

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2246 OF 2022****IN****CRIMINAL APPEAL NO. 443 OF 2022**

X

...Applicant

V/s.

The State Of Maharashtra

...Respondent

Ms.Mahrukh Adenwalla a/w Mr. Anush Shetty i/by Dr. Yug Mohit Chaudhry
for Applicant.

Mrs. Geeta P. Mulekar, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 23rd MARCH, 2023

P.C.:-

1. Applicant is convicted for offence under Section 302 of Indian Penal Code (for short "IPC") and sentenced to suffer imprisonment for life, vide Judgment and Order dated 12.01.2018 passed by the learned Additional Sessions Judge-3, Nashik in Sessions Case No.9 of 2017. The said Judgment and Order has been challenged by preferring Criminal Appeal No.443 of 2022 which has been admitted by this Court vide Order dated 06.06.2022.

2. By the present Application, the Applicant is seeking declaration that, he is a child in conflict with law as he was less than 18 years of age on the date of offence and that, he be released from custody forthwith as he has

been in custody from 26.09.2016. It is also prayed that, pending the hearing and final disposal of the Application, the Applicant be released on bail. Though by present Application, the Applicant is seeking declaration to the effect that, he was juvenile on the date of commission of offence and he be released from jail forthwith, we are restricting the present Order to the prima facie findings of juvenility and prayer for release on bail.

3. Applicant claimed that, he was a juvenile i.e. one day short of 18 years at the time and on the date of alleged offence. In support of his submission, the Applicant had relied upon the extract of School Admission Register and School Leaving Certificate which shows that, the date of birth of Applicant is 22.09.1998. The alleged incident had occurred on 21.09.2016 and hence on the date of incident the applicant was one day short of 18 years.

4. This Application was adjourned at the request of learned A.P.P. to enable the Officer to verify the documents relied upon by Applicant. Vide Order dated 22.08.2022, this Court had directed that, the concerned Officer after verifying the said documents to submit a report to this Court. On 12.09.2022, the application was adjourned to 21.09.2022, as it was submitted by learned A.P.P. that, necessary report has been received and an affidavit will be filed before the next date. The affidavit was filed on 28.09.2022. Vide Order dated 08.03.2023 it was directed that, additional affidavit of concerned Police Officer be filed with categorical averments,

whether the Applicant was a juvenile on the date of commission of offence or not. Additional affidavit was filed as per the directions of this Court.

5. In the affidavit dated 12.09.2022 filed by Mr. Nisar Anwar Sayad, Assistant Police Inspector, Indira Nagar Police Station, Nashik it is stated that, the officer had visited Zilla Parishad Primary School, Patana, Taluka Chalisgaon, District, Jalgaon and verified from the Principal of the said school whether there is entry of Applicant in School Register and whether School Leaving Certificate has been issued by the said school. He recorded statement of Principal of Zilla Parishad Primary School, Patana, Taluka Chalisgaon, Dist. Jalgaon. The Principal has stated that, he has issued the duplicate School Leaving Certificate on 02.03.2022 and as per the said Leaving Certificate, the date of birth of the Applicant is 22.09.1998. He further stated that, there is entry in School Register of Applicant at Serial no. 302 and the place of birth is mentioned as Village Sarave Budruk, Taluka Pachora, Dist. Jalgaon. The Applicant had taken admission in the school on 13.06.2005. He recorded statement of father and mother of Applicant. As per statement of mother of Applicant, he was born at Sarave Budruk, Taluka Pachora, District Jalgaon and the entry of Birth has been registered at Sarave Gram Panchayat Office. While taking admission in the school, she had submitted the copy of birth entry of Gram Panchayat Sarave to Zilla Parishad Primary School Patana. The statements are annexed to the Affidavit. He gave letter to Sarpanch, Gram Panchayat Office Sarave,

Taluka Pachora in order to verify, whether there is entry of birth of Applicant in their register and whether the certificate has been issued by Gram Panchayat. Block Development Officer, Panchayat Samiti, Pachora has given a Certificate dated 08.09.2022 which shows that, as per record of Birth and Death Register, there is no entry of Applicant in the year 1998.

6. In the Additional Affidavit filed by Ms.Shashini Chhagan Barela, Police Sub Inspector, Indira Nagar Police Station, Nashik, dated 08.03.2023, she has reiterated the version of deponent in the first affidavit-in-reply. In addition it is categorically stated that, incident took place on 21.09.2016. The birth date of Applicant is 22.09.1998. Therefore, on the date of offence, the applicant was a juvenile of 17 years and 364 days.

7. In view of the above, we are inclined to suspend the sentence and release the Applicant on bail during the pendency of Appeal.

8. Hence, the following Order :-

(i) During the pendency of present Application and Appeal, the substantive sentence imposed upon the Applicant is suspended and he be released on bail on his executing PR. bond in the sum of Rs.20,000/- with one or two local sureties in the like amount.

(ii) After his release from jail, the Applicant shall attend Indira Nagar Police Station, Nashik, on every first Monday of every 3rd Month i.e. 4 times a year between 10.00 a.m. to 12.00 noon.

(iii) Applicant shall furnish details of his residential address along with photocopies of documents in support thereof and mobile/land line phone number on which he can be contacted to the Indira Nagar Police Station, Nashik.

(iv) It is made clear that, other issues with respect to final adjudication about juvenility of Applicant and application of Section 15 of Juvenile Justice (Care and Protection of Children) Act, 2015 are expressly kept open, to be argued at the time of hearing of Criminal Appeal.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)