

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3148 OF 2023
IN
CRIMINAL APPEAL NO.407 OF 2022

XYZ

.. Applicant

v/s.

State Of Maharashtra

.. Respondent

Mr. Anush Shetty i/b Dr.Yug Mohit Chaudhari for the applicant.

Mrs. P.P. Shinde, APP for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
SHYAM C. CHANDAK, JJ.**
DATE : 11th JUNE, 2024.

JYOTI
RAJESH
MANE

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ORDER (PER : REVATI MOHITE DERE, J.)

1 By this Interim Application, the applicant seeks the following reliefs;

- I) to declare the applicant as Juvenile in conflict with law, in Sessions Case No.117/2016; and
- ii) to direct the release of the Applicant forthwith from custody.

2 Mr.Shetty, learned Counsel for the applicant submits that

the applicant was a Juvenile in conflict with law at the time when the alleged offence was committed. In support of his submissions, learned Counsel relied on the Birth Certificate and School Leaving Certificate of the applicant, evidencing the birth date of the applicant i.e. 7th January 2000. He submitted that both the said documents will reveal that the applicant was aged 15 Years and 11 Months at the time when the offence was committed and hence, the applicant be declared as a Juvenile in conflict with law.

3 Learned APP had submitted a report of the API, Shri.Dattaji Desai, attached to Kurduwadi Lohmarg Police Station dated 8th May 2024. The said report was taken on record by us on the last date.

4 Perused the Application.

5 The applicant was convicted by the learned Additional Sessions Judge, Solapur, vide Judgment and Order dated 22nd March 2018 in Sessions Case No. 117/2016 for the offence punishable under Section 302 of the Indian Penal Code. For the said offence, the applicant was sentenced to suffer imprisonment for life and to pay a fine of

Rs.1,000/-, in default to suffer rigorous imprisonment for six months. Against the said Judgment and Order of conviction and sentence, the appellant has filed the aforesaid appeal. The applicant is in custody since his arrest i.e. for almost 8½ years. Post his conviction and filing of the aforesaid Appeal, the Applicant secured documents to show that he was a Juvenile in conflict with law at the time of the commission of the alleged offence, i.e. on 20th December 2015. According to the Applicant, he was aged 15 years and 11 months i.e. 1 month shy of 16 years, when the offence was committed. Pursuant thereto, the applicant filed the aforesaid Interim Application seeking the aforesaid reliefs .

6 The applicant has annexed two documents i.e. School Leaving Certificate and Birth Certificate, which are at Exhibits 'G' and 'H' respectively. We, vide Order dated 6th February 2024, had directed the learned APP to get the certificates relied upon by the applicant, verified, by conducting necessary inquiry. Pursuant thereto, the learned APP had tendered the report of API Dattaji Desai, attached to Kurduwadi Lohmarg Police Station dated 8th May 2024. As per the said report, the documents relied upon by the applicant were verified and

necessary inquiry was conducted. As per the report the documents which are at Exhibits 'G' and 'H' are genuine. As per the said documents the applicant's date of birth is 7th January 2000. Thus, the applicant was aged 15 years and 11 months at the time when the incident took place, i.e. on 20th December 2002. Thus, there is merit in the claim of the applicant that he was a Juvenile at the time when the incident took place. It is also not in dispute, that the plea of juvenality can be raised at any stage, even post the conviction of an accused.

7 Considering the aforesaid, the Application is allowed and the following order is passed:

ORDER

(i) The applicant is declared as a Juvenile in conflict with law, in Sessions Case No.117/2016 decided by the learned Additional Sessions Judge, Solapur.

(ii) Since, we have declared the applicant as a Juvenile in

conflict with law, the applicant be released forthwith from custody, if not required, in any other case.

8 Interim Application is allowed and disposed of in above terms.

9 Learned APP to also communicate the said Order to the Superintendent, Nashik Road Open Prison, where the applicant is undergoing his sentence so as to enable him to comply with the said Order.

10 All concerned to act on the authenticated copy of this order.

SHYAM C. CHANDAK, J.

REVATI MOHITE DERE, J.