



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2772 OF 2024

IN

CRIMINAL APPEAL NO. 778 OF 2003

Santosh Eknath Aute
Age 40 years, Occ: Agril.,
R/o Balamtakli, Tq. Shevgaon,
Dist. Ahmednagar.

... Applicant.

Versus

The State of Maharashtra
(At the instance of Paithan Police
Station, Dist. Aurangabad)

... Respondent

.....

Mr. Abhaysinh K. Bhosle, Advocate for the Applicant.
Mr. S. M. Ganachari, APP for Respondent-State.

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 13.11.2024

Pronounced on : 21.11.2024

ORDER :

1. Heard both sides.
2. The application is at the instance of a convict in Sessions Case No. 126 of 2002, for offence punishable under Sections 147, 148 and 304(II) of IPC. The applicant claims himself to be juvenile in conflict with law on the date of incident and prays for directions to the trial court to examine his said claim in accordance with the provisions of the Juvenile Justice (Care and Protection of Children) Act.

3. It is argued on behalf of the applicant that as on the date of incident, provisions of the Juvenile Justice Act, 1986 were applicable as the age of petitioner at that time was above 16 years. However, it is emphasized that during pendency of trial, Juvenile Justice Act, 2000 came into force and thus, the applicant herein would be entitled to claim himself to be a juvenile, as per the Act of 2000, wherein age of juvenility is raised and fixed as 18 years. As such, it is submitted that applicant would be entitled to benefit under the said Act. In support of his submission, learned counsel placed reliance on the decision in the case of *Ashok v. State of Madhya Pradesh* 2021 (4) PLR 685 and *Abuzar Hossain v. State of West Bengal* (2012) 10 SCC 489.

4. From perusal of the record, it appears that when the incident in question had occurred i.e. on 23.11.2000, applicant was above 16 years of age and as such, he was tried as a regular offender and conviction came to be recorded against him for above offences on 21.11.2003. His appeal against said conviction however continued till date. Admittedly, in the interregnum, the Act of 2000 had already come into force. In the said Act, for ascertaining age, provision of provided for. Section 7A of the Act of 2000 provided as under :

“7A. Procedure to be followed when claim of juvenility is raised before any Court :

(1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence; the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a court shall be deemed to have no effect.”

5. Consequently, in view of the above facts and the settled law, the plea of juvenility of the applicant deserves to be entertained. Moreover, such plea is *prima facie* supported by photo copy of school leaving certificate showing his date of birth as 05.10.1984 (Exhibit A

page 12 of the application). Therefore the following issue shall be determined by the concerned Sessions Court :-

“Whether the present applicant was juvenile in conflict with law on the date of alleged commission of offence?”

6. In the circumstances, record and proceedings be sent to the learned Sessions Judge, Aurangabad. The learned Sessions Judge, Aurangabad to conduct an enquiry, as provided by the Rules to determine the age of the applicant. Parties to appear before the learned Sessions Judge on 25.11.2024. The learned Sessions Judge is directed to record the findings on the above issue and remit the papers alongwith findings, to this Court, within a period of two [2] months from the date of this order.

7. This order be communicated to the concerned trial court forthwith.

8. The Criminal Application is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]