

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

CRIMINAL REVISION APPLICATION NO.167 OF 2018

Ajay s/o. Ramesh Bansode,
Age : Minor,
Through Natural Guardian -
Rahul s/o. Limbaji Bansode,
Age : 48 years, Occ. Labour,
r/o. Waladgaon,
Tq. and Dist. Aurangabad ..Applicant

Vs.

1. The State of Maharashtra,
Through Police Station, Satara,
Tq. and Dist. Aurangabad
2. Meena w/o. Sidhant Manwate,
Age : 24 years, Occ. Household,
r/o. Wadgaon,
Tq. and Dist. Aurangabad ..Respondents

Mr.A.S.Wankhade, Advocate for applicant

Mr.S.B.Joshi, APP for respondent no.1

**CORAM : SANGITRAO S. PATIL, J.
RESERVED ON : SEPTEMBER 04, 2018
PRONOUNCED ON : SEPTEMBER 12, 2018**

JUDGMENT :

The applicant has challenged the judgment and order dated 20.06.2018 passed by the learned Additional

Sessions Judge, Aurangabad, in Criminal Appeal No.92 of 2018 filed under Section 101(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("J.J. Act", for short), confirming the order dated 07.05.2018 passed by the Juvenile Justice Board, Aurangabad ("the Board", for short), holding the applicant as a "child" having mental and physical capacity to commit the offences alleged against him, with ability to understand consequences thereof and transferring his case to the Children's Court, Aurangabad, as per sub-section (3) of Section 18 of the J.J. Act.

2. It is alleged that on 05.06.2017 at about 11.00 a.m., the applicant called the victim girl aged about 7 years, inside his house and committed rape on her. Therefore, he came to be charge-sheeted for the offences punishable under Section 376 of the Indian Penal Code ("I.P.C.", for short) and also under Section 3 punishable under Section 4 and Section 7 punishable under Section 8 of the Protection of

Children from Sexual Offences Act, 2012 ("POCSO Act", for short).

3. The learned Counsel for the applicant submits that the applicant was above 16 years of age at the time of the alleged incident. He was arrested on 06.06.2017, produced before the Board and was sent to Remand Home on the same day. According to the learned Counsel for the applicant, as per sub-section (3) of Section 14 of the J.J. Act, a preliminary assessment in case of heinous offence under Section 15, shall be disposed of by the Board within a period of three months from the date of first production of the child before the Board. As per the proviso to sub-section (2) of Section 15 of the J.J. Act, the assessment under this section shall be completed within the period specified in Section 14. He submits that in this case, the Board has disposed of preliminary assessment on 07.05.2018 i.e. after about eleven months of the first production of the applicant before the Board. Therefore, the said

assessment would be vitiated and the applicant would have to be treated as a juvenile in conflict with law and would be dealt with under the provisions of the J.J. Act. The learned Counsel for the applicant submits that as per the proviso to sub-section (1) of Section 15 of the J.J. Act, the Board was required to take assistance of experienced psychologists or psycho-social workers or other experts. However, no such assistance was taken by the Board for carrying out the preliminary assessment. This omission also, would vitiate the preliminary assessment. According to him, treating the applicant as a child and sending him to the Children's Court for facing the trial after eleven months of his first production before the Board, being illegal, the impugned order is liable to be quashed and set aside. He submits that the learned Members of the Board as well as the learned Additional Sessions Judge did not consider the facts of the case and the mandatory provisions of Sections 14 and 15 of the J.J. Act properly. He,

therefore, prays that the impugned orders may be quashed and set aside.

