

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

CRIMINAL APPLICATION (APL) NO. 538/2022

Vikram @ Vikky Sadanan Rathod,
aged about 22 years, Occ. Student.
R/o. Kinh Raja, Tq. Malegaon,
Dist. Washim.

..... APPLICANT

...VERSUS...

State of Maharashtra,
through P.S.O. Jaulka,
Tq. Malegaon, Dist. Washim.

..... NON-APPLICANT

Mr. , V. R. Deshpande, Advocate for applicant.
Ms. T. H. Khan, Additional Public Prosecutor for
non-applicant/state.

CORAM: **VINAY JOSHI, J.**
DATE: **8th JUNE, 2022.**

ORAL JUDGMENT:

By consent of both side, the application is heard
finally.

2. **Admit.**

3. The applicant raises a challenge to the order dated 10.12.2021 passed by the Additional Sessions Judge, Washim in Special Case (POCSO) No. 46/2017, by which the applicant's claim of juvenility has been rejected. The applicant has urged that as per birth date certificate, his date of birth is as 22.06.1999 whilst the alleged offence has been committed on 19.06.2017. Precisely, the applicant claimed to be a 'child' within the meaning of Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 ('JJ Act') and therefore, he ought to have tried before the Juvenile Justice Board. The State resisted this application by contending that the real date of birth of applicant is as 07.06.1999 and as such, he has completed 18 years of age on the date of occurrence and therefore, the application is not tenable.

4. The learned counsel for applicant has submitted that the Trial Court has not conducted an inquiry about the juvenility of applicant in terms of Section 9 of the JJ Act which ought to have been done. He would submit that the Trial Court has relied on the report of Juvenile Justice Board ('JJB') which is not in accordance with law. Moreover, by placing reliance on the decision of the Supreme Court in case of *Rishipal Singh Solanki Vs. State of Uttar*

Pradesh and others, 2021 SCC Online SC 1079, it is urged that when the two views are possible on the same evidence then the Court should lean in favour of holding that the accused to be a juvenile in borderline cases.

5. At the instance of report, Crime No. 177/2017 has been registered by the concerned Police Station against the applicant for offences punishable under Sections 354, 376(2)(f), 376(2)(i) of the Indian Penal Code, Sections 6, 8 and 10 of the Protection of Children from Sexual Offences Act ('POCSO'). The allegation pertains to the incident dated 19.06.2017, for which the crime was registered on 21.06.2017. The applicant's father has filed an application to the Special Court under Section 9 of the JJ Act seeking transfer of case to the JJB as the applicant was minor on the date of occurrence. Precisely, the claim of juvenility was raised before the Trial Court vide application dated 01.07.2017. On the very day, the learned Special Judge has sent the matter to the JJB for determination of age of the applicant. In pursuance of said direction, the JJB has submitted its inquiry/report dated 26.07.2017 contending that on the basis of material produced by applicant, it cannot be said that applicant was below 18 years of age. Thereafter, applicant has applied for bail, on which the

learned Special Judge has released him on bail by observing that there appears to be dispute about the age of applicant. While releasing him on bail, the Special Judge directed the Investigating Officer to conduct an inquiry regarding date of birth of accused and to file charge-sheet before the appropriate Forum.

6. The Police completed the investigation and filed charge-sheet in the Special Court treating applicant to be above 18 years of age. At this juncture, the applicant has once again applied to the Special Court vide application dated 27.06.2019 raising the claim of juvenility. The said application was opposed by the State. After hearing both sides, the learned Special Judge by passing impugned order dated 10.12.2021, has turned down the claim of juvenility and therefore, this application.

7. In support of the claim of juvenility, the applicant has produced birth certificate issued by the Grampanchayat in terms of Section 12 of the Registration of Births and Deaths Act, 1969 showing his date of birth as 22.06.1999. The record indicates that the State has disputed the date of birth on the ground that Birth Certificate was issued after registration of crime. More so, the State has relied on counter documents namely School Leaving

Certificate showing date of birth as 07.06.1999 as well as Adhar Card showing the same date of birth. The Special Court while rejecting application, primly held that JJB has already conducted inquiry and on that basis, rejected the claim of juvenility.

8. It is evident that the claim of juvenility has been raised before the Special Court by the applicant. Needless to say that such claim can be raised before any Forum at any stage, even after disposal of the case. Section 9(2) of the JJ Act provides that when such a claim of juvenility is raised before the Court, then the Court itself has to conduct an inquiry, take such evidence as may be necessary and to record a finding to that effect. It is apparent that the Special Court has relied on the report of JJB instead of himself conducting the inquiry.

9. The learned Additional Public Prosecutor would submit that in terms of Section 94(2) of the JJ Act, the precedence shall be given to the birth certificate from the School over the date of birth certificate. Therefore, she would submit that the School Leaving Certificate demonstrating the age of applicant as 07.06.1999 shall be accepted by discarding tented birth certificate. It is a matter of inquiry to be conducted by the Court who is ceased with the

matter. The learned Trial Court failed to conduct proper inquiry in the matter which was of utmost importance. In the circumstances, impugned order is not sustainable in the eyes of law.

10. Having regard to the above facts, it is necessary that the Trial Court himself shall conduct a full-fledge inquiry to decide juvenility of the applicant as it has far reaching repercussion. The Trial Court shall record the evidence adduced by the parties during the course of inquiry. Since the Birth Certificate produced by applicant is doubtful, the Trial Court shall summon the issuing authority require to produce original register to ascertain the genuineness of birth certificate. Besides that, both parties should be allowed to lead evidence subject to relevancy.

11. In view of above, impugned order dated 10.12.2021 is hereby quashed and set aside and application stands disposed of in above terms.

JUDGE

Gohane

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signed by
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