

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.398 OF 2022

Yashwant alias Akshay Rajendra
Suryawanshi

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Vikas B. Shivarkar for the applicant.

Mr. R. M. Pethe, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 18, 2022

P.C.:

- 1.** The challenge in this petition is to the order dated 25th August 2021 passed by Additional Sessions Judge, Pune thereby holding that the applicant is not juvenile on the date of crime.
- 2.** The date of crime is 28th January 2018. According to the petitioner, his date of birth as per death and birth register is 4th of February 2000. Therefore, according to him, he was juvenile on the date of crime as his age as per the said record comes to 17 years 11 months 24 days.
- 3.** While considering the application filed by the applicant, report was called from the Judicial Magistrate, First Class, Cantonment Court, Pune wherein it is stated that the date of birth of the applicant was 4th November 1999.

4. The learned Sessions Judge recorded a finding that the entry in Grampanchayat, Madansuri, Tal. Nilanga, Dist. Latur register is doubtful and unbelievable. The said finding has been recorded based on 3 factors:

a) The date of receipt of information as per the birth extract relied by the petitioner is 30th February 2000. The learned Sessions Judge, therefore, recorded a finding that in the month of February there are 28 days or 29 days.

b) The applicant was born in 2000 but his name came to be mentioned in relevant page maintained during February 1997

c) In column No.22 of the register, the details of delivery, name and address of the person who given information, signature or thumb impression of the person reporting are kept blank.

5. Based on above three factors, the learned Sessions Judge recorded a finding that the claim of the applicant based on the entry in birth register that he was born on 4th February 2000 cannot be accepted.

6. Moreover, while recording a finding that the applicant was born on 4th November 1999, the learned Sessions Judge has relied on school admission register extract duly proved by Headmaster of Zilla Parishad Primary School, Madansuri. Apart from the said document, ossification test report is also referred in the order.

7. Once the birth and death register extract has been disbelieved by the learned Sessions Judge, in my opinion, it was permissible for the learned Sessions Judge to rely on the school

admission register extract.

8. The Apex Court in the case of **Ashwani Kumar Saxena Vs. State of M.P.**, reported in (2012) 9 SCC 750 in paragraph 34 has held that it is only in cases where the documents or the certificates are found to be fabricated or manipulated, the Juvenile Justice Board or committee need to go for medical record for age determination.

9. Therefore, in my opinion, once death and birth register extract of Gram Panchayat had been disbelieved by the learned Sessions Judge, it was open for the learned Sessions Judge to consider Primary School admission register extract duly proved by the Headmaster, Zilla Parishad. Therefore, there is no error of jurisdiction calling for interference in the order.

10. Criminal revision application is disposed of accordingly. No costs.

(AMIT BORKAR, J.)