

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 185 OF 2016**

The State of Maharashtra	...Applicant
Versus	
Ganya @ Ganesh Manikrao Sadavarte	...Respondent

Mr. A. S. Shitole, A.P.P for the Applicant-State

Mr. Bharat H. Parwani for the Respondent/accused

CORAM : REVATI MOHITE DERE, J.
TUESDAY, 26th JULY, 2016

P.C. :

1. Heard learned A.P.P for the applicant-State and the learned Counsel for the respondent/accused.
2. Rule. Rule is made returnable forthwith, with the consent of the parties.
3. By the aforesaid revision, the applicant-State has impugned the order dated 17th June, 2015 passed by the 3rd Additional Sessions Judge, Thane, in C.R. No. 191 of 2015 registered with the Bhiwandi City Police

Station and consequently all proceedings thereafter and has prayed that the respondent be directed to surrender before the appropriate Court.

4. A few facts as are necessary to decide the present application are as under :

The respondent-accused was arrested in connection with C.R. No. 191 of 2015 registered with the Bhiwandi City Police Station for the alleged offences punishable under Sections 376, 363, 328, 506(2) of the Indian Penal Code and under Section 3(A), 4, 7, 8 of the Protection of Children from Sexual Offences Act. The applicant was arrested in connection with the aforesaid offences on 3rd June, 2015.

5. According to the prosecution, the respondent-accused had administered some liquid to the victim girl aged 9 years and had sexual intercourse with her. It is alleged that the respondent-accused thereafter, threatened the victim girl that he would kill her if she disclosed the said incident. The mother of the victim girl on learning of the aforesaid incident, lodged the complaint as aforesaid, on the basis of which, the aforesaid C.R. was registered. The Investigating Officer after confirming

that the respondent-accused was an adult, arrested him and produced him before the Special Court. Thereafter, the respondent-accused preferred an application dated 16th June, 2015 before the learned Special Judge stating therein, that he was a juvenile when the incident had taken place i.e. on 31st May, 2015. The following documents were relied on by the respondent-accused; the Aadhar Card, the election card of Manik Umaji Sadavarte (Sadaonay) and Indirabai Manik Sadavarte (the parents of the respondent-accused); the Residence Certificate dated 13th June, 2015 issued by Sarpanch, Gram Panchayat, Taluka Sevali, District Jalna; and the Birth Certificate of the respondent-accused issued by the Gram Panchayat, Taluka Sevali, District Jalna. The date of birth reflected in the said Residence Certificate and the Birth Certificate produced by the respondent-accused shows his date of birth as 20th January, 1999. The learned Additional Sessions Judge, Thane, therefore, after considering the said documents, observed that the age of the respondent was about 16 years, 4 months and 11 days, at the time of the incident and thus, the the respondent-accused was a juvenile in conflict with law. Accordingly, the learned 3rd Additional Sessions Judge, Thane, passed the following order :

“ORDER

- 1] *Jail authority is hereby directed to produce Ganesh @ Ganya Manikrao Sadavarte as juvenile conflict with law before juvenile justice board in crime no. 191/2015 of Bhiwandi City police station, Thane, for the offences punishable u/s. 376, 363, 328, 506(2) of I.P.C. and under sec. 3(A), 4, 7, 8 of Protection of Children from Sexual Offences Act, 2012.*
- 2] *Remand papers be sent to juvenile justice board.*
- 3] *Concerned Bhiwandi City police Station be informed, accordingly.”*

6. Pursuant to the aforesaid order, the respondent-accused was produced before the Juvenile Justice Board, Bhiwandi. The respondent preferred an application seeking his release in the aforesaid C.R on bail. The Principal Magistrate, Juvenile Justice Board, Bhiwandi, accordingly vide order dated 10th July, 2015, was pleased to order the release of the respondent-accused on bail on furnishing P.R bond and surety bond of Rs. 15,000/-. The personal bond was to be furnished by the parents of the respondent-accused.

7. Mr. Shitole, the learned A.P.P for the applicant-State submitted that the documents filed by the respondent-accused before the learned

Sessions Judge were fabricated. He submitted that the Investigating Officer verified the said two documents i.e. the Residence Certificate dated 13th June, 2015 and the Birth Certificate dated 14th June, 2015, purportedly issued by the Gram Panchayat and found that the said Certificates were issued by the Gram Panchayat on an application made by the respondent's father. He submitted that the statement of the Officer from the Gram Panchayat Office, shows that the said certificates were not issued after verifying the records. Learned A.P.P has produced on record, the copies of the Certificates and documents to show that the date of birth of the respondent-accused was 5th December, 1992 and not 20th January, 1999 as alleged by the respondent-accused. The learned A.P.P relied on the School Leaving Certificate, the extract of Birth Register of December, 1992 and School Register, etc. in support of his submission, to show that the respondent's date of birth was 5th December, 1992. He submitted that in view of the said documents, the respondent-accused was not a juvenile in conflict of law, but was an adult aged 22 years 5 months, at the time of the incident.

8. Perused the papers and the Certificates relied upon by the learned A.P.P and the learned Counsel for the respondent-accused. It appears from the documents which were relied upon by the learned A.P.P, that the respondent-accused was born on 5th December, 1992 and was aged 22 years and five months, at the time of the incident. It appears that the learned Additional Sessions Judge has relied on the Residence Certificate and the Birth Certificate, issued by the Gram Panchayat only in June, 2015, which shows the date of birth of the respondent as 20th January, 1999. The Investigating Officer has recorded the statement of the Officer of the Gram Panchayat, who has stated that the said Certificates have been issued by him on the request of the father of the respondent. He has stated that he has only verified the name and issued the Certificates. His statement does not show that he had verified the date of birth of the respondent from the available records.

9. Learned Counsel for the respondent-accused states that the respondent will surrender before the appropriate Court on 2nd August, 2016. The said statement is accepted.

10. Considering the aforesaid, the following order is passed :
- (i) The application is allowed;
 - (ii) The impugned order dated 17th June, 2015 passed by the 3rd Additional Sessions Judge, Thane, is quashed and set-aside and consequently all orders thereafter passed by the Juvenile Board, are also set-aside;
 - (iii) The learned Sessions Judge to pass appropriate orders, after the respondent-accused surrenders before him;
 - (iv) The Investigating Officer is at liberty to initiate prosecution against the persons responsible for issuing the said Certificates.
11. Rule is made absolute on the aforesaid terms and is accordingly disposed of.
12. Parties to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.