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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4236 OF 2014

Avinash @ Godeya Santosh Pimpale @ Pawar ... Petitioner
vs.
The State of Maharashtra ... Respondent

Mrs. Nasreen Ayubi, Advocate appointed for the petitioner.
Mrs. A.S. Pai, APP for the respondent/State.

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

JUNE 29 , 2016.

ORAL ORDER (Per Mrs. V.K. Tahiramani, J.)

Heard both sides.

2. Rule. By consent, rule is made returnable forthwith.
3. The claim of the petitioner in this petition is that he was a juvenile in conflict with law on the date of incident, i.e., 19th October, 2003, hence he should be given the benefit of Juvenile Justice (Care & Protection of Children) Act, 2000.
4. By the judgment and order dated 24th April, 2006, the learned

Sessions Judge, Sangli convicted the petitioner under section 396 of Indian Penal Code in Sessions Case No. 40 of 2004. For the offences punishable under section 396 of Indian Penal Code, the petitioner was sentenced to life imprisonment. Being aggrieved thereby, the petitioner preferred an Appeal before this Court, being Criminal Appeal No. 723 of 2006. This Court by judgment and order dated 20th February, 2013 dismissed the Appeal.

5. On plain reading of Section 7A of the Act, it is clear that the claim of juvenility can be raised before "any" Court even after final disposal of the case. It is seen that this claim was raised by the petitioner before the trial Court by preferring Criminal Miscellaneous Application No. 269 of 2012. By order dated 15th July, 2014, the Application came to be rejected. Hence, this Petition.

6. The case of the petitioner is that his date of birth is 15th June, 1988 and the incident occurred on 19th October, 2003. He was arrested in the said case on 21st October, 2003. The claim of the petitioner is that looking to his date of birth on the date of the incident he was 15 years and 4 months, hence he should be given the benefit of being a juvenile in conflict with law on the date of the offence. It is pertinent to note that the petitioner has not produced any documentary evidence to show that his date of birth

is 15th June, 1988. Only a bald claim has been made by the petitioner that his date of birth is 15th June, 1988.

7. Before the Sessions Court on 17th May, 2012 the petitioner preferred an application for his medical examination with a view to determine his age by way of ossification test. In the said application, directions were given by the Sessions Court and the applicant was examined on 19th June, 2012 by the Medical Board. The report of the Medical Board shows that the final approximate age from the physical, dental and radiological examination of the petitioner on 19th June, 2012 appears to be approximately 22 plus or minus one year. Thus, according to the report of the Medical Board, on the date of the incident the petitioner would have been 12 to 14 years of age.

8. Thereafter on 22nd March, 2013, the petitioner preferred an Application to produce him in the Court for adducing his evidence pertaining to his claim of juvenility. Accordingly, production warrant was issued. However, the petitioner led no evidence to substantiate his claim of juvenility. Instead on 16th April, 2010, another application was preferred by the petitioner stating therein that since last one and half, his sisters – Miss Netra Santosh Pimple, Miss Gayatri Santosh Pimple @ Mrs. Gayatri

Shani Kale and daughter of his maternal uncle viz. Maneka Himmat Chavan, residing at village Kalegaon, Taluka Gangapur, District Aurangabad used to meet him regularly in jail and, therefore, matter be fixed on 03-05-2013 for recording their evidence pertaining to his claim of juvenility. The said application came to be allowed. As per request of counsel of applicant, matter was adjourned on 20-07-2013 (Exhibit 18). Again, on 07-08-2013, matter was adjourned at the instance of applicant (Exhibit 19). On 31-08-2013, the Sessions Court received an application of applicant (Exhibit 20). In the said application, it was specifically stated that it is impossible for the applicant to summon his sisters before this Court for adducing evidence.

9. Thereafter the petitioner preferred another Application before the Sessions Court requesting the Court to make necessary arrangement for the purpose of recording the evidence of his father Santosh Shankar Pimple/Pawar. However, the father of the petitioner could not be examined and on 24th June, 2014 the learned Advocate, who was representing the petitioner before the Sessions Court, filed pursis stating therein that despite sincere efforts, close relatives of the applicant are not attending the Court for adducing evidence and therefore, written argument is filed. By filing

such pursis (Exhibit 26) the learned counsel for the petitioner did not lead evidence of petitioner or anyone else. In the written argument simply a bald statement has been made that the petitioner's date of birth is 15th June, 1988 and as the incident occurred on 19th October, 2003, on the date of the incident he was a juvenile in conflict with law, hence, he should be given benefit of being a juvenile.

10. It is important to note that the petitioner has given his date of birth as 15th June, 1988. However, to prove that on the date of offence, the petitioner was a juvenile in conflict with law, he has not produced documents like matriculation or equivalent certificate or date of birth certificate from the school first attended or the birth certificate given by a Corporation or Municipal Authority or a Panchayat. In absence of such documents, plea taken by applicant about his juvenility, cannot be accepted. It is pertinent to note that the father and sisters of the applicant are alive. Despite efforts, these persons have failed to appear before the Sessions Court and failed to lead evidence pertaining to the claim of juvenility of the petitioner.

11. It is an admitted fact that the petitioner was arrested in the present case which pertains to C.R. No. 174 of 2003 of Vishrambag Police Station,

Sangli on 21st October, 2003. The said case is under section 396, 457, 380 r/w. 34 of the Indian Penal Code. It is pertinent to note that after the arrest or during the trial in the Sessions Court no objection was raised relating to the age of the petitioner. If the applicant would have been 12 or 13 years of age at the time of offence as per the report of the Medical Board, then it is not possible that nobody would have noticed or recognized this fact of juvenility including the investigating machinery, trial Court or advocate for the petitioner. The incident has occurred on 19th October, 2003 and the applicant was arrested two days thereafter, i.e., 21st October, 2003. That means as per the report of the Medical Board which is of the year 2012, the petitioner in October 2003 would have been 12 to 14 years of age. Within 24 hours of arrest the petitioner would have been produced before the Magistrate. Had the petitioner been 12 or 13 years of age in October 2003 when he was produced before the Magistrate, the learned Magistrate or the investigating agency or the advocate representing the petitioner would have realized this fact that the petitioner was a juvenile and taken appropriate steps.

12. As far as the report of the Medical Board regarding the age of the petitioner is concerned, it is not a conclusive proof and the same is not

absolute in absence of oral evidence of the petitioner's close relatives and other documentary evidence as provided under Sub-Rule (3) of Rule 12 of Juvenile Justice (Care & Protection of Children) Rules 2007. When the petitioner was arrested in C.R. No. 174 of 2003, the petitioner had himself given information to the police that he is 19 years of age. Moreover, when the charge was framed by the trial Court on 6th November, 2004, the petitioner himself gave his age as 19 years. In view of these circumstances, the claim of the petitioner about him being a juvenile in conflict with law on the date of offence cannot be accepted. Moreover, we are of the opinion that his claim is not bonafide and came to be taken by intentionally suppressing the proof of age.

13. In view of the above facts, we are of the opinion that there is no merit in the plea raised by the petitioner. Hence, Rule is discharged.

14. Office to communicate this order to the petitioner, who is in Kolhapur Central Prison.

(MRS. MRIDULA BHATKAR,J.) (MRS. V.K. TAHILRAMANI, J.)