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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL BAIL APPLICATION NO. 4746 OF 2024

Vishal Dinesh Vayeda

.. Applicant

Versus

The State of Maharashtra and Anr.

.. Respondents

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- Mr. Shamrao B. Gore, Advocate for Applicant.
 - Ms. Savita M. Yadav, APP for Respondent No.1 – State.
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CORAM : MILIND N. JADHAV, J.

DATE : APRIL 28, 2025.

P.C.:

- 1.** Mentioned at the time of rising of the Court.
- 2.** Heard Mr. Gore, learned Advocate for Applicant and Ms. Yadav, learned APP for Respondent No.1 – State.
- 3.** In the present case, learned Advocate Mr. Gore has raised a claim that Applicant was a child on the date of commission of offence. He would submit that date of birth of Applicant is 12.06.2004 and date of commission of offence in the present case is 30.05.2022. In that regard he would submit that since on the date of commission of offence Applicant was a “child” not having completed 18 years of age as per definition of “child” envisaged under Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (for short “JJ Act”), the Court should relegate the matter to the Juvenile Justice

Board constituted under Section 4 of the JJ Act for passing appropriate order in terms of Section 9(2) and 12 of the JJ Act which provides for procedure regarding bail in relation to child alleged to be in conflict with law.

4. In support of his above submission, he has persuaded the Court to conduct an impartial inquiry and obtain the birth certificate of the Applicant and accordingly order dated 18.03.2025 was passed by this Court.

5. In compliance of the order dated 18.03.2025, learned Prosecutor has investigated the matter and placed on record the birth certificate of Applicant issued by the Government of Maharashtra, Department of Public Health, Grama Panchayat Ganjad Gr., Form 5 issued under Section 12/17 of the Registration of Births and Deaths Act, 1969 read with Rule 8/13 of the Maharashtra Registration of Births and Deaths Rules, 2000 of the Applicant namely Vishal Dinesh Vayeda.

6. In view of the above facts, it is necessary to follow the procedure prescribed under Section 9 of the JJ Act which reads thus:-

“9. Procedure to be followed by a Magistrate who has not been empowered under this Act.—

(1) When a Magistrate, not empowered to exercise the powers of the Board under this Act is of the opinion that the person alleged to have committed the offence and brought before him is a child, he shall, without any delay, record such opinion and forward the child immediately along with the

record of such proceedings to the Board having jurisdiction.

(2) In case a person alleged to have committed an offence claims before a court other than a Board, that the person is a child or was a child on the date of commission of the offence, or if the court itself is of the opinion that the person was a child on the date of commission of the offence, the said court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) to determine the age of such person, and shall record a finding on the matter, stating the age of the person as nearly as may be:

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

(3) If the court finds that a person has committed an offence and was a child on the date of commission of such offence, it shall forward the child to the Board for passing appropriate orders and the sentence, if any, passed by the court shall be deemed to have no effect.

(4) In case a person under this section is required to be kept in protective custody, while the person's claim of being a child is being inquired into, such person may be placed, in the intervening period in a place of safety."

7. Birth certificate of the Applicant as submitted by the prosecution mentions his date of birth as 12.06.2004 and the date of occurrence of the incident / date of the alleged crime being 30.05.2002. Age of Applicant on the date of offence was 17 years, 11 months and 18 days. Hence it is seen that Applicant was a "child" as per its definition provided under Section 2(12) of the JJ Act on the date of the occurrence of the incident / date of the alleged crime.

8. In that view of the matter, as per the provisions of Sections 9(2) read with 9(3) and 12 of the JJ Act delineated herein above, present Applicant alongwith the record of the present Bail Application is forwarded to the Juvenile Justice Board constituted under Section 4 of the JJ Act for passing appropriate orders in accordance with provisions of Section 12 of the JJ Act.

9. Bail Application is accordingly disposed of by this Court.

[MILIND N. JADHAV, J.]

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