

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

BAIL APPLICATION NO. 3027 OF 2022

Amitkumar @ Ammu @ Shikandar

Hariram Bhatham

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Ms. Maharukh Adenwalla for the Applicant.

Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 05th JULY, 2023.

P. C. :-

. The Applicant seeks bail under section 12(1) of the Juvenile Justice Act, 2015 (the JJ Act).

2. Pursuant to the FIR lodged by Gulam Rabbani Shamim Khan, C.R.No.54/2018 came to be registered with Jogeshwari Police Station, Mumbai for offences punishable under sections 302, 397 of the Indian Penal Code and sections 37(1) and 135 of the Maharashtra Police Act. The facts narrated in the FIR prima facie reveal that on 10/04/2018, at about 02:00 p.m., the first informant was informed that his brother, Ghulam Jabir Khan was admitted in the hospital. He went to the hospital and learnt that his brother was assaulted by an unknown person for unknown reason. He, therefore, lodged the FIR against an

unknown person for attempting to commit murder of his brother. The Applicant came to be arrested on 12/04/2018 on the basis of the CCTV footage. The injured – Ghulam Jabir Khan expired on 14/04/2018. Hence, section 302 of the Indian Penal Code came to be added.

3. Upon completion of the investigation, charge sheet was filed before the Metropolitan Magistrate, 10th Court, Andheri. The offence being sessions triable, the case was committed to the Sessions Court, Dindoshi and the same is registered as Sessions Case No.241/2018. The Applicant filed a bail application before the learned Sessions Judge under Section 439 of the Cr.P.C., which came to be rejected on 25/02/2019.

4. Subsequently, the Applicant filed an application stating that as on the date of the offence, he was 17 years and 04 months of age. Though he was a child/juvenile within the meaning of Section 2(12) of the JJ Act, he was wrongly treated as an adult. The learned Judge, upon inquiry, held that the Applicant was below 18 years of age as on the date of the incident and hence forwarded the proceedings to the Juvenile Justice Board and the Applicant, who was in judicial custody, came to be admitted in Observation Home w.e.f. 28/07/2021.

5. Considering the nature of the offence and the fact that the Applicant was above 16 years of age, learned Principal Magistrate, Juvenile Justice Board conducted preliminary assessment in terms of Section 15 of the JJ Act with regard to his mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which he allegedly committed the offence. Pursuant to the said enquiry on preliminary assessment, the Board, by order dated 23/09/2021 under section 18(3) of the JJ Act, ordered transfer of the trial to the Children's Court, Dindoshi having jurisdiction to try such offences.

6. The Applicant filed an application for bail before the Sessions Court, Dindoshi, which came to be dismissed by order dated 27/11/2021 mainly on the ground that there is prima facie material to show the involvement of the Applicant in the said crime which is of serious nature. The learned Judge also observed that the Applicant is a resident of Uttar Pradesh and there are chances of the Applicant absconding or thwarting the course of justice, if released on bail. Being aggrieved by the order of rejection of bail, the Applicant has filed this Application.

7. Learned counsel for the Applicant submits that the Applicant being a child within the meaning of Section 2(12) is entitled for bail under section 12(1) of the JJ Act, 2015. In support, she has relied upon the decisions of the co-ordinate Bench of this Court in ***Bail Application Nos.2282/2021, 3838 of 2021 and 1647/2020***. She has also relied upon the decision of the Delhi High Court in ***CCL A' v/s. State (NCT of Delhi) (Bail Application No.2510 of 2020)***.

8. Learned counsel for the Applicant submits that the Applicant has no criminal antecedents and that his case does not fall within the proviso of Section 12(1) of the JJ Act. The Applicant intends taking further education and his family is willing to receive his custody. She submits that the learned Judge has not considered the scope and ambit of section 12 of JJ Act, 2015, which excludes applicability of general bail under section 438 and 439 of Cr.PC.

9. Per contra, Mr. Gavand, learned APP submits that a similar question viz. whether a child who is ordered to be treated as an adult under section 18(3), is entitled to maintain his bail plea under section 12 of the JJ Act was raised and is pending consideration before the Hon'ble Apex Court in ***Master Bholu (Imaginary Name) v/s. Central***

Bureau of Investigation and another 2022 DGLS(SC) 1434.

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

11. A perusal of the order of the learned Sessions Judge reveals that the Applicant had filed an application for bail under section 439 of Cr.P.C. The plea of applicability of section 12 was not raised before the learned Sessions Judge. Hence, the learned Judge cannot be faulted with for not considering the said issue.

12. Be that as it may, the Co-ordinate Bench of this Court in ***Bail Application Nos.2282/2021, 3838/2021 and 1647/2020*** has considered the issue and has held the child who is treated as an adult under section 18(3) of the Act, is entitled for benefit under section 12(1) of JJ Act, which in view of non-obstante clause clearly excludes applicability of general provisions relating to the bail under the provisions of the Cr.P.C. This being the case, the Applicant cannot be deprived of the benefit under the beneficial legislation solely on the ground that a similar question is raised and is pending before the Hon'ble Supreme Court.

13. As noted above, the Applicant herein was a child within the meaning of section 2(12) of the JJ Act. He has studied till 09th class and is willing to continue his education. The Social Investigation Report and the Child Guidance Clinic Report reveal that the Applicant is well-behaved, has good habits and he is involved in creative projects and vocational training. He has positively responded to rehabilitative efforts. It is also stated that the Applicant has good relationship with his family members and his father is willing to receive him with assurance of proper supervision and control.

14. There is nothing on record to indicate that the Applicant, if released on bail, is likely to come in association with any known criminal or that he is likely to be exposed to moral, physical or psychological danger. His release on bail will not defeat the ends of justice. On the contrary, his release on bail will safeguard his right to be reunited with the family and to be restored to the same socio-economic and cultural status that he was in before commission of the alleged crime. In short, his release will be in his best interest, which will ensure his rehabilitation and development of full potential.

15. Under the circumstances, the Application is allowed on the

following terms and conditions :-

(a) The Applicant, who is facing trial in Sessions Case No.241/2018 pending on the file of learned Sessions Judge, Dindoshi, is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

(b) The Applicant shall not leave the State of Maharashtra without prior permission of the Court.

(c) The Applicant shall not create any hindrance in the proper progression of the trial and shall not contact/communicate with any of the witnesses related with the case.

(d) The Applicant shall be placed under the supervision of the Probationer Officer or any other person, fit for the purpose, as may be appointed by the learned Sessions Judge, Dindoshi.

(e) The Probationer Officer or the person appointed

by the learned Sessions Judge shall submit quarterly report to the learned Sessions Judge as regards the conduct of the Applicant while on bail.

**PREETI
HEERO
JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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by PREETI
HEERO JAYANI
Date: 2023.07.07
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