

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

**5. CRIMINAL APPLICATION NO. 993 OF 2021
IN CRIMINAL APPEAL NO. 228 OF 2021**

1. Sambhaji Ramchandra Pillewad
2. Renukabai Ramchandra Pillewad. **.. APPLICANTS**

VERSUS

The State of Maharashtra. **.. RESPONDENT**

...

Mr.G.A.Gadhe, Advocate for the applicants.
Mr.M.M.Nerlikar, APP for the respondent-State.

...

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.
DATED : 19.07.2021**

PER COURT :

1] Heard. Pending Criminal Appeal No.228 of 2021 preferred against the judgment and order of conviction passed by the Additional Sessions Judge, Biloli, District Nanded in Sessions Case No.39 of 2018, convicting thereby the appellants – accused for the offence punishable under Section 302 r/w. 34 of the IPC and sentencing them to suffer imprisonment for life each and also to pay fine of Rs.5,000/- each, in default S.I. for three months each, the applicants – accused have preferred Criminal Application No.992 of 2021 for suspending the

substantive part of the sentence and bail and applicant no.1 – original accused no.1 - Sambhaji Ramchandra Pillewad filed Criminal Application No.993 of 2021 for permission to produce additional evidence in respect of his juvenility as on the date of incident.

2] So far as Criminal Application No.993 of 2021, learned counsel for the applicants submits that the date of birth of original accused no.1 - Sambhaji Ramchandra Pillewad is 10.06.2002 as per his birth certificate, school leaving certificate and admission extract of the school. Learned counsel for the applicants, thus, submits that as on the date of the incident i.e. 23.08.2018, applicant no.1 – original accused no.1 - Sambhaji Ramchandra Pillewad was 16 years, 2 months and 18 days of the age.

3] Learned counsel for the applicants submits that in terms of the provisions of Section 2 [13] of the Juvenile Justice [Care and Protection of Children] Act, 2015, for short “the Act of 2015”, ‘child in conflict with law’ means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence.

4] Learned counsel for the applicants has also invited attention to Section 9 [2] of the Act of 2015, the enquiry is contemplated in case a person alleged to have

committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence.

5] Learned counsel for the applicants further submits that in terms of the provisions of Section 18 of the Act of 2015 the child found to be in conflict with law can be dealt with by various orders as contemplated but certainly not with the term of imprisonment.

6] Learned counsel for the applicants in order to substantiate his contention placed reliance on the following two cases :

[I] **Ashwani Kumar Saxena Vs. State of Madhya Pradesh**, reported in [2012] 9 SCC 750; and

[ii] **Gundya s/o. Yellappa Arote & others Vs. The State of Maharashtra**, reported in 2014 SCC Online Bom. 4338.

7] We have heard learned APP for the respondent – State. Learned APP has not disputed this legal position. Learned APP, however, submits that the enquiry as contemplated under Section 9 [2] of the Act of 2015 by the Board is necessary for determination of the age of applicant no.1 - accused no.1 - Sambhaji Ramchandra Pillewad before passing any further orders.

8] We have carefully considered the submissions made on behalf of applicant no.1 – accused no.1 - Sambhaji by the learned counsel Mr.Gadhe. We have carefully gone through the documents annexed to the Criminal Application No.993 of 2021, it appears from the birth certificate, which has been issued by the office of the Grampanchayat, Patoda [T.B.], Taluka Naigaon, District Nanded that the date of birth of applicant no.1 – original accused no. 1 - Sambhaji is 10.06.2002 and the names of the parents are mentioned as mother – Renukabai Pillewad and father – Ramchandra Pillewad. The school leaving certificate is at Exhibit-A-2 wherein same date of birth is mentioned. The said school leaving certificate has been issued by the Head Master of Ananddayi Anu.Adiwasi Madhyamik Ashram School, Manjaram, Taluka Naigaon, District Nanded along with school admission extract. *Prima facie*, it appears that the date of birth of applicant no.1 – accused no. 1 - Sambhaji Ramchandra Pillewad is 10.06.2002 and if the same date is assumed for the sake of discussion, the age of applicant no.1 – original accused no.1 - Sambhaji as on the day of the incident i.e. 23.08.2018, was 16 years, 2 months and 18 days.

9] We reproduce herein-below Section 9 [2] of the Juvenile Justice [Care and Protection of Children] Act, 2015, which is relevant for the present discussion:

9. Procedure to be followed by a Magistrate who has not been empowered under this Act. -

(1)

(2) *In case a person alleged to have committed an offence claims before a Court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the Court itself is of the opinion that the person was a child on the date of commission of the offence, the said Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:*

Provided that such a claim may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such a claim shall be determined in accordance with the provisions contained in this Act and the rules made thereunder even if the person has ceased to be a child on or before the date of commencement of this Act.