4. The learned APP strongly opposed the application. He submits that in paragraph 4 of the order passed by the Board, it is specifically mentioned that two of the Members of the Board, were absent since April, 2016. Despite making several requests for filling-up the vacancies of the two members, they were not appointed till 25.04.2018. Consequently, the preliminary assessment could not be disposed of within a period of three months from the date of first production of the applicant before the Board, as prescribed under sub-section (3) of Section 14 of the J.J. Act. He submits that the applicant is involved in a heinous crime of rape on a girl aged about 7 years only. The applicant was above 16 years of age at the time of the incident. The Board conducted necessary inquiry and found that the applicant had mental and physical capacity to commit such offences. He was able to understand the

consequences of the offences committed by him. He himself called the victim girl inside the house and committed rape on her after removing her clothes and that of himself. In the circumstances, the Board rightly assessed him to be a child, who needs to be tried as an adult, and directed to transfer his case to the Children's Court. He submits that the proviso to sub-section (1) of Section 15 of the J.J. Act for taking assistance of experienced psychologists or psycho-social is not mandatory. It is directory. The Board did not find it necessary to take such assistance. Therefore, no exception can be taken against the decision of the Board for not taking assistance of experienced psychologist or psycho-social worker. The learned APP supports the impugned orders and prays that the Revision Application may be dismissed.

5. As per sub-section (3) of Section 14 of the J.J. Act, a preliminary assessment in case of heinous offence under Section 15, shall be disposed of by the

Board within a period of three months from the date of first production of the child, who is above age of 16 years. The Board shall conduct a preliminary assessment with regard to his mental and physical capacity to commit the offence with ability to understand consequences thereof and the circumstances in which, he, allegedly, committed the offence and may pass an order as per sub-section (3) of Section 18 of the J.J. Act, provided that for such an assessment, the Board may take the assistance of experienced psychologists or psycho-social workers or other experts. It is explained that for the purposes of this Section, preliminary assessment is not a trial, but is to assess the capacity of such child to commit and understand the consequences of the alleged offence. From the proviso referred to above, it is clear that the Board may or may not take assistance of an expert for such an assessment. Therefore, contention of the learned Counsel for the applicant that for want of assistance from expert, the

preliminary assessment made by the Board in respect of the applicant, is not justifiable, cannot be accepted.

6. As per Section 15(1) read with Section 14(3) of the J.J. Act, the preliminary assessment has to be completed within a period of three months from the date of the first production of the child before the Board. In this case, the applicant was produced before the Board on 06.06.2017. The preliminary assessment was disposed of by the Board on 07.05.2018, i.e. after a period of about 11 months. However, in paragraph 4 of the order, the Board has specifically mentioned that two members of the Board were not available, despite repeated correspondence the vacancies of two members were not filled up and therefore, the preliminary assessment could not be done within the prescribed period of three months. In the circumstances, the delay in preliminary assessment, by itself, would not vitiate the assessment made by the Board. As a matter of fact,

there is no provision in the Act, which mandates that in case, preliminary assessment is not disposed of within three months, as prescribed under sub-section (3) of Section 14 of the J.J. Act, it would vitiate the preliminary assessment done at the later stage.

7. In paragraph 8 of the order of the Board, it is mentioned that the Board took the assistance of the Probation Officer and considered the social investigation report in respect of the applicant. In that report, it was observed that the applicant had completed 11th standard. He was not interested in learning. He was working in a company. The Board further took the help of a Counsellor, who reported that the applicant himself explained the act done by him. The applicant took advantage of the situation that nobody was present in his house. Thus, the Board held that the applicant committed the alleged act knowingly and after taking care that nobody would know the same. The Board ultimately held that the applicant was mentally and physically fit to commit

the offences alleged against him. He had ability to understand the consequences of the offences. Therefore, he came to be treated as a child to be tried as an adult before the Children's Court.

8. The learned Additional Sessions Judge also rightly considered the facts of the case and rightly confirmed the order passed by the Board. I do not find any reason to interfere with the order passed by the Board, which has been confirmed by the learned Additional Sessions Judge.

9. There is no substance in the Criminal Revision Application. It is liable to be dismissed and accordingly, dismissed.

[SANGITRAO S. PATIL, J.]