

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**957 CRIMINAL REVISION APPLICATION NO.14 OF 2023**

PRATAP MADHUKAR PATIL  
VERSUS  
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Ms. Bodke Patil Poonam V.  
APP for Respondent-State : Mr. S. P. Sonpawale.

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**CORAM : S. G. MEHARE, J.**  
**DATE : 28.03.2023**

**PER COURT :-**

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant has claimed that he was a juvenile on the date of the alleged incident. He moved an application before the learned Judicial Magistrate First Class, Degloor, District Nanded. Learned Magistrate, by his order dated 12.09.2021, rejected the prayer of the applicant. Hence, the applicant approached this Court under Section 102 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (For short, "J.J.Act").

3. Learned counsel for the applicant would submit that the prosecution has relied on the school admission register to ascertain the date of birth of the applicant. As per the said register, his date of birth is 22.11.2004. The alleged offence was committed between 07.07.2020 to 10.09.2021. Therefore, the applicant was a juvenile on the date of the alleged incident. She would argue that the learned Magistrate has erred in law in receiving the birth certificate issued by the Municipal Corporation, Nanded. The learned Magistrate also committed the error of law in rejecting the application on the grounds that the applicant has preferred an application to correct his date of birth in the school admission register. She would refer to Section 94 of the J.J.Act and argue that the documents listed therein to believe the date of birth of the juvenile have to be considered as per the preference. In sub-Section 2(i) of the said Section, the date of birth certificate from the school or the matriculation or equivalent certificate from the concerned examination Board, if available, shall be preferred to the birth certificate issued by the Corporation or Municipal Authority or Panchayat. Relying on the documents filed by the prosecution, she would claim that on the date of the alleged incident, the applicant was 16 years, 9 months and 19 days old. As per the definition of juvenile in J.J.Act, the applicant was below the

age of 18 years. Hence, he was a juvenile and tried before the J.J. Board. The applicant shall be forwarded to the Board for passing appropriate order and sentence after the trial.

4. Learned APP would argue that the applicant has disputed his date of birth mentioned in the school admission register. The applicant has applied for correction of the date of birth and relied on the certificate issued by the Municipal Corporation, Nanded. Therefore, the learned Magistrate has correctly rejected the application.

5. Section 94 of the J.J. Act provides for the procedure for inquiry to determine the age. In Sub Section (2) of the said Section, the list of documents has been given to be considered for determining the age of the person claiming juvenile. The birth certificate from school or matriculation or equivalent certificate from the concerned examination Board, if available, is preferred to the remaining documents listed in the said Sub Section. The prosecution relied on the birth certificate from the school where he was admitted to level first. Therefore, this document would prevail over the certificate issued by the Municipal Corporation, Nanded. The Magistrate is empowered to make an inquiry if the juvenility is claimed under Section

9(2) of the J.J.Act. The said Section empower the Court, which includes the Magistrate, to make an inquiry to determine the age of the person and shall record a finding on the matter stating the age of the person as nearly as may be. Further, where the Court comes to the conclusion that the applicant was a child/juvenile, the Court shall forward the child to the Board for passing appropriate order and sentence. In the intervening period, the child is required to be kept in protective custody. The law is very specific as regards the inquiry as to the determination of the age and procedure to forward the child to the J.J. Board.

6. Considering the date of birth described in the school admission register in level first and the date of the incident, the applicant was around 16 years, 9 months and 19 days old. Therefore, this Court is of the view that the applicant was a juvenile/child on the date of the alleged incident. The learned Judicial Magistrate First Class erred in preferring the birth certificate issued by Municipal Corporation to the birth certificate issued by the school. The Court accepts the plea of the applicant that he was a juvenile on the date of the incident, and therefore, the impugned order is liable to be set aside, and

a criminal revision application deserves to be allowed. Hence,  
the following order :

**ORDER**

- (i) Criminal Revision Application is allowed.
- (ii) The impugned order passed by the Judicial Magistrate First Class, Degloor, dated 12.09.2021, in Crime No.398/2021, registered by Police Station Degloor, is quashed and set aside.
- (iii) The applicant is held juvenile on the date of the alleged incident.
- (iv) The applicant shall appear before the learned Judicial Magistrate First Class, Degloor, on 18.04.2023.
- (v) The learned Judicial Magistrate First Class is directed to forward the applicant to the concerned J.J.Board for passing appropriate orders and sentence after the trial and make an arrangement for keeping him in protective custody in the intervening period in a place of safety if required till he is produced before the concerned J.J.Board.

**(S. G. MEHARE, J.)**

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vmk/-