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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2341 OF 2017

Akshay Vasant Agarwal

... Petitioner

vs.

State of Maharashtra

... Respondent

Mr. L.C. Kranti i/b. Rupwate Archana Punja for the Petitioner.

Ms. N.S.Jain, APP, for the Respondent-State.

CORAM : A.K. MENON, J.

DATED : 6th JULY, 2017

P.C.

1. This petition seeks to challenge the order dated 8th May, 2017 whereby the Sessions Court in Application no.211 of 2014 disposed Exhibit 41 by which the applicant sought transfer of proceedings. Submissions were made before the Sessions Judge to the effect that since the applicant was born on 22nd November, 1995 he should be treated as a Juvenile in conflict with law and accordingly entitled to protection of the Juvenile Justice (Care and Protection of Children) Act, 2005. At the hearing of this application today, the learned counsel for the petitioner states that he is not pressing the other prayers in the petition.
2. With the consent of the parties, the petition is taken up for final disposal. I issue Rule. Rule returnable forthwith.
3. By the impugned order the Court recorded that while the applicant had sought to rely upon a school leaving certificate, the Court called for a

report from the police station. The prosecution thereafter produced Exhibit 42 which is a record of birth of the hospital where the applicant was born. A copy of the birth register appears at Exhibit G to the present application. The hospital record establishes that the applicant was born on 22nd November, 1995 and as such on the date of the alleged offence i.e. 3rd November, 2013 the accused had not completed 18 years and was thus a juvenile in conflict with law. The Court found in his favour. However, while disposing of Exhibit 41 the Court held that the applicant shall be tried by the Children's Court.

4. The limited relief sought in this petition is that the direction to transfer the proceedings pending before the Children's Court be set aside since it appears the Court passed the order of transfer on the basis of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the said Act was in force at the material time having been brought into force on 15th January, 2016. The Juvenile Justice (Care and Protection of Children) Act, 2000 in Section 25 provides for saving in respect of pending cases. In the instant case the offence being of 2013 the case would have to be tried by the Juvenile Justice Board and accordingly the trial Court ought to have transferred the matter for trial before the relevant Juvenile Justice Board.

5. Accordingly, considering the narrow issue before me today in this petition, I pass the following order:-

(i) The impugned order dated 8th May, 2017 which directs that the

applicant being juvenile in conflict with law be tried by the Children's Court is set aside.

(ii) The case shall be forthwith be transferred to the Juvenile Justice Board which will proceed to hear the matter in accordance with law.

(iii) With this limited direction the petition is disposed of.

(iv) No orders as to costs.

(v) Liberty to apply before the Sessions Court for further and consequential reliefs.

(vi) Parties to act on an authenticated copy of this order.

(A. K. MENON, J.)