

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

BAIL APPLICATION NO.274 OF 2021

Ms Nikhat Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

...

Mr. P.G. Sabnis for the Applicant.
Mr. Umeshchandra Yadav-Patil Special PP for Respondent-State.
Ms A.A. Takalkar, APP for Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th APRIL, 2023.

P. C. :-

1. This is the second bail application filed by the aforesaid Applicant, who is facing trial in Sessions Case No.382 of 2019 pending on the file of learned Sessions Judge, Greater Bombay. The said case arises from Crime No.571 of 2018 registered with Pant Nagar Police Station, Ghatkopar (East) for the offences punishable under Sections 201, 120B, 302, 363, 364, 365, 394 r/w 34 of the Indian Penal Code (IPC).

2. The previous application being Bail Application No.2347 of 2019 filed by the aforesaid Applicant was dismissed by this Court

(Coram: Sandeep K. Shinde, J.) on 20/01/2020. The second Bail Application is filed mainly on the ground that the Applicant was a juvenile and further on the ground of delay in conducting the trial.

3. Learned counsel for the Applicant submits that certificate issued by the School cannot be relied upon for determining the age of the Applicant. He further submits that the medical report indicates that as per the date of the examination i.e. on 11/10/2022, the Applicant was 21 to 22 years of age. He submits that the offence was committed in the year 2018 and on the date of the offence, the Applicant was 17 to 18 years of age. He therefore contends that benefit of doubt has to be given to the Applicant. He has relied upon the decision of the Hon'ble Apex Court in *Rishipal Singh Solanki vs. State of Uttar Pradesh and Ors*, 2021 SCC Online SC 1079, *Ravinder Singh Gorkhi vs. State of UP*, (2006) 5 SCC 584, *Madan Mohan Singh and Ors. vs. Rajni Kant and Anr.* 2010) 9 SCC 209, *Ruby vs. State* 2014 SCC Online Del 2073 and *Mohd. Muslim @ Hussain vs. State (NCT of Delhi)*. He further submits that the Applicant is incarcerated since 2018 and that the charge is not yet framed. He submits that delay in conducting the trial would justify grant of bail.

4. Per contra, Mr. Umeshchandra Yadav-Patil, learned Spl. PP for the Respondent submits that the Applicant had not raised the plea of juvenility in the previous application. Since the plea was subsequently raised, the Investigating Officer conducted inquiry and collected necessary documents. He submits that the learned Sessions Judge has recorded a finding that the Applicant was above 18 years of age. The Applicant has not challenged the said order and hence, cannot raise the plea of juvenility in the bail application. Learned Special PP further submits that the prosecution has submitted the draft charge-sheet but the charge could not be framed and trial could not be commenced only in view of several applications filed by the accused persons. He submits that the prosecution is ready to conclude the trial expeditiously provided the Applicant and the co-accused are ready to co-operate.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The previous bail application filed by the Applicant having been rejected on merits, the subsequent bail application would be maintainable only on the ground of change in circumstance. The

change in circumstance alleged by the Applicant is that the plea of juvenility was not raised in the previous bail application and further that there is delay in conducting the trial.

7. It is to be noted that the Applicant had not raised the issue of juvenility in the previous bail application. Since the issue was raised subsequently, the Investigating Officer collected material to determine the age of the victim as on the date of the incident. The Investigating Agency placed on record certificate issued by the School and the statement of the Head Master of the school, who had issued the said certificate. The learned Sessions Judge conducted an inquiry to determine the age of the Applicant. The statement of the Head Master was recorded in the course of the inquiry. The victim was also referred for medical examination to determine the age. Learned Sessions Judge upon considering the material on record has recorded a finding that the victim was above 18 years of age as on the date of the incident.

8. In *Ravinder Singh Gorkhi* (supra) as well as *Madan Mohan Singh* (supra) the Apex Court has reiterated that the entries made in the official record may be admissible under Section 35 of the Evidence Act but the Court has right to examine their probative value. There is

no dispute regarding this proposition. These decisions would not be of no assistance to the Applicant as in the instant case, an inquiry has been conducted and finding has been recorded that the Applicant is not a juvenile. The Applicant having failed to challenge this finding, cannot raise the plea of juvenility in the bail application.

9. As regards the delay in conducting the trial, learned Special PP has stated that the trial is delayed only in view of several applications filed by the accused. There is nothing on record to indicate that the prosecution has delayed the trial. Moreover, the Applicant is charged for offences under Sections 302 and 120-B. Since the offence is grave and serious, the Applicant would not be entitled for bail solely on the ground that she is in custody for a period of over 3 to 4 years.

10. Hence, the Application is dismissed.

PREETI
H
JAYANI

Digitally signed
by PREETI H
JAYANI
Date: 2023.05.08
16:05:57 +0530

(SMT. ANUJA PRABHUDESSAI, J.)