

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1599 OF 2014
IN
CRIMINAL APPEAL NO. 1239 OF 2013

Ajamali Soharali @ Ahmedali Ansari

.....Applicant
(Orig. Accused)

IN THE MATTER BETWEEN :-

Ajamali Soharali @ Ahmedali Ansari

.....Appellant
(Orig. Accused)

: V E R S U S :

State of Maharashtra
at the instance of Bhiwandi
City Police Station, Bhiwandi,
Dist. Thane) in C.R. No.I-68
of 2010, Tried in Sessions
Case No. 254 of 2010

.....Respondent

Mr. Murtuza Najmi a/w. Mr. Sana Bundeally and Mr.
Raymond Gadkari i/by. Mr. Ashish Mehta, Advocate for
the applicant.

Mr. H.J. Dedhia, APP for respondent, State.

CORAM :- SMT. V.K. TAHILRAMANI, &

SANDEEP K. SHINDE, JJ.

DATE :- 17th JULY, 2017.

P.C. :

1. Heard Learned Counsel for the applicant and Learned AGP for the State.

2. In this application, the applicant/accused claims that he was a juvenile in conflict with law when the incident occurred on 27th February, 2010. According to the applicant, his date of birth is 1st April, 1995. Thus, the contention of the applicant is that, on the date on which the alleged offence was committed, the applicant was a juvenile in conflict with law. Hence, he should be given the benefit of the fact that, he was a juvenile in conflict with law on the date of the offence.

3. In view of the claim made by the applicant, by order dated 13th January, 2015 this Court directed the concerned Sessions Court which is Sessions Court, Thane

to give an opportunity to both sides to adduce evidence on the question whether, the applicant/accused was a juvenile in conflict with law on the date on which the alleged offence was committed. It was stated in the said order that, the Learned Sessions Judge after giving opportunity of adducing evidence and thereafter hearing the parties, shall record finding on the aspect whether the applicant was a juvenile in conflict with law on the date of the offence.

4. Pursuant to the said order, the Sessions Court submitted a report dated 17th November, 2016. On behalf of the applicant, two witnesses were examined. Witness, 1 is Biharilal Yadav, Ex-Sarpanch, Gram Panchayat, Bankat which is allegedly the native place of the applicant. On going through his evidence and through Exhibit-34 which was produced by witness, Biharilal Yadav, it only shows that, he knew the applicant. Neither the evidence of Biharilal Yadav nor the exhibit produced by him, show the date of birth of the applicant. Thus, the

evidence of this witness is of no use to the applicant.

5. As far as witness no.2 is concerned i.e. Idris Ali Musafir Ali, his evidence shows that, he was working as a Secretary in the Gram Panchayat of Village-Bankat, Tahasil- Gola, District- Gorakhpur (U.P.). He stated that, he brought the original register showing birth dates of people in the entire village of Bankat. This register was prepared in the year 2001 as per the orders of the Government. He produced Exhibit-44 which is the copy of extract in the original Gram Panchayat Village Register. As far as Register is concerned, each page of the original register from which copy, Exhibit-44 is prepared, does not bear the seal of the office nor the signature of any authority. This witness was working in Gram Panchayat, Bankat only since last 10 months. As far as Exhibit-44 is concerned, it is noticed that the name therein was Amjad Ali. Thereafter, the name Amjad was scored out and the name of Ajam was written. The handwriting in which the name Ajam is written is in

totally different handwriting then the handwriting in which original name Amjad was written in the Register. Witness no.2 was unable to state as to who carried out the correction and when. On account of this overwriting in the Register, serious doubt is created whether this entry belongs to the applicant.

6. In addition, it is to be noted that, the specific contention of the applicant is that, his date of birth is 1st April, 2015. However, Exhibit-44 which has been produced by witness no.2 shows that, the date of birth of Amjad Ali which was later cancelled and overwritten as Ajam is 10th April, 1995. Thus, the date of birth also does not match the date given by the applicant.

7. Mr. Murtuza, placed reliance on the decision of the Supreme Court in the case of **Jarnail Singh Versus. State of Harayana (Criminal Appeal No. 1209 of 2010 dated 1st July, 2013)**. The facts therein are entirely different than those in the present case and

hence this decision cannot be made applicable to the facts of the present case.

8. Thereafter, Mr. Murtuza placed reliance on Rule 54 (18)(iv) which relates to age determination of the victim. We find that the said Rule does not apply to the present case.

9. The Learned Sessions Judge has considered all the aspects and has come to the conclusion that the applicant was not a juvenile in conflict with law on the date of the incident. In view of the evidence on record i.e. of witnesses no.1 and 2 and the exhibits produced by them, we find that the conclusion arrived at by the Learned Sessions Judge cannot be faulted. Hence, no interference is called for. The application is rejected.

(SANDEEP K. SHINDE, J)

(SMT. V.K. TAHILRAMANI, J)