

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

**INTERIM APPLICATION NO. 532 OF 2019
IN
WRIT PETITION NO. 4332 OF 2018**

Shrihari Rajlingam Guntaka	..	Applicant
Versus		
State of Maharashtra	..	Respondent

.....

Mr. Amit A. Mane for Applicant.
Mr. S.S.Hulke, APP for State-Respondent.

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**CORAM : A.S. GADKARI &
MILIND N. JADHAV, JJ.**

DATED : 20th October, 2022.

P.C. : [PER: MILIND N. JADHAV, J.] :

. The present Interim Application is numbered on the basis of letter received through jail wherein a prayer is made for taking into consideration additional documents.

2. Writ Petition is filed by Petitioner/Applicant claiming that he was a juvenile in conflict with law under the Juvenile Justice Act, 2000 (for short "**Said Act**") on the date of offence i.e. 11.11.1992. Petitioner is convicted in Session Case No. 159 of 1993 under Section 302 IPC on 17.07.2004 and is undergoing life imprisonment in Nashik Road Central Prison, Nashik. It is Petitioner's case that on the date of the incident he was a juvenile.

3. We have heard the learned Advocate appointed through

legal aid to represent the Petitioner and the learned APP for the State. We have also considered the entire record and the additional evidence/documents produced by the Petitioner. Also perused the order dated 22.03.2017 passed by the Additional Sessions Judge in the matter of inquiry about the age of Petitioner, order dated 17.7.2018 passed by the co-ordinate bench of this Court in Criminal Writ Petition No. 2921 of 2016 filed by the Petitioner to challenge the order dated 22.03.2017. In effect the present Petition and Interim Application is another ground of hearing on the same cause of action which was the subject matter of inquiry and decision/order stated above, however Petitioner in this instance has furnished two additional documents for consideration.

4. It may be noted that in Writ Petition No. 2921 of 2016, Petitioner was represented by a private Advocate whereas in the present Petition and Interim Application, Advocate has been appointed through legal aid to represent Petitioner.

5. It is Petitioner's case that on the date of incident/offence for which he stands convicted, he was 17 years 3 months and 9 days old and therefore, it is claimed that he was a juvenile on that date. Hence, Petitioner sought directions under the said Act. Records indicates that by order dated 08.09.2016 a coordinate bench of this Court directed the concerned Sessions Judge to conduct an inquiry in terms of section 7A of the said Act. Records further indicates that a detailed inquiry

was conducted pursuant to which order dated 22.03.2017 concluding that Petitioner had not proved that he was a juvenile in conflict with law on the date of incident was passed. It is noted that in the inquiry, witnesses were examined, oral evidence was adduced and several documents, viz., School Admission Register, Admission and withdrawal of Register of students, Date of Birth Certificate and Delivery Certificate issued by the Civil Surgeon of the Hospital were produced and considered by the Court. A finding was returned on the School Admission Register in which column No. 9, 10 and 11 were torn and mutilated. Hence, it was not given any weightage. The date of Birth Certificate was not exhibited as the signature was not identified by the witness. Further the oral evidence of the mother and sister of the Petitioner did not support the Petitioner's claim.

6. The reasoned order dated 22.03.2017 was challenged before this Court in Writ Petition No.2921 of 2016. This Court considered the Petitioner's challenge and passed a reasoned Judgment dated 17.07.2018 dismissing Criminal Writ Petition No. 2921 of 2016. This Court held that, the date of birth certificate was based upon the extract of the School Admission Register which did not contain the column as regards to the date of birth of Petitioner as the same was mutilated and torn. This Court, thus recorded its findings in para No. 7 and 8 of the said Judgment which are reproduced below:-

“Having heard the learned counsel for the Petitioner and the learned APP, we have considered the rival contentions. The issue of juvenility of the person has been to be considered on the touchstone of Section 7A and Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, and the Rules. Insofar as Section 7A and Rule 12 are concerned, they postulate the manner in which the enquiry is to be held and the importance or priority to be granted to the certificates which are mentioned therein, in the process of the adjudication of the claim. In the instant case as indicated above, the documents produced were extracts of School Admission Register which did not contain the column as regards the date of birth atleast in the ones which were produced before the learned Sessions Judge as columns nos. 9, 10 and 11 of the pages which were produced were mutilated or torn. Insofar as the Date of Birth Certificate is concerned, the case of the Petitioner was that it was based on the Register, since the Register itself has not been given weightage on account of the fact that column nos.9, 10 and 11 were torn or mutilated, the birth certificate was not admitted in evidence in view of the fact that the said certificate was not proved in accordance with law. The learned Judge has also observed that the evidence which has come on record namely the evidence of the mother and the sister of the Petitioner, the same do not support the case of the Petitioner. A reading of the said evidence would indicate that it does not further the case of the Petitioner that his date of birth is 2nd August, 1975. Insofar as, the medical examination is concerned, it is observed by the learned Judge that the said option is available only if the certificate mentioned in Rule 12(3)(a)(i) to (iii) are not available since in the present case the said certificates were available but were not proved, the learned Judge was of the view that the request to send the Petitioner for medical examination was required to be rejected. The learned Judge therefore recorded a finding of fact applying the principle of preponderance of probabilities, that the Petitioner has not proved his date of birth was 2nd August, 1975 and that he was a juvenile in conflict with law on the date of the incident.

