

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

9 CRIMINAL APPLICATION NO. 2542 OF 2017

SHIVAM @ SHUBHAM MANOJ DESHMUKH

VERSUS

THE STATE OF MAHARASHTRA

...

Advocate for Applicant : Mr. Waramaa B. R.
APP for Respondent State: Mr. K. N. Lokhande
Advocate for Respondents :

CORAM : K. L. WADANE, J.

DATE : 27th June, 2017

ORDER:

1. Heard Mr. Waramaa learned counsel for the applicant and Mr. Lokhande, learned APP for the State.

2. Perused the order dated 19.04.2017 passed below Exh.8 in RCC No.4/2016. On perusal of the same, apparently, it is seen that the learned Sessions Judge has committed error while dealing with the Bail application of a juvenile, which ought to have been entertained by the Juvenile justice Board as per the provisions of Section 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. Section 12 of the Act, 2015 reads as under:

12.Bail to a person who is apparently, a child alleged to be in conflict with law- (1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that

person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a Court other than a Bord, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

Provided that such a claim may be raised before any Court and it shall be recognized at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has cased to be a child on or before the date of commencement of this Act.

(3) If the Court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any passed by the Court shall be deed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed , in the intervening period in a place of safety."

3. In view of the above, since the order passed by the learned Additional Sessions Judge, Amalner is without jurisdiction, the same is set aside. The applicant may approach the concerned Juvenile Justice Board as per provisions of Section 12 of the Act, 2015.

4. The Criminal Application is disposed of.

(K. L. WADANE, J.)

JPC