(3)

(4)

10] In the case of **Ashwani Kumar Saxena Vs. State of Madhya Pradesh**, reported in [2012] 9 SCC 750, relied on by the learned counsel for applicant no.1, the Hon'ble Supreme Court has dealt with the issue of the nature of the enquiry contemplated under Section 7-A and Section 94 of the

J.J. Act, 2000 r/w. Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. In paragraph Nos.30 and 32 of the said judgment, the Hon'ble Supreme Court has made following observations :

30. Consequently, the procedure to be followed under the JJ Act in conducting an inquiry is the procedure laid down in that statute itself i.e. Rule 12 of the 2007 Rules. We cannot import other procedures laid down in the Code of Criminal Procedure or any other enactment while making an inquiry with regard to the juvenility of a person, when the claim of juvenility is raised before the court exercising powers under Section 7-A of the Act. In many of the cases, we have come across, it is seen that the criminal courts are still having the hangover of the procedure of trial or inquiry under the Code as if they are trying an offence under the penal laws forgetting the fact that the specific procedure has been laid down in Section 7-A read with Rule 12.

32. "Age determination inquiry" contemplated under Section 7-A of the Act read with Rule 12 of the 2007 Rules enables

the court to seek evidence and in that process, the court can obtain the matriculation or equivalent certificates, if available. Only in the absence of any matriculation or equivalent certificates, the court needs to obtain the date of birth certificate from the school first attended other than a play school. Only in the absence of matriculation or equivalent certificate or the date of birth certificate from the school first attended, the court needs to obtain the birth certificate given by a corporation or a municipal authority or a panchayat (not an affidavit but certificates or documents). The question of obtaining medical opinion from a duly constituted Medical Board arises only if the abovementioned documents are unavailable. In case exact assessment of the age cannot be done, then the court, for reasons to be recorded, may, if considered necessary, give the benefit to the child or juvenile by considering his or her age on lower side within the margin of one year.

11] In the case of ***Gundya Yellappa Arote & others Vs. The State of Maharashtra*** [Criminal Application No.4912 of 2014], decided on 05.11.2014, the Division Bench of this

Court in paragraph Nos.9 and 10 has made following observations :

9] Upon conjoint reading of Section 7-A of the said Act with Rules 12 and 19 of the said Rules, when such claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the procedure as contemplated under Rules 12 and 19 of the said Rules is required to be followed.

10] In the light of discussion herein above, we deem it appropriate to direct the Committee constituted under the relevant Rules for Nanded district to initiate an inquiry in respect of age of the applicant No.4 Yellappa s/o Yellappa Arote within four corners of the Act and the Rules and conclude the same, as expeditiously as possible, as stated in Rule 12 of the said Rules.

12] In the instant case, applicant no.1 – original accused no.1 - Sambhaji Ramchandra Pillewad has filed Criminal Appeal against his conviction for the offence punishable under Section 302 r/w. 34 of the IPC, sentencing him to suffer imprisonment for life, which is pending for hearing before this Court. In this Appeal itself, applicant no.1 – original accused no.1 - Sambhaji Ramchandra Pillewad has filed present application for permission to produce additional evidence pertaining to his juvenility. However, in the light of the ratio laid down by the Hon'ble Apex Court so also the

Division Bench of this Court, instead of undertaking the enquiry by this Court in terms of the provisions of Section 9 [2] of the Act of 2015, we deem it appropriate to direct the concerned Juvenile Justice Board to make an enquiry about the age of applicant no.1 – accused no.1 - Sambhaji Ramchandra Pillewad on the date of incident and submit a report to this Court. Hence we proceed to pass the following order :

ORDER

i] Criminal Application No. 993 of 2021 is hereby partly allowed.

ii] We direct the Juvenile Justice Board, Nanded to make an enquiry into the determination of the age of applicant no.1 – accused no.1 - Sambhaji Ramchandra Pillewad, as on the day of the incident i.e. 23.08.2018, in connection with Sessions Case No.39/2018 wherein the Additional Sessions Judge, Biloli, by the judgment and order of conviction dated 03.03.2021, has convicted him along with his mother – Renukabei Ramchandra Pillewad for the offence punishable under Section 302 r/w. 34 of the IPC and sentenced both of them to suffer imprisonment for life and to pay fine of Rs.5,000/-, in default S.I. for three months each.

iii] We direct the Juvenile Justice Board to complete the enquiry within two weeks from the date of receipt of this order and submit a report to this Court.

iv] Learned counsel for applicant no.1 – accused no.1 - Sambhaji Ramchandra Pillewad has submitted a *pursis* on record wherein the name of the brother-in-law of accused no.1 namely, “Datta s/o. Vithal Bandewar”, is mentioned as a person to prosecute an enquiry on behalf of applicant no.1 – accused no.1 - Sambhaji Ramchandra Pillewad before the Juvenile Justice Board and submit all the documents on behalf of applicant no.1 – accused no.1 - Sambhaji Ramchandra Pillewad before the Juvenile Justice Board, Nanded during the course of enquiry.

v] Leave granted to prosecute an enquiry on behalf of accused no.1 – Sambhaji.

vi] Criminal Application is accordingly disposed of.

[S. G. DIGE, J.]

[V. K. JADHAV, J.]

DDC