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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1977 OF 2017**

Babudin Shakil Shaikh

... Petitioner

vs.

The State of Maharashtra

... Respondent

Ms. Akshada Pasi for the Petitioner.

Mr. Avinash Khamkhedkar, APP for the State.

CORAM : A. K. MENON, J.

DATE : 27th JUNE, 2017

P.C.:

1. By this application the petitioner has sought to challenge the order dated 31st March, 2017 passed by the Sessions Judge, Mumbai and sought transfer of the case to the Juvenile Court on the basis that at the time of the incident the accused was a Juvenile in conflict with law.

2. Learned Counsel for the applicant has submitted that the impugned order has ignored the opinion obtained from the J.J. Hospital viz. the Forensic Medical Examination report dated 27th October, 2016 wherein the age of the petitioner is shown as 17-18 years with a margin of error. The Sessions Judge vide his order dated 20th October, 2016 held that the age should be ascertained after referring the matter to the Medical Board in accordance with the Act. However, the age vide the report of the board was shown as 22 years. The Learned Counsel submitted that the age as per the first report dated 27th October, 2016 may be

considered and the petitioner be sent to the Juvenile Justice Board.

3. Learned APP submits that vide order dated 20th October, 2016 the Sessions Court directed the accused to be referred to the medical board constituted by Sir. J.J.Hospital for a medical opinion of the age of the accused and IO was directed to take accused before the Court. Accordingly, it appears that the first report dated 27th October, 2016 was issued at the instance of the Tardeo police station. Learned APP today relied upon the forwarding letter dated 7th February, 2017 issued by Department of Forensic Medicine, Grant Government Medical College, Mumbai to Sir. J. J. Hospital requesting examination by the Medical Board.

4. The letter refers to the fact that the board would be consisting of persons from Department of Radiology, Dentistry and Forensic Medicine. It is submitted that the opinion dated 16th November, 2016 recorded the opinion of the said board whereas the Forensic Medical examination at Exhibit-A [Exh-37 before the lower Court] is issued by the Assistant Professor of Department of Forensic Medicine and resident doctor and thus it is not in compliance of the directions of the Court. The detailed examination conducted by the medical board and as reported on 16th November, 2016 has indicated that the age of the applicant at the time of examination was about 25 years.

5. Learned Counsel for the applicant submitted that such difference in age is not likely and therefore the benefit of doubt has to be given to the said applicant. The impugned order considered the opinion of the medical board and clearly

records that as on date of the incident on 29th January, 2014 and going by the opinion of the medical board the age of the applicant was more than 22 years and even considering the law on the subject it was not possible to conclude that the accused was juvenile at the time of committing the offence as contemplated under the Juvenile Justice (Care and Protection of Children) Act, 2000. In the circumstances it is not possible to read the opinion dated 27th October, 2016 as one that overrides the opinion of the medical board. The law mandates reference to the medical board and unless there are compelling reasons it is necessary that the opinion of the board must be taken as authoritative qua age determination.

6. There is no merit in the present application. I therefore pass the following order.

- (i) Writ Petition is rejected.
- (ii) No orders as to costs.

(A. K. MENON, J.)