

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 117 OF 2022

Janmejaya s/o Santosh Mishra, aged
 about 18 years, Occupation Student, R/o
 Wardha, Tah. & Dist. Wardha.

... **PETITIONER**
ORI. Juvenile Offender On
R.A.

VERSUS

State of Maharashtra,
 through Police Station Officer,
 Ram Nagar, P.S. dist. Wardha.

... **RESPONDENT**

Shri M.B. Naidu, Advocate for the petitioner.
 Shri H.D. Dubey, A.P.P. for the respondent-State.

CORAM : **VINAY JOSHI, J.**
DATED. : **17.06.2022.**

JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Heard finally by consent of both the parties.

3. By this petition a power of superintendence of this Court in terms of Article 227 of the Constitution of India has been invoked by the petitioner.

4. The challenge in this petition is to the order dated 20.10.2018 passed by the Principal Magistrate, Juvenile Justice Board, Wardha in terms of Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'the J.J. Act') and consequential order of dismissal of appeal passed by the Additional Sessions Judge, Wardha dated 19.01.2022.

5. The petitioner a 'child' within the meaning of Section 2(12) of the J.J. Act, has challenged the preliminary assessment order whereby the Principal Magistrate held that there is a need of trial of the petitioner-child as an 'adult' by the Children's Court. The order is challenged solely on the ground that the petitioner has not committed an offence which can be termed as 'heinous offence' within the meaning of Section 2(33) of the J.J. Act.

6. The facts in brief are that, the incident took place on 15.12.2017 wherein allegedly the petitioner along with two co-accused (adult) have assaulted a group of persons in which one of them died whilst two sustained injuries of grievous nature. On the basis of report,

Police have registered a crime for the offence punishable under Section 302, 307, 201 read with Section 34 of the Indian Penal Code and Section 4 read with Section 25 of the Arms Act. The petitioner's date of birth is 10.02.2000 whilst alleged incident took place on 15.12.2017. Undisputedly, on the date of occurrence, the petitioner was 17 years and 10 months of age, that is a 'child' within the meaning of Section 2(12) of the J.J. Act. Having regard to the fact that the petitioner was above 16 years of age and considering the nature of offence, the Principal Magistrate has made preliminary assessment with regard to the petitioner's mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the related circumstances. After making preliminary assessment in terms of Section 15 of the J.J. Act, the Principal Magistrate has passed final order in terms of Section 18(3) of the J.J. Act whereby directed him to be tried as an adult before the Children's Court.

7. Initially, the impugned order passed by the Principal Magistrate dated 20.10.2018 was challenged in statutory appeal bearing Criminal Appeal No.56 of 2018, however, it came to be dismissed. The learned Counsel for the petitioner has assailed the impugned order only on the ground that the offence in which the petitioner was arrested cannot be termed as 'heinous offence'. Pertinent

to note that though in statutory appeal the petitioner has challenged the preliminary assessment report, however, the said ground has not been canvassed in writ jurisdiction. Despite that the impugned order has been perused to satisfy whether it meets the statutory requirement. It is evident from the preliminary order that the Principal Magistrate has taken assistance of Expert while making preliminary assessment. The petitioner was referred to the Psychologists of General Hospital, Wardha whose findings suggest that the petitioner's mental and physical capacity was sound. The petitioner's IQ report was collected and on the basis of said material, it was held that the petitioner was required to be tried as an adult. Notably, neither the preliminary assessment on facts has been challenged nor medical report to that effect is produced. Rather the petitioner before the Writ Court has only challenged the order on the sole ground that the charged offence as regards to the petitioner cannot be said to be 'heinous offence'.

8. In order to make preliminary assessment, dual requirements are to be met i.e. the child must be above 16 years of age and secondly, the offence must be "heinous offence" as defined under Section 2(33) of the J.J. Act. For the sake of convenience, the term 'heinous offence' is reproduced as below :

“(33) “heinous offences” includes the offences for which the

minimum punishment under the Indian Penal Code (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more;”

9. Since undisputedly the petitioner was above 16 years of age, the short question falls for consideration is whether the petitioner was involved in the offence of heinous nature. The bone of contention is that though the petitioner was arrested for the offence punishable under Section 302 of the Indian Penal Code, however, there are no allegations that the petitioner has assaulted the deceased by means of dangerous weapon. The learned Counsel appearing for the petitioner took me through the copy of charge-sheet. It is pointed out that as per the prosecution case, co-accused namely Vibhav Gupta has assaulted deceased by means of knife and had also caused serious injuries by knife to other two injured. He would submit that the role of the petitioner is restricted to his presence and at the most beating by means of fists blows and kicks. On that basis, it is argued that the offence punishable under Section 302 of the Indian Penal Code may not attract against the petitioner and therefore, the act of the petitioner cannot be construed as “heinous offence”.

10. It necessitates to go through the factual aspect. Undoubtedly, the petitioner is involved in a case of homicidal death as

well as attempt to commit murder along with other offence. Perusal of statements of injured eye-witnesses, prominently unveils the incident. It conveys that at relevant time, the petitioner along with his companions have called the other group including deceased at a specific place i.e. near Mahada complex. There was oral altercation in which co-accused made deadly assault on deceased namely Sameer whilst other two were assaulted by means of knife. It is the specific statement that the petitioner and another co-accused Pratham Vhora were present on the spot along with the main assailant. The petitioner and co-accused also participated in the incident by abusing the deceased and beating them by means of fists blows and kicks.

11. *Prima facie*, there is enough material to infer that the incident was a result of premeditated attack. By invoking the principle of vicarious liability, Section 34 of the Indian Penal Code was employed. To attract Section 34 of the Indian Penal Code, it is not necessary that each one of the accused must assault the deceased. It is enough if it is shown that they shared a common intention to commit the offence. A prearranged plan can be proved either from conduct or from variety of circumstances. I am afraid to make such adventure at this stage to express whether it was a prearranged plan and all of them have shared the common intention. It is a matter of trial. However, *prima facie*, it is

evident that the petitioner was present on the spot and participated in the act. Therefore, by using principle of vicarious liability, if the offences are proved then the petitioner is also liable for the punishment prescribed under Section 302 of the Indian Penal Code, as if the act was done by him alone. Thus by all means it can be said that the petitioner is involved in the offence which can be terms as “heinous offence” within the meaning of Section 2(33) of the J.J. Act.

12. In view of the above discussion, the impugned order calls no interference. The Criminal Writ Petition being devoid of merits, stands dismissed. Rule is discharged.

(VINAY JOSHI, J.)

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