

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 826 OF 2021

Pawan S/o Madhavarao Chothmal,
Age : 20 Years, Occ. Labour,
R/o. Hanumant Kheda,
Tq. Soyagaon, Dist. Aurangabad. ..Petitioner

Versus

The State of Maharashtra .. Respondent

...
Advocate for the Petitioner : Abhishekh Kulkarni
Additional Public Prosecutor for Respondent : Mr. R. B. Bagul
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CORAM : SURENDRA P. TAVADE, J.

DATE : 17.08.2021

JUDGMENT :-

Rule. Rule made returnable forthwith with consent of the learned counsel for the parties.

2. The petitioner is challenging the order passed by learned Additional Sessions Judge, Aurnagabad in Misc. criminal Application No. 98 of 2021. The petitioner once prosecuted for the offences punishable under Sections 302, 363, 201, 366-A, 376 read with 511 of the Indian Penal

Code and Section 8, 17 and 18 of Protection of Children From Sexual Offences Act, (POCSO). At the time of alleged incident the petitioner was aged 17 years 7 Months and 7 days hence he was produced before Juvenile Justice Court Aurangabad. The Juvenile Court passed an order under Sections 15 of the Juvenile Justice Act 2015 in J.C.C No. 228 of 2017 and directed the petitioner to appear before the Children Court, Aurangabad on 17th May 2018 and committed/ transfered the case of the petitioner to the Children Court. The petitioner appeared before the Children Court and his case was merged into Special Case No. 156 of 2017. The petitioner instead of filing appeal against the order of Juvenile Justice Board dated 5th May 2018 filed an application before the Children Court praying that his case sent back to the Juvenile Justice Board for an enquiry. The said application is still pending.

3. The petitioner came to know that the order passed by the Juvenile Justice Board under Section 15 is appealable hence he has preferred Misc. Criminal Application No. 98 of 2021 before the learned Sessions Court, Aurangabad for condonation of delay to file an appeal. The said application was rejected by the Sessions Court on the ground that no

sufficient cause was shown by the petitioner. It is also observed that the petitioner appeared before the Children Court on 17th May 2018 and his case was merged Special Case No. 156 of 2017. Thereafter, charge came to be framed against the petitioner and co-accused on 14th June, 2019.

4. It is case of the petitioner that he had filed an application for remanding his case to Juvenile Justice Board at that point of time he was not knowing the provision of appeal against the said order so the delay is caused for prosecuting the application before the children Court. It is contended that the petitioner was not knowing the provision of law and he was not properly advised by his counsel for filing appeal before the competent authority challenging the order passed by the Juvenile Justice Board.

5. The special prosecutor submits that the petitioner and his counsel was present when order under Section 15 of the Juvenile Justice Board was passed. Thereafter the petitioner remained present before the Children Court since 2017 till filing of the Misc. Criminal Application No 98 of 2021. It is also submitted that ignorance of law is no ground for

condonation of delay. He also submitted that there is specific provision of appeal to challenge the order passed under Section 15 of the Juvenile Justice Board which was not availed by the petitioner. The cause for delay is not sufficient and is not explained properly, therefore, the trial Court has rightly rejected the application. There is no need to condone the delay.

6. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor.

7. The controversy which arose in this petition is whether the cause shown by the petitioner is sufficient to condone the delay. According to petitioner after transfer of his case Children Court he appeared before the Children Court. He had submitted an application for remand of his case but it was not decided by the Children Court and the said application is pending. He also submitted that counsel for the petitioner came to knowledge that there is provision of appeal to challenge the order passed under Section 15 of the Juvenile Justice Act. Meantime the delay was caused in preferring appeal and thereafter appeal was preferred

wherein Criminal Misc. Application was moved for condonation of delay which was rejected. The entire crux of the petition is that petitioner was not aware of the provision of appeal and therefore, he prosecuted his application for remanding the matter before Children Court for long time. The said cause appears to be not justifiable. The Children Court has taken steps in the matter and charge is framed against the petitioner along with co-accused. The Order of Juvenile justice Board was passed on 5th May 2018. Thereafter, the petitioner appeared before the Children Court on 17th May 2018. Since 17th May, 2018 till the framing of the charge no action was taken by the petitioner or his counsel for preferring an appeal. The charge came to be framed on 14th June, 2019 and appeal was preferred on 22nd February, 2021. If the said period is taken into consideration , it can be said that there is inordinate delay, except the excuse of law no other cause is shown by the petitioner. The law has taken it's course by framing of the charge. It appears that the incident had taken place in the year 2017 and charge came to be framed in the year 2019 and present appeal is preferred in the year 2021 so it cannot be said that the petitioner was vigilant in taking his recourse to law. The

cause shown by the petitioner is not sufficient or probable. Therefore, I do not find any merit in the petition. Hence the following order.

ORDER

1. The Criminal Writ Petition is dismissed.

Rule is discharged.

(SURENDRA P. TAVADE)
JUDGE

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