

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.5065 OF 2024

Vishal Pravin Oganiya .. Applicant
Versus
The State of Maharashtra and Anr. .. Respondents

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- Mr. Siddharth Desai a/w. Ms. Mahadevi Utkar and Mr. Rishabh Yadav, Advocates for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent No.1.
- PSI – Shelke R., Kasturba Marg Police Station.

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CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 28, 2025

P.C.:

1. Heard Mr. Desai, learned Advocate for Applicant and Mr. Kulkarni, learned APP for Respondent.

2. The primary grievance of Applicant stems from the fact that Applicant's age stated in the Arrest / Court Surrender Form appended at page No.102 of the Application records the age of Applicant as 17 years.

3. Mr. Desai points out that the same is endorsed and confirmed two days later in the medical narration form on page No.67 of the Application. He would therefore contend that the arrest of Applicant and his incarceration in the present crime and rejection of the Bail Application by the learned Sessions Court is completely

vitiated since case of Applicant being a child in conflict with law ought to have been referred to the Juvenile Justice Board for adjudication / trial.

4. When this Application was mentioned before me on the previous date and this point was informed to Court across the bar on 26.02.2025, I immediately directed the learned Prosecutor to take instructions on the submissions made by Mr. Desai and apprise the Court with respect to the determination of the age of Applicant.

5. Today when the matter is opened before me at the outset Mr. Kulkarni, learned APP on instructions would submit that they have obtained the Aadhar Card of Applicant which denotes that on date of incident, the age of Applicant was 18 years and 2 months. He would fairly concede that there is an apparent mistake in notifying age of Applicant in Arrest / Court Surrender Form.

6. Mr. Desai would counter the submissions of learned Prosecutor by stating that as per Section 94 of Juvenile Justice (Care and Protection of Children) Act, 2015 it is categorically and specifically stated in descending order of importance the primacy as to proof of age to be considered on the basis of documents namely :-

- (i) the date of birth certificate from the school, or the Matriculation or equivalent certificate from the concerned

- examination Board, if available; and in the absence thereof;
- (ii) the birth certificate given by a Corporation or a Municipal Authority or a panchayat;
- (iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.

7. Mr. Desai would therefore submit that Aadhar Card would not be the yardstick for determining the age. Mr. Desai would further fairly concede that Applicant is not in position to provide either of the above documents. However he would persuade the Court to consider the Bail Application of the Applicant. However since he is not conceding the fact that Applicant is above 18 years of age on the date of the incident, Prosecution is directed to file appropriate Affidavit-in-Reply within a period of three weeks from today.

8. If required, Investigating Officer may carry out appropriate investigation to apprise the Court about the date of Birth of Applicant on the basis of statutory documents which are prescribed in Section 94

of Juvenile Justice (Care and Protection of Children) Act, 2015. This is so because for Aadhar Card to be issued, the aforesaid documents would have to be considered by the statutory authorities.

9. Stand over to **21st March, 2025.**

H. H. SAWANT

[MILIND N. JADHAV, J.]

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