



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO.36 OF 2025

Vijay Uddhav Ghatcherle

..Appellant

Vs.

The State of Maharashtra

..Respondent

Mr.Satej S. Jadhav, Advocate for appellant

Dr.Kalpalata Patil – Bharaswadkar, Addl. P.P. for respondent

**CORAM : R.G.AVACHAT AND
NEERAJ P. DHOTE, JJ.**
DATE : FEBRUARY 20, 2025

ORDER :-

This appeal under Section 101 of the Juvenile Justice (Care and Protection of Children) Act, 2015 ("the Act", for short) is filed against the order of the Children's Court dated 01.12.2022, refusing to grant the appellant bail in connection with Crime No.0097 of 2022, registered with Chakur Police Station, Dist. Latur, for the offences punishable under Section 302, 201, 120-B, 212, 216 read with Section 34 of Indian Penal Code and Sections 3(1)(i), 3(2), 3(3), 3(4) of M.C.O.C. Act and the consequential proceedings (charge sheet), being Sessions Case no.173 of 2022.

2. The Children's Court refused to grant bail to the appellant mainly for the following reasons :-

9. The father of deceased has filed affidavit that he has danger to his life from the accused, if released on bail. He has further submitted that he is receiving threats and therefore, he has lodged N.C. Report No.593/2022 and there is every possibility of tampering with the prosecution witnesses. Merely because the charge sheet is filed, the J.C.L. is not entitled for grant of bail in such type of serious offence. Considering the nature of offence, the release of the JCL will likely to bring him in association with known criminals or expose him to moral, physical or psychological danger. Considering the facts, it is necessary to keep the JCL in the observation home.

3. Learned counsel for the appellant would submit that the appellant has been in the Observation Home for three years. He would, now, be sent to Yerwada Central Prison, Pune. The appellant is a student of Animal Husbandry. He is just 21 years of age. His father is no more. The brother is behind the bars in connection with the very crime. He, then, adverted our attention to the relevant provisions of the Act, to ultimately urge for allowing the appeal.

4. Learned Addl. Public Prosecutor would, on the other hand, reiterate the reasons given by the Children's Court. She would submit that the father of the victim has filed an affidavit claiming

threats at the hands of the appellant. A non-cognizable case has been registered in this regard. She would further submit that it would also be in the interest of the appellant not to grant him bail as he is likely to come in contact with other criminals. On the merits of the case, she would submit that there are confessional statements of the co-accused. Those are admissible in view of Section 18 of the Maharashtra Control of Organised Crime Act. She would further submit that the confessional statements indicate the appellant to have actively participated in commission of the offence of murder. The competent Court has directed him to be tried as an adult. Learned Addl. Public Prosecutor urged for dismissal of the appeal.

5. Considered the submissions advanced. Perused the order impugned herein and the material relied on.

6. Admittedly, the appellant, when allegedly committed the offence, was a juvenile-in-conflict with law. He was, therefore, dealt with by the Juvenile Justice Board. The J.J.B. has directed him to be tried as an adult. For little over three years, the appellant has been in the Children's Home/Observation Home. Since he has attained the age of 21 years, he would now be shifted to the Yerwada Central Prison. It is true that the proviso to Section 12 of the Act mandates not to grant bail if there appears reasonable grounds for believing

that the release is likely to bring that person into association with any known criminal or expose the said person to moral, physical or psychological danger or the person's release would defeat the ends of justice. Relying on the said proviso, J.J.B. had refused to grant the appellant bail. On completion of the investigation, charge sheet came to be filed. Since the provisions of the M.C.O.C. Act have been invoked and there are confessional statements of the co-accused, those could be read in evidence against all the accused, provided all of them are charged and tried in the same case together with the accused who made the confessional statement. Section 21 of the Act mandates that no child in conflict with law shall be sentenced to death or for life imprisonment without the possibility of release, for any such offence, either under the provisions of the Act or under the provisions of the Indian Penal Code or any other law for the time being in force. Section 23 of the Act speaks of no joint proceedings of a child in conflict with law and a person not a child. The proviso of Section 23 reads thus:-

23. No joint proceedings of child in conflict with law and person not a child.- (1) *Notwithstanding anything contained in section 223 of the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law for the time being in force, there shall be no joint proceedings of a child alleged to be in conflict with law, with a person who is not a child.*

(2) If during the inquiry by the Board or by the Children's Court, the person alleged to be in conflict with law is found that he is not a child, such person shall not be tried along with a child.

7. Learned Addl. Public Prosecutor would submit that since the appellant is directed to be tried as an adult, this provision will not apply. We are not in agreement with the submissions made by her. A child is a child. Only considering his age of understanding, he is directed to be tried as an adult. Section 23 contains an overriding effect to Section 223 of the Code Criminal Procedure. In our view, the appellant will have to be tried separately. He cannot be tried along with the co-accused in view of this legal position. The confessional statements of the co-accused cannot be read against the appellant. Then, there remains the material in the nature of C.C.T.V. footage indicating the appellant taking with him the victim on a motorbike. Since the appellant is just 21 years of age, the fact that he is taking education and the further fact that he has been in observation home for a period of three years, we find it a fit case to grant him bail. Needless to mention, the observations made herein above are prima facie in nature.

8. Hence, the following order:-

(i) The appeal is allowed.

(ii) The appellant be granted bail in connection with Crime No.0097 of 2022, registered with Chakur Police Station, Dist. Latur, for the offences punishable under Section 302, 201, 120-B, 212, 216 read with Section 34 of Indian Penal Code and Sections 3(1)(i), 3(2), 3(3), 3(4) of M.C.O.C. Act and the consequential proceedings (charge sheet), being Sessions Case no.173 of 2022, on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The appellant shall not indulge in any criminal activity. If he was found to have indulged in any criminal act, the prosecution may move the trial court/children's court for cancellation of bail. Needless to mention, such application would be decided on its own merits.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

KBP