



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2250 OF 2023

IN

WRIT PETITION NO.5823 OF 2021

... Applicant

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. M.M. Chaudhari for Applicant.

Mr. J.P. Yagnik, APP for Respondent No.1-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 21st February 2024

P.C. :

1) Applicant/Petitioner convicted under Section 376(f) of the Indian Penal Code, has invoked the jurisdiction of this Court under Section 226 of the Constitution of India, seeking release from jail on the ground of completion of more than 14 years of an actual imprisonment.

2) After taking into consideration the gravity of offence, the State Government by its Order dated 7th November 2019 had rejected the request of the Applicant for his pre-mature release from jail.

3) During pendency of the present Petition, the Applicant filed the aforestated Interim Application for seeking his release from jail on the ground of his juvenility at the time of commission of the said crime.

4) Applicant/Petitioner relied on the School Leaving Certificate issued by the Head Master of Dharmaraj Vishwakarma Primary School, Turkauliya, Bargah (Husemau), Bankati Vasti, Uttar Pradesh, in support of his claim of juvenility. This Court vide its Order dated 29th July 2022 had directed the State to verify the claim of the Applicant. The Police Officer attached to Naigaon Police Station, Mira Bhayander Vasai Virar Police Commissionerate, Dist. Palghar, conducted inquiry with respect to the said School Leaving Certificate. Police Sub-Inspector Mr. Suraj S. Jagtap, attached to Naigaon Police Station, Dist. Palghar, has filed an Affidavit dated 31st August 2023. In para-10 thereof, it is stated that, during verification of the said School Leaving Certificate, it was found that, the said school is recognized by Government of Uttar Pradesh and Head Master of the said Dharmaraj Vishwakarma Primary School, had issued the School Leaving Certificate of the Petitioner vide Transfer Certificate No.52. It is categorically stated that, the date of birth of the Petitioner is 16th April, 1988.

5) Trial Court by its Judgment and Order dated 9th December, 2005, had convicted the Applicant/Petitioner under Section 376 of the Indian Penal Code and sentenced to suffer imprisonment for life.

5.1) Mr. Chaudhari, learned Advocate for the Applicant/Petitioner submitted that, Applicant/Petitioner did not prefer an appeal against the said conviction and sentence. He submitted that, in view of the aforestated fact that, the date of birth of Applicant is 16th April, 1988, on the date of

commission of the offence, i.e. 16th January 2005, he was aged about 16 years and 9 months, a juvenile and therefore provisions of Juvenile Justice (Care and Protection of Children) Act, are squarely applicable to him.

5.2) We find substance in the contentions of the learned Advocate for the Applicant/Petitioner.

6) It is an admitted fact that, the Applicant has already undergone more than three years of actual imprisonment. In view thereof, the Applicant/Petitioner is entitled to be released from jail forthwith.

7) In view of the above, the following Order is passed.

: O R D E R :

- i) Petition is allowed in terms of prayer clause (B).
- ii) Petitioner be released from jail forthwith, if not required in any other offence(s), on production of an operative part of present Order.
- iii) Before release from jail, the Petitioner shall submit his prospective address, where he intends to reside and two names of his close relatives to whom the Police can contact in case of necessity with the Superintendent, Nashik Road Central Prison, Nashik.

(SHYAM C. CHANDAK, J.)

(A.S. GADKARI, J.)