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

CRIMINAL WRIT PETITION NO. 3002 OF 2022

State of Maharashtra

...Petitioner

Versus

1. Unique Identification Authority of India

2. Electronics and Information Technology

Dept.

3. Sandeep Alias Ghungro Lalji Kumar

...Respondents

Mrs. P. P. Shinde APP for the Petitioner-State

Mr. S. K. Halwasia a/w Mr. D. P. Singh for Respondent nos. 1 and 2

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 28th JULY 2023.

P.C. :

1. Heard learned counsel for the parties.

2. At the outset, learned APP seeks leave to amend to correct the serial numbers of the respondents in the cause title. Leave granted.

Amendment to be carried out forthwith.

3. By this petition, the petitioner-State of Maharashtra seeks a direction to the respondent no. 1-Unique Identification Authority of India (UIDAI) to share/disclose information including the identity, information and authentication data, authenticity of the Aadhar Card of the respondent no. 3-Sandeep alias Ghungro Lalji Kumar.

4. The respondent no. 3-Sandeep alias Ghungro Lalji Kumar was arrested in connection with C.R. No. 591 of 2020 registered with the Wakad Police Station, Pune for the alleged offences punishable under sections 363, 364, 302, 201, 120(b) r/w 34 of the Indian Penal Code and under sections 3(2)(v), 3(2)(va), 6 of the Scheduled Tribes (Prevention of Atrocities) Act.

5. The incident in question is stated to have taken place on 16th August 2020. It appears that a missing complaint came to be registered at the instance of Seshrao Angrak (Complainant), bearing Missing Complaint no. 135 of 2020. During the course of investigation of the said missing complaint, the dead body of Santosh Seshrao Angrak was recovered, pursuant to which, the aforesaid C.R. was registered on 2nd

September 2020, with the Wakad Police Station, Pune, alleging the aforesaid offences. In connection with the said case, four accused came to be arrested i.e. Ganesh Pawar, Arvind alias Sonya Ganesh Ghuge, Mangesh Bhaguji Jagtap and Sandeep alias Ghungro Lalji Kumar (respondent no. 3).

6. As far as respondent no. 3-Sandeep is concerned, he was arrested from his residence in Uttar Pradesh on **27th November 2020**. It appears that at the time of arrest, Sandeep alias Ghungro Lalji Kumar produced his Aadhar card bearing XXXX, as proof of age. The date of birth mentioned on the said Aadhar card was **1st January 1999**, thus, showing that at the time of incident, respondent no. 3 was 21 years of age. Accordingly, he was produced before the learned Special Judge, Pune for remand. The Aadhar card of the respondent no. 1-Sandeep which was produced by him, is at Exhibit 'A' page 17 of the petition.

7. It appears that subsequently, the respondent no. 3-Sandeep filed an application, claiming that he was a juvenile in conflict with law, at the time of commission of the offence, and hence, sought a direction

that he be produced before Juvenile Justice Court, Pune. The said application was filed on **1st January 2021**. The respondent no. 1-Sandeep claimed juvenility on the basis of Aadhar card, which was produced by him which showed his date of birth as **5th March 2003**. It appears that some other documents were also produced by the respondent no. 3-Sandeep. The documents furnished by the respondent no. 3-Sandeep are at Exhibit 'B' of the petition. The said application was opposed by the petitioner-State essentially on the ground that at the time of arrest, respondent no. 3-Sandeep had produced his Aadhar card showing his date of birth as 1st January 1999 and thus his age was 21 years at the time of commission of offence. Since two Aadhar cards were produced by the respondent no. 3, one at the time of his arrest and second, at the time when he moved an application claiming juvenility, it was prayed that respondent no. 3 be sent for medical examination i.e. for conducting his ossification test.

8. Learned Sessions Judge vide order dated 1st January 2021 allowed the application preferred by respondent no. 3-Sandeep and

directed the Superintendent of Yerwada Jail, Pune to produce the respondent no. 3-Sandeep before the Juvenile Justice Court. The said order is at Exhibit 'C'. It is not in dispute that the said order passed by the learned Sessions Judge dated 1st January 2021 has not been challenged by the State till date. Instead, the present petition is filed by the State seeking a direction as stated aforesaid in paragraph 1.

9. Learned counsel for respondent nos. 1 and 2 has tendered an affidavit-in-reply of the said respondent, duly affirmed by Dr. Amar Bhadange, Deputy Director at Unique Identification Authority of India (UIDAI), Regional Office, Mumbai. The said affidavit dated 26th July 2023 is taken on record.

10. In paragraph 4 of the said affidavit, it is stated that the object of UIDAI, a statutory body established under the provisions of the Targeted Delivery of Financial and Other Subsidies, Benefits and Services Act, 2016 is to empower the residents of India with a unique identity and digital platform only for the purpose of "identity proof". It is further stated that the 12 digit identification number is issued to a

person, if he or she indicates number of Aadhar enrollment by submitting his or her demographic or bio-metric information. It is further stated in para 5 that since the information collected from the individuals at the time of enrollment/update is sensitive in nature, Chapter VI of the said Act mandates the Authority to ensure protection and to maintain security and confidentiality of the identity information and authentication records of individuals. The relevant provisions have been quoted in support of the same. In paragraph 15, it is further stated that UIDAI merely stores the demographic and bio metric information collected from the Aadhar number holder at the time of enrollment or update. In **paragraph 17**, it is further stated that when a date of birth is not provided by a resident, his/her date of birth is recorded as declared or approximate. It is further stated that in toto the capturing of date of birth is entirely based on information submitted by the resident and hence, burden of proving the date of birth of any person lies with the concerned resident.

11. Thus, it is evident from the affidavit filed by respondent nos. 1 and 2, that the Aadhar card is not a proof of the date of birth of a

person, and that the burden of proof would lie with the Aadhar card holder, who states his/her date of birth.

12. Considering the aforesaid, we do not find any merit in the petition filed by the petitioner seeking a direction to the respondent no. 1- UIDAI as stated aforesaid in paragraph 1.

13. It is always open for the prosecution to make an endeavor to obtain the birth certificate of respondent no. 3 from the appropriate forum/authority to prove his date of birth, since Aadhar card is not used as proof of date of birth of any individual. Infact, there is an office memorandum dated **20th December 2018** issued by the Government of India, Ministry of Electronics & Information Technology Unique Identification Authority of India. In the said office memorandum, it is stated in **paragraph 6** as under.

“6. In view of the above, it is suggested that all Central Ministries/ Departments/ State Governments and other implementing agencies may keep in consideration the following :-

*(a) An Aadhaar number can be used for establishing identity of an individual subject to authentication and thereby, **per se its not a proof of date of birth.***

(b) the usage of Aadhaar for delivery of welfare services, benefits or subsidies pursuant to Section 7 of the Aadhaar Act, 2016 or for any other purpose as may be required under any applicable law and the extent to which Aadhaar is to be used is to be determined by the implementing agencies such as State Government/ Central Ministries and other agencies.

*(c) Aadhaar which includes Aadhaar card, physical copy of e-aadhaar, masked Aadhaar, offline Aadhaar XML, and QR code embedded on the Aadhaar card, may be used as a proof of identity / proof of address along with other acceptable documents (subject to such terms and conditions as may be imposed by the Authority from time to time), **however, same may not be used as a proof of date of birth.***”

(Emphasis supplied).

14. In view of the aforesaid, there is no merit in the petition. Petition stands dismissed.

15. Needless to state, that it is always open for the State to challenge the order dated 1st January 2021, in view of what is observed hereinabove.

16. All parties to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.