

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.533 OF 2024

Kaif Ali Saeed Ali

.... Applicant

V/s.

State of Maharashtra

.... Respondent

NILAM
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KAMBLE

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Ms.Sahana Manjesh, for the Applicant.

Mr.Ashok Gawai, APP, for Respondent-State.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st APRIL 2025

P.C:-

. By this Application, Applicant is challenging the order passed below Exhibit-1 by the learned Special Court in Sessions Case No.45 of 2019.

2. It is prosecution's case that, due to quarrel with the deceased, the Applicant (child in conflict with law) on 01.09.2018 at about 1.00 p.m. when the deceased was standing near juice stall. The Applicant went there with his friend and assaulted the deceased with knife. It is alleged that, the Applicant stabbed the deceased multiple times.

3. It is contention of the learned counsel for the Applicant that, at the time of the incident the Applicant was 16 years and 4 months old. The Juvenile Justice Board called report a Psychiatrists report (mental health report) of the Applicant and on the basis of that report the Board has directed to transfer the matter to the Children's Court denying him the protection under Juvenile Justice Act (for short 'J.J. Act') The learned counsel further submitted that, said order was challenged before Children's Court, but learned Judge has maintained order of the Juvenile Board which is erroneous. The learned counsel further submitted that, the Juvenile Board had called the report of Psychologist but there is report of Psychiatric and not Psychologist. The learned counsel further submitted that, as per provisions of JJ Act, Psychologist report is must hence requested to allow the Application.

4. It is contention of the learned APP that, the Applicant has knifed the deceased multiple times. The said assault was pre-planned, it shows that, the Applicant was aware about consequences of the act. The learned Board had called

report of team of experts, on the basis of that report, the learned Board has considered that, the matter can be tried against the Applicant before the Children's Court. The said report includes Psychiatric expert. The order of board is confirmed by the Sessions Court. Both orders are well reasoned. Hence no interference is required in it and requested to reject the Application.

5. I have heard both learned counsel. Perused impugned orders.

6. Admittedly, at the time of the incident Applicant was 16 years and four months old. The Board had called the report of the experts. The report shows that, the expert team was comprising of Professor and head of the Department of Psychiatry, Assistant Professor of Psychiatry and Professor and head of the department of Pharmacology. It Appears that, no report of Psychologist was taken before sending the case of the Applicant to the Children's Court. As per view of Apex Court in case of Barun Chandra Tahkur V/s. Master Bholu and Another, Criminal Appeal No.950 of 2022 decided on 13th July 2022, has

interpreted the provisions of Section 15(1) of the JJ Act to be mandatory and directed that JJ Board should mandatorily take the assistance of experienced Psychologist. In present case there is no report of Psychologist. There is report of Psychiatric considering the ratio laid by Apex Court, I pass following order.

ORDER

- (i) The application is allowed.
- (ii) The order passed by the learned Sessions Court dated 27th February 2023 in Criminal Appeal No.45 of 2019 is quashed and set aside.
- (iii) The learned Juvenile Justice Board shall call the report of the Psychologist in respect of the Applicant's mental health.
- (iv) The learned Juvenile Justice Board shall not be influenced by the observations of this Court and decide the matter on its own merits.
- (v) Application is allowed in the aforesaid terms.

(SHIVKUMAR DIGE, J.)