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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.98 OF 2017

Ravi Bharat Chavan

... Applicant

vs.

The State of Maharashtra

... Respondent

Ms. Mahararukh Adenwalla a/w Ms. Monica Sakhrani for the Applicant.

Ms. N. S. Jain for the Respondent.

CORAM : A.K. MENON, J.

DATE : 29th JUNE, 2017

P.C.

1. This application under Section 407 of the Code of Criminal Procedure seeks transfer of Juvenile Case no.311/2016 pending before the Juvenile Justice Board, Nashik to the Juvenile Justice Board, Mumbai. The applicant is a minor, hence the application is filed through his father and natural guardian. The applicant is stated to be 15 years and 9 days on the date of the alleged offence. The offence is alleged to have taken place on 8th October, 2016 at Talegaon, Anjaneri, District Nashik. FIR bearing C.R. No.102/2016 has been registered on 8th October, 2016 under Section 376 r/w Section 12 of the Protection of Children from Sexual Offences Act, 2012. The charge-sheet has been filed on 27th October, 2016.
2. It is the case of the applicant that the alleged incident led to communal violence between the communities involved and the situation was delicate for several days. The applicant has also stated that his home was

vandalized and burnt and the applicant's parents and siblings had to flee the village and have still not returned to village. The applicant has relied upon an order passed by the Juvenile Justice Board, Nashik on 9th October, 2016 viz. on the very same date of the incident, copy of which appears at Exhibit A. By the said order the Juvenile Justice Board, Nashik observed that the juvenile applicant is not safe in Nashik since no security is provided at the local remand home and therefore it would be appropriate that the applicant was kept at Mumbai in the remand home at Umarkhadi till further orders. The applicant was thereafter shifted to Mumbai in view of the delicate situation prevailing in Nashik.

3. The respondent has meanwhile filed an affidavit in reply of the concerned officer. The reply dated 31st March, 2017 admits that the law and order situation in Nasik was adversely affected due to the reaction of the persons in the surrounding area and became more critical due to transmission of hate messages on social media. In fact the deponent states that mobile data services were discontinued for 6-7 days and due to the communal charged atmosphere in Nashik at the relevant time, 200 people were arrested. However, in the same reply it is stated that the situation has since come under control and from November 2016 till March 2017 no other incidents are reported. It is further stated that presently the law and order situation in Nasik is absolutely normal and the apprehension expressed are false. This application for transfer is opposed for the aforesaid reasons.
4. An affidavit in rejoinder is filed on behalf of the applicant wherein the

contents of the reply have been refuted. The rejoinder further sets out the intensity with which the mob had behaved immediately after the incident. The mob was targeting men and women of the community to which the applicant belong and houses were also allegedly destroyed. The applicant and his family therefore reiterated the contents of the application.

5. Having considered the pleadings as well as the documents on record, I find that the order of transfer passed by the Juvenile Justice Board, Nashik was on the basis of a communication dated 9th October, 2016 appearing at Exhibit 'A'. Furthermore, the deponent of the affidavit in reply had also supported the transfer of the Juvenile in conflict with law made at the material time as is evident from the communication addressed to the Juvenile Justice Board on 9th October, 2016 copy of which appears at Exhibit M. The contention of the affidavit in reply that presently the situation in Nashik is normal and that there is no risk of any kind to the applicant cannot be accepted for the simple reason that the applicant was transferred to Mumbai immediately after the alleged incident and the situation have quietened down.
6. However, rejecting this application would entail the applicant being shifted back to Nashik. Admittedly, security arrangements were insufficient at Nashik Observation Home. That apart even assuming, security arrangement are provided at the observation home in Nashik, it would not in my view be sufficient to protect the applicant against any mob should the issue flare up. Considering the facts of the case, I am inclined to allow

this application. Accordingly, I pass the following order:-

- (i) Application is allowed, Juvenile Case No.311/2016 pending before Juvenile Justice Board, Nashik shall be transferred to Mumbai.
- (ii) Record and Proceedings of Juvenile Case no.311/2016 pending before the Juvenile Justice Board, Nashik, shall forthwith be transferred to the Juvenile Justice Board, Mumbai City, Mumbai.
- (iii) Application is disposed of in the above terms.
- (iv) No orders as to costs.
- (v) Learned APP to immediately take steps to inform the authorities in Nashik of the passing of this order.

(A. K. MENON, J.)