

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

CRIMINAL REVISION APPLICATION NO.514 OF 2022

Ranjankumar @ Guddikumar
Shriram Ekbal Singh

.... Applicant

versus

State of Maharashtra

.... Respondents

.....

- Mr. Vijay K. Jha, Advocate for Applicant.
- Mr. Arfan Sait a/w Ms. M. R. Tidke, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th AUGUST, 2023

P.C. :

1. The Applicant has challenged the order dated 10/05/2022 passed by the Additional Sessions Judge, Kalyan, below Ex.4 in Sessions Case No.272/2021 whereby the Applicant's claim that he was below 18 years at the time of incident, was rejected.

2. Heard Mr. Vijay K. Jha, learned counsel for the Applicant and Mr. Arfan Sait, learned APP for the State.

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3. Before advertizing to the impugned order, it is necessary to mention brief background of this case. On 01/03/2021, C.R. No.107/2021 was registered against the Applicant by one Rajesh Gupta. It was his case in the FIR that on 28/02/2021, the first informant, his wife Shweta and the present Applicant were present in his ration shop. They consumed liquor. At about 10.30 p.m., the first informant went away from the shop because his wife Shweta discussed something which the first informant did not like. After some time, he received a phone call from the Applicant informing him that Shweta had suffered injuries with knife. The first informant went back to the shop to find Shweta in an injured condition. She had suffered incised wounds over her throat, elbow, palm and stomach. She was taken to the hospital, where she was declared dead. On this basis, he lodged his FIR.

4. The investigation was conducted. The Applicant was arrested. It is the case of the prosecution that by taking

advantage of the situation, the Applicant tried to molest the deceased and when she resisted, he committed this offence.

5. The investigation was conducted and the charge-sheet was filed. Before the case was committed to the Court of Sessions by the learned Magistrate, the Applicant made an application before the learned Magistrate claiming that his date of birth was 04/02/2004 and therefore, on the date of incident, he was 17 years and 24 days old. According to him, he could not be tried as an adult before the regular Court and he had to be produced before the Juvenile Justice Board. The learned Magistrate considered his submissions. Aadhar card was produced by him. During investigation, the investigating agency had taken charge of the Aadhar card, purportedly in the name of the Applicant. The Aadhar card was having number 4326 7060 5308. The Aadhar card which the investigating agency collected showed the Applicant's date of birth as 04/02/2000 whereas the Aadhar card produced by the Applicant bearing the same number showed his date of birth as 04/02/2004. Thus, there

was apparent discrepancy and there was scope for raising suspicion about the genuineness of the Aadhar card. The learned Magistrate sent the Applicant for ossification test, which was conducted on 06/08/2021. The report of the ossification test mentioned that on the date of examination, his age could be between 19-20 years. Therefore, the learned Magistrate concluded that the Applicant was not below 18 years of age at the time of incident and he committed the case to the Court of Sessions.

6. The Applicant renewed his claim that he was below 18 years of age on the date of incident, by making an application below Ex.4 before the Sessions Judge in Sessions Case No.272 of 2021 pending before the Additional Sessions Judge, Kalyan. The learned Additional Sessions Judge conducted the inquiry and held that the Applicant could not prove that he was below 18 years of age on the date of incident and rejected his application. Learned counsel for the Applicant submitted that most important documents under such circumstance are the birth

certificate and the certificate issued by his school. Both these documents show the Applicant's date of birth as 04/02/2004. He submitted that in the light of this conclusive piece of evidence, there was no scope to hold that the Applicant was not below 18 years of age on the date of incident. He further submitted that the birth dates of the Applicant and many others were recorded and registered in the year 2014. The date of incident was 28/02/2021. Therefore, the Applicant could not have fabricated these documents much earlier. He submitted that during the inquiry conducted by the Sessions Court, the Investigating Officer had reported that the certificate issued by the school authorities was genuine. He therefore submitted that the order passed by the Additional Sessions Judge was erroneous.

7. Learned APP opposed this application. He submitted that though the transfer certificate issued by the school was found to be genuine by the investigating agency; the record of the school register was produced by the Applicant himself

through photocopies and therefore it was not reliable. He further submitted that the investigating agency found that the birth certificate issued purportedly by the Secretary, Navanagar Gram Panchayat, Karsan, was forged. He submitted that the copy of the Aadhar card collected by the investigating agency during investigation shows that the date of birth of the Applicant is 04/02/2000. Learned APP supported the impugned order passed by the Additional Sessions Judge, Kalyan.

8. I have considered these submissions. The learned Judge discarded the school leaving certificate issued by the Applicant's school on the assumption that the Applicant had attended another school earlier and record from that school was not made available. However, from the entire record there is nothing to show that the Applicant had attended any other school prior to taking admission in primary school Bhelvaniya. The certificate issued by the Head Master of the said school mentions the Applicant's date of birth as 04/02/2004. This certificate is important. In this view of the matter, certain

important issues are required to be considered in respect of the school record, the Aadhar card and the birth certificate. The birth certificate is prepared on the basis of record maintained by the Gram Panchayat. Therefore, the Court was required to see the record of the Gram Panchayat. All these issues are important. However, the learned Judge proceeded only on the assumption that there was another school where the Applicant had studied before taking admission in the primary school at Bhelvaniya. The learned Judge also relied on the police report that the birth certificate on record was forged and was not issued by the Secretary of the Gram Panchayat. However, this fact would have been very well examined if the Gram Panchayat's record was produced before the learned Sessions Judge. This is a serious matter involving the offence of murder, wherein the accused is claiming to be a minor at the time of incident. Therefore, the Court had to approach very cautiously and had to reach complete satisfaction that the Applicant was major at the time of incident. However, from the impugned order it appears that all this necessary exercise was not done

before arriving at the conclusion and before rejecting the Applicant's application. The learned Additional Sessions Judge had powers u/s 91 of Cr.P.C. to call for the original record. He needs to examine the original record of the Gram Panchayat regarding the date of birth of the Applicant. The learned Judge needed to verify the original school record. As rightly submitted by learned APP only the photocopy of extract of school record was before the Court. The learned Judge needed to see the original register of the school. Similarly, there were two Aadhar cards of the same number. The police are sufficiently empowered to find out which Aadhar card was genuine by referring to the record maintained by the authorities in respect of those Aadhar cards. All this had to be done before arriving at a final conclusion regarding the age of the Applicant. For all these reasons, I am inclined to set aside the impugned order and remand back the matter for fresh inquiry in the light of the observations made in this order.

9. Hence, the following order :

ORDER

- (i) The order dated 10/05/2022 passed by the Additional Sessions Judge, Kalyan, below Ex.4, in Sessions Case No.272 of 2021 is set aside.
- (ii) The learned Judge shall conduct fresh inquiry with reference to the issues discussed hereinabove, but not only restricted to those issues, to find out the actual age of the present Applicant without being influenced by his earlier order.
- (iii) This inquiry shall be conducted in accordance with law as early as possible.
- (iv) With these observations, the application is disposed of.
- (v) The registry is directed to send back the record and proceedings immediately to the Additional Session Judge, at Kalyan.

(SARANG V. KOTWAL, J.)