birth certificate, it was seen that all the documents were of the months of October and November, 2014 and March 2015. This Court observed that the earlier document dated 20th June, 1996 which was relied upon by the applicant in Criminal Application no. 481 of 2013 was found to be fabricated and forged . Thereafter the applicant has attempted to procure a fresh certificate which is based on recent documents. This Court further observed that it was seen that the applicant has not approached this Court with clean hands and looking to the fact that the old document dated 20th June, 1996 was found to be fabricated and forged and looking to the fact that the document dated 3rd November, 2014, which according to Smt. Nita Bhat was procured on the basis of documents which were of the month of October 2014, November 2014 and March 2015, this Court was of the opinion that the said certificate dated 3rd November, 2014 was also false, fabricated and forged document and the said certificate had been procured by the applicant with malafide intention to get the benefit of being juvenile in conflict with law. In view of these facts, Criminal Application No. 178 of 2015 wherein it was prayed that the applicant be released on bail as he is

juvenile came to be rejected. The applicant has now approached the Court with the same prayer.

5. It is pertinent to note that by order dated 14th October, 2015 in Criminal Application No. 178 of 2015 the claim of the applicant that he is a juvenile in conflict with law came to be rejected. This order has not been challenged. In this view of the matter, we are not inclined to grant bail to the applicant based on same set of facts.

6. The second prayer of the applicant in the present Application is that a Medical Board be constituted in terms of sub-rule 3(b) of Rule 12 of the Juvenile Justice Rules, 2007 and that directions be issued to the Jail Superintendent of Nashik Road Central Prison where the applicant is presently lodged to produce the applicant before the Medical Board. Thus, the only other contention of the applicant is to refer him for medical test, i.e., ossification test.

7. It is necessary to examine whether ossification test/medical test can be straightway directed or not. No doubt, in view of Section 7(A) of Juvenile Justice (Care & Protection of Children) Act, 2000 (hereinafter referred to as “Juvenile Justice Act”, the claim regarding juvenility can be

raised before any Court at any stage and even after final disposal of the case. Rule 12(3)(a) of the Juvenile Justice Rules prescribes that the age determination inquiry shall be conducted by seeking evidence by obtaining the matriculation or equivalent certificates, if available; and in the absence whereof, the date of birth certificate from the school (other than a play school) first attended; and in the absence whereof, the birth certificate issued by a Corporation or Municipal authority or a Panchayat. Rule 12(3)(b) further prescribes that only in the absence of the documents in clause 12(a) (i) to (iii) medical opinion will be sought as prescribed therein. It is, therefore, clear that the medical examination should be directed as a last resort and not on the basis of the wish of the claimant. It is also clear that medical examination is merely an opinion and it is not binding on the Court. The Court rely on the medical opinion whenever there is disagreement in relation to documents relating to age or in those cases where they are completely missing. In the present case, the applicant has not once but twice attempted to produce certificates showing his date of birth which were found to be unreliable by the Court.

8. We have also made a note that the learned Sessions Judge has framed charge on 15th February, 2008 and at that time, the plea of the accused was recorded. He pleaded not guilty. At that time, he told his age as 21 years

and accordingly it is recorded. The charge was framed approximately 8 to 9 months after the incident. Therefore at the time of incident, as per the information given by the applicant, his age must be 20 years. He was not juvenile at the time of the incident. The information given by the accused himself while recording of plea is voluntary, natural and hence true. This is also one of the circumstances which fortifies the fact that accused was not minor at the time of incident.

9. Looking to all the above facts, we reject the claim of the applicant that he was a juvenile in conflict with law on the date of the offence, consequently the prayer of the applicant for being sent to the Medical Board is rejected.

10. Application is disposed of.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)