

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

24 CRIMINAL WRIT PETITION NO.425 OF 2021

A B C

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.D. Gade, Advocate for the petitioner

Mr. B.V. Virdhe, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th JULY, 2022

PER COURT :

1 Heard both sides.

2 Basically after hearing the learned Advocate appearing for the petitioner and perusal of the order under challenge dated 08.08.2019 by learned Children's Court, Ambajogai, Dist. Beed it appears that after the Juvenile Justice Board, Beed had passed order under Section 18(3) of the Juvenile Justice (Care and Protection of Child) Act, 2015 cognizance was taken for the offence when the charge sheet was before the Learned Special Judge under Children's Court. At the outset, there was no necessity to take

cognizance of the offence once again when it was already taken by Juvenile Justice Board. Merely because there are offences under Protection of Children from Sexual Offences, Act which permits charge sheet to be produced directly before the concerned Court and that Court i.e. Special Court under POCSO Act has power to take cognizance of the offence when the charge sheet would have been rather transferred (in fact, when the case was transferred or made over) there was no stage of taking cognizance by the Children's Court. However, after taking cognizance summons was issued to the petitioner stating that summons to be issued to JICWL who has to be tried as an adult. It appears that the petitioner is worried as to whether the Children's Court will take up the stages as contemplated under Section 19 of Juvenile Justice Act, 2015 or not. Section 19(1)(i)(ii) reads thus -

19. Powers of Children's Court. - (1) After the receipt of preliminary assessment from the Board under section 15, the Children's Court may decide that -

(i) there is a need for trial of the child as an adult as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) and pass appropriate orders after trial subject to the provisions of this section and section 21, considering the special needs of the child, the tenets of fair trial and maintaining a child friendly atmosphere;

(ii) there is no need for trial of the child as an adult and may conduct an inquiry as a Board and pass appropriate orders in accordance with the

provisions of section 18.

The above Section contemplates that Children's Court has to decide the point that there is need for trial of child as an adult as per the provisions of the Code of Criminal Procedure and pass appropriate orders after trial subject to the provisions of this Section i.e. Section 19 and Section 21 of the Juvenile Justice Act.

3 Learned Advocate appearing for the petitioner is also relying on the decision in **Shilpa Mittal vs. State (NCT of Delhi) and another** [(2020) 2 SCC 787], **Mumtaz Ahmed Nasir Khan vs. State of Maharashtra and another** [2019 (4) Bom.C.R. (Cri.) 261] and **Saurabh Jalinder Nangre and others vs. State of Maharashtra** [2019 ALL M.R. (Cri.) 438]. Even after perusal of those decisions, it appears that the stage has not yet come in the said case in hand before Children's Court, wherein as regards the present petitioner is concerned, the Children's Court will have to come to the said decision that he needs to be tried as an adult, though such decision is taken by Juvenile Justice Board and that decision was not challenged by the petitioner.

4 Upon inquiry, the learned Advocate for the petitioner submits that he would make appropriate application before the Children's Court before framing of charge and in view of the same he seeks withdrawal of the

petition with liberty to go before the Children's Court and file appropriate application. It is informed that the case before the Children's Court is now fixed on 06.07.2022 and the learned Advocate for the petitioner submits that such application would be filed on that day before the concerned Court. When the stage is yet to come or in other words, it may be in the process of taking that decision, but law requires a detailed order to be passed by the Children's Court, there is no hurdle in granting such liberty to the petitioner. Hence, the following order.

ORDER

1 The petition stands disposed of as withdrawn with liberty to file an appropriate application before the Children's Court and the learned Judge of the Children's Court, Ambajogai, Dist. Beed to decide the said application within a period of 15 days from the date on which the application is given.

(Smt. Vibha Kankanwadi, J.)