

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.659 OF 2024

Pandurang Shankar Phadake

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Vikas B. Shivarkar, for the Applicant.

Mr. Abhijeet Karnik, for the Respondent No.2.

Ms. P. P. Bhosale, APP for the Respondent-State.

PSI, M. I. Metalwad, Yavat Police Station, Pune Rural, present.

CORAM: MADHAV J. JAMDAR, J.

DATED: 24th JUNE 2025

P.C.:

1. Heard Mr. Shivarkar, learned Counsel appearing for the Applicant, Mr. Karnik, learned Counsel appearing for the Respondent No.2 and Ms. Bhosale, learned APP for the Respondent-State.

2. By the present Criminal Revision Application, the challenge is to the legality and validity of the order dated 8th October, 2024 passed by the learned Additional Sessions Judge, Baramati, District-Pune below Exhibit-14 in Special Case No.122 of 2022. The said Application bearing Exhibit-14 has been filed by the father of the Accused-Mayur Pandurang Phadke for declaring Accused as 'Child In Conflict With Law' ("CCL") and produce the accused before the Juvenile Court.

3. The main submission of Mr. Shivarkar, learned Counsel is that although FIR records multiple incidents, in the medical history which has been recorded on Page Nos.115 and 116 mentions that last incident

has taken place on 27th February, 2022. He also pointed out statement(Page Nos.132-134) recorded under Section 164 of the Code of Criminal Procedure, 1973 (“**CrPC**”) and submitted that in the said statement recorded on 31st March, 2022, it is stated that the incident took place in the last month i.e. in the month of February 2022. He pointed out Section 10 of the Juvenile Justice Act, 2015 (“**JJ Act**”) and submitted that as the person who has been apprehended was CCL and thus, procedure contemplated under Section 10 of JJ Act should have been followed. He therefore submitted that the impugned order dated 8th October, 2024 be quashed and set aside and said Application bearing Exhibit-14 filed in Special Case No.122 of 2022 be allowed.

4. On the other hand, Mr. Karnik, learned Counsel appearing for the Respondent No.2 and Ms. Bhosale, learned APP for the State submitted that the First Information Report dated 17th March, 2022 clearly records that the last incident took place about 10 days back. Both of them submitted that the Accused was involved in very serious crime of sexual assault on a victim who at the relevant time was of 10 years. Both of them submitted that in fact medical history specifically records on page No.116 regarding the incident which has taken place on 27th February, 2022 when admittedly the Accused was major. Both of them therefore submitted that no interference is warranted in the impugned order.

5. Before considering rival contentions, it is necessary to set out

certain admitted factual aspects:

- (i) The date of birth of the Accused is 19th May, 2003 and he became major on 18th May, 2021.
- (ii) The FIR has been lodged on 17th March, 2022. As per the incidents which have been narrated in the FIR, the first incident is of February, 2021 and the last incident is about 10 days back of the date of FIR i.e. in or about February 2022/March 2022.
- (iii) Thus, admittedly, at least one of the incident mentioned in the FIR is when the Accused was major.

6. In the impugned order, the learned Trial Court by relying on the judgment of Supreme Court in the case of ***SRI Ganesh v. State of Tamil Nadu & Anr.***¹ has held that if the offence of rape was alleged to have been committed on multiple occasions, then the relevant date for determination of juvenility of the Accused would be the date when last of such incidents of rape had occurred. The relevant Paragraph No.10 which reads as under:-

“10. In the present case, the trial court took into account the documentary evidence as contemplated in the statutory provisions and returned a finding that the date of birth of the appellant was 19-10-1991. During the course of its judgment, the High Court could not find such conclusion to be vitiated on any ground. In the face of the relevant documentary evidence, there could be no medical examination to ascertain the age of the appellant and as such the consequential directions passed by the High Court were completely unwarranted. Further, if the allegations of the prosecution are that the offence under Section 376 IPC was

¹ (2017) 3 SCC 280

committed on more than one occasion, in order to see whether the appellant was juvenile or not, it is enough to see if he was juvenile on the date when the last of such incidents had occurred. The trial court was, therefore, justified in going by the assertions made by the victim in her cross-examination and then considering whether the appellant was juvenile on that date or not.”

(Emphasis added)

7. Thus, the position on record clearly show that the FIR was lodged on 17th March, 2022, the last incident mentioned in the FIR is of 10 days before the lodging of the FIR i.e. in the first week of March 2022. Admittedly, the accused attained majority on 18th May, 2021.

8. Section 2(13) of the JJ Act, defines child in conflict with law as follows:-

“Section 2(13) "child" in conflict with law means a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence;”

9. Thus, the “Child In Conflict With Law” is, who is alleged or found to have been committed an offence and who has not completed 18 years of age on the date of the commission of such offence. Admittedly, in March, 2022 or at least in February 2022 when the last incident took place, the accused was major as he attained majority on 18th May, 2021.

10. Mr. Shivarkar, learned Counsel appearing for the Applicant has very heavily relied on the medical history narrated by the victim as recorded on Page No.115 and also description of the incident on Page Nos.116 and 117. The relevant portion of the same reads as under:-

Informant being victim and her mother Mrs. Supriya Mahesh Fadke 72 yr/F, R/o Kangaon knows accused as cousin brother and gives A/H/O sexual assault on multiple occasions first on 14th February 2021 when victim was alone at home at Kangaon as both her parents were out of home for work purpose and the accused entered victim's home by talking sweetly. The accused took the victim to the bedroom of her house and forcefully removed her clothes. The victim opposed initially by wearing back her clothes but the accused successfully attempted non-consensual vaginal penetration.

Each time, accused used to ejaculate outside the vagina in the bathroom of the victim's house. Last incident of non-consensual vaginal penetration as per history given by the victim, is on 27th February 2022 at the victim's home in the afternoon while the victim was alone at home.

Thus, it is clear that even the said history shows that there are sexual assaults took place on multiple occasions first on 14th February, 2021 and lastly on 27th February, 2022. Admittedly, the Accused attained majority on 18th May, 2021.

11. For the above reasons, there is no substance in the contentions raised by the learned Counsel appearing for the Applicant. In the facts and circumstances no interference is warranted in the impugned order dated 8th October, 2024.

12. Accordingly, the Criminal Revision Application is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]