8. In our view therefore the finding of fact recorded by the learned Sessions Judge does not merit any interference as the said finding cannot be said to be perverse neither there is any illegality committed by the learned Sessions Judge whilst recording the said finding.”

7. In the above background, Petitioner now has once again approached this Court and sought a fresh inquiry. The subjective grounds pleaded by the Petitioner are ground Nos. 6 to 11 in the Interim Application. For convenience they are reproduced below:-

“6. The D.O.B certificate was not accepted just because the coloums 9,10,11 were in torn conditions.

7. There is a strong possibility that the registers must be in good condition at the time of issuing D.O.B. certificate as the matter belongs to year 1975 there is higher possibility of tear papers.

8. The most important factor which cannot be neglected is that the D.O.B. is issued by a valid government school i.e. Zilla Parishad School (Prathamik Shala) with seal on it and signature of the head-master with his seal.

9. The D.O.B. issued by the Govt. school and admission date are strong proof to consider the age of person.

10. The deposition of the applicants mother also clarifies that the applicant was born in year 1975. As she is more than 75 years of age and unable to speak other language except Telgu. She was unable to speak properly. She is illiterate and passed her whole life in the remote village of Telangana.

11. Currently the applicant is ready to produce supportive documents regarding his age.”

8. Petitioner has placed on record an adduced additional documentary evidence in support of his claim that he was a juvenile on the date of incident and his date of birth was recorded as 02.08.1975. He has now relied upon a certificate issued by Shri. D Amoy Kumar working as Sub-Collector who he claims has conducted an inquiry and issued the order as under.

“12. In support, the applicant most humbly provides a certificate issued by Shri D. Amoy Kumar, B. Tech Revenue, Divisional Office, Jagital, Sub-Collector dated 3.12.10 no.K/Dy.SO.3558/2010 who conducted enquiry through the Tahsildar, Katlapur regarding the age of applicant. After conducting enquiry the Hon. Sub-Collector, Jagital issued order.

“I am satisfied with the report of Tahsildar, Katlapur supported by evidence like notary affidavit and other reports that the date of birth of Guntuka Sirhari S/o. Rajlingam R/o Gambheerpur Village of Katlapur mandal and claim is found correct. Accordingly, I order that D.O.B. of Guntaka Srihari S/o. Ramlingam be recorded as 2-08-1975 in the births and death register u/s. 13(3) of the registration of births/death rules, 1995 by Competent authority.”

9. It is pertinent to note that, this Certificate is dated 03.12.2010. Further, it is issued in the printed format and is in the nature of order relating to proceedings before the said Revenue Divisional Officer.

10. Next the petitioner is relying upon an a date of Birth Certificate dated 25.02.2009 issued by the Panchayat Secretary of Gram Panchayat Gambhirpur certifying that the date of birth of Petitioner is 02.08.1975. This certificate is issued on the basis of local inquiry as stated in the certificate.

11. We have carefully perused both these documents. In the first instance nothing prevented the Petitioner from providing these documents at the time of inquiry though they were available with Petitioner. It is pertinent to note that both these documents are identical and similar to the earlier documents which were relied upon by Petitioner during the inquiry. This is so because both these documents have been issued much after his date of birth. Reliance placed on these documents cannot prove that the Petitioner was born on 02.08.1975. It is pertinent to note that the basic document i.e. the School Register / Form produced by the Petitioner which is at page Nos. 62 and 63 of the affidavit-in-reply filed by Respondent clearly shows that out of the total 22 columns, the most relevant column i.e. column Nos. 9 to 13 are mutilated and torn. In view of the detailed inquiry conducted under the said act pursuant to order of this Court

and the findings returned by this Court in respect of similarly placed documents, the claim of the Petitioner cannot be considered. Hence, the Petition fails.

12. Writ Petition is dismissed. Interim Application is also accordingly dismissed.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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