

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3493 OF 2025
IN
CRIMINAL APPEAL NO. 1034 OF 2023

Nilesh Kisan Waghe ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

Ms. Syed Shabana Mashkooor Ali for the Applicant.

Ms. Mahalakshmi Ganapathy, Addl.PP for the Respondent-State.

Ms. Vrushali Maindad a/w Ms. Simran Raut a/w Ms. Gayatri Kulkarni
for the Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.**
DATE : 22nd JANUARY, 2026

P.C. :

1. The applicant was the original accused in Special Case No.24 of 2018 before the Additional Sessions Judge - 2, Vasai.

The learned Judge, vide his Judgment and Order dated 25th February, 2022, convicted the applicant for commission of offences punishable under Sections 363, 366, 307, 376(2)(i)(j)(k) of the Indian Penal Code and under Sections 4 and 5(m) (n) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012. The major sentence imposed on him was imprisonment for life.

2. The applicant has challenged the impugned Judgment and Order before this Court vide Criminal Appeal no. 1034 of 2023 which is already admitted and is ready for final hearing.

3. At this belated stage, the applicant sent the present application through jail. The date of the application is 23rd June, 2025. The applicant has raised the specific plea that on the date of incident, he was a minor. He has annexed a School Leaving Certificate issued by the Head Master of Shasakiya Prathamik Ashramshala, Pise, Tq.Bhivandi, District Thane. In that certificate, his

date of birth is mentioned as 15th March, 2000. The date of incident is 9th December, 2017. Therefore, as per that certificate, the applicant was three months short of attaining majority.

4. Heard learned Counsel Ms. Sayed Shabana Mashkoo Ali for the applicant, Ms. Mahalakshmi Ganapathy, Addl.PP for the State and Ms. Vrushali Maindad for the respondent No.2.

5. Since the applicant has raised a specific plea, we have considered the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as 'J.J.Act'). Section 9 Sub-Section (2) which has proviso, is relevant in the context of the case, which reads thus :

"Section 9(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."

6. Thus, it can be seen that the proviso mentioned that the claim can be raised before any Court and it has to be recognized at any stage, even after final disposal of the case and such claim will have to be determined in accordance with the provisions contained in J.J. Act and Rules thereunder.

7. Considering this provision, it is necessary to determine whether the applicant was a minor on the date of offence. For that purpose, elaborate inquiry is required to be conducted. This exercise can be done by the Trial court. Hence, the following order :

ORDER

(i) The Additional Sessions Judge - 2, Vasai, shall conduct inquiry under the provisions of the Juvenile Justice

(Care and Protection of Children) Act, 2015 and under the Rules framed under the said Act for determining the age of the applicant on the date of incident.

(ii) A copy of the School Leaving Certificate, annexed to this application, shall be sent by the Registry to the said Court.

(iii) The said Court can issue direction for production of the applicant on every date of inquiry.

(iv) The prosecuting agency shall co-operate with the said inquiry.

(v) The inquiry shall be conducted as far as possible, within a period of eight weeks from today. The Inquiry Report be forwarded to this Court immediately.

(vi) The office shall immediately send a copy of this order to the said Court and also to the applicant.

9. The application is accordingly disposed of.

SANDESH D. PATIL, J.

SARANG V. KOTWAL, J.