

-a writ in the nature of Habeas Corpus or any other appropriate writ for release/production of the petitioner, aged 16 years (presently detained at Central Prison, Thane); for setting aside orders of the Juvenile Justice Board, Dongri dated 26th August 2021, 8th November 2021 as well as the orders passed by the learned 67th Metropolitan Magistrate, Borivli Court, Mumbai, dated 9th November 2021 and 12th November 2021 passed mechanically, without following the provisions of the Juvenile Justice (Care and Protection of Children) Act; for transferring the matter to the Juvenile Justice Board, Dongri, Mumbai; for initiating departmental inquiry, disciplinary action, criminal prosecution against the respondent No.3- Samadhan Wagh for misleading and misguiding the Juvenile Justice Board, Dongri as well as the Metropolitan Magistrate and for demanding Rs. 50,000/- from the petitioner's father; for or a direction of payment of compensation to the petitioner/his father for the pain and suffering at the hands of the respondents for wrongful prosecution and for transfer of the petitioner's son immediately to the Observation Home, till the

aforesaid petition is finally disposed of, having regard to the fact that the petitioner is around 17 years of age.

3 The petitioner, according to his father, is a Juvenile. The petitioner was taken into custody by the police on 13th August 2021 in connection with C.R. No. 660/2021 registered with the Dindoshi Police Station, Mumbai on 12th August 2021 for the alleged offences punishable under Sections 302, 307, 397, 326, 143, 145, 147, 148, 149, 504, 506(II), 34 of the Indian Penal Code r/w Sections 4 and 25 of the Arms Act and Section 37(1)(A) r/w 135 of the Maharashtra Police Act.

4 According to the learned counsel for the petitioner, the petitioner at the time of the incident, was a minor i.e. a Juvenile aged 16 years 2 months and 5 days and as such, the petitioner ought to have been treated as a Juvenile. Learned counsel for the petitioner states that the petitioner was produced initially before the Juvenile Justice Board, Dongri and was kept in the Children Observation Home,

however, within 3 to 4 days of sending the petitioner to the Juvenile Justice Board, Dongri, Mumbai, the respondent No. 3 called the petitioner's father and asked him to produce the documents with respect to age of his son. Learned counsel for the petitioner submits that pursuant thereto, the petitioner produced the original School Bonafide Certificate along with a xerox copy of the same issued by the School, where the petitioner was studying, to show his date of birth (4th June 2005); a copy of the Aadhar Card confirming the date of birth of the petitioner i.e. 4th June 2005. Learned counsel for the petitioner submits that the respondent No. 3- PI Samadhan Wagh returned the original School Bonafide Certificate issued by the School authorities as well as the Aadhar Card and kept the xerox copies of the same and further demanded a sum of Rs. 50,000/- from the petitioner's father. He submits that the petitioner's father, being a poor person, refused to make the said payment, pursuant to which, respondent No. 3 threatened him saying that now nobody could save his son. He further submits that the respondent No. 3, despite the said documents received from the petitioner, filed an application to the

Juvenile Justice Board on 26th August 2021, which is at Exhibit `B' at page 35 of the petition. In the said application, it is stated that the offence is serious in nature and that there is complicity of the petitioner and that, in order to ascertain the boy's age, he should be sent for the medical examination. Although learned A.P.P states that the respondent No. 3 had furnished the xerox copy of the Aadhar Card before the Juvenile Justice Board, there is nothing on record in Exhibit-B to show that the same was submitted. The Juvenile Justice Board allowed the said request of the respondent No. 3. The order passed by the Juvenile Justice Board reads thus :

“Allowed as per rules.”

It appears that pursuant thereto, the petitioner was taken for medical examination to the Nagpada Police Hospital, Mumbai. It appears from the medical certificate issued by the Medical Officer in the proforma for age determination, which is at page 38, that the opinion given by the Medical Officer is, that the boy was aged about 20-21 years. Detailed report of the ossification test is not produced. It appears that the respondent No. 3 produced the said medical report

before the Juvenile Justice Board on 3rd November 2021. The said report is at Exhibit-D at page 37 of the petition. On the said report, the Juvenile Justice Board has passed the following order:

“In view of medical report, P.S. to take steps to produce Vikas Yadav before regular Court having jurisdiction since he was major on date of offence.”

Thereafter the petitioner was produced before the regular Court and thereafter, the learned 67th Metropolitan Magistrate, Borivli Court, Mumbai, passed orders dated 9th November 2021 and 12th November 2021.

5 The grievance of the learned counsel for the petitioner is that the respondent No. 3 malafidely did not produce the documents handed over by the petitioner’s father to show that his son was a Juvenile at the relevant time. The documents relied upon by the petitioner’s father to show the juvenility of his son are at page 31- Bonafide Certificate, page 32-Aadhar Card showing the age of the petitioner i.e. date of birth as 4th June 2005 and School Leaving

Certificate at Page 36 Exhibit-C of the petition, evidencing the petitioner's date of birth as 4th June 2005. According to the learned counsel for the petitioner, the respondent No. 3, malafidely, did not produce the said documents which showed the juvenility of the petitioner, as the petitioner's father failed to satisfy the demand of Rs. 50,000/- of the respondent No. 3.

6 Learned counsel for the petitioner further submits that even the Juvenile Justice Board has failed to comply with the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children) Act. He submits that there is a procedure laid down under the said Act with respect to the process of age determination. In this context, learned counsel for the petitioner relied on Section 94 (2)(i) (ii)(iii). He submits that only in the absence of any document to show the juvenility of a person, that the age is to be determined by conducting an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board.

7 *Prima-facie*, there is some substance in what is contended by the learned counsel for the petitioner. The documents relied upon, in particular, the Aadhar Card was prepared in 2011 and as such, the petitioner or his father could not have anticipated of any impending case against the petitioner. The Juvenile Justice Board also should have sought documents from the respondent No. 3 before resorting to clause (3) of Section 94 of the Juvenile Justice (Care and Protection of Children) Act. From the documents which are annexed to the petition, the date of birth of the petitioner appears to be 4th June 2005, which, *prima-facie* shows that at the relevant time, petitioner was a juvenile. We are not aware whether the respondent No. 3 had placed any document with respect to the age of the petitioner before the Juvenile Justice Board.

8 In this light of the matter and having regard to the documents annexed by the petitioner's father with respect to the age of the petitioner and as there is non-compliance of the provisions of Section 94 of the Juvenile Justice (Care and Protection of Children)

Act, we quash and set- aside the orders dated 26th August 2021 and 8th November 2021.

9 Having regard to the conduct of the respondent No. 3, we direct that the investigation of the case in hand be handed over by the respondent No. 3-PI Samadhan Wagh to Senior Inspector of Police Jeevan Kharat, Dindoshi Police Station. The Senior PI to place all the documents on which reliance is sought by the petitioner, to show the juvenility of the petitioner, before the Juvenile Justice Board, at the earliest and in any event, within one week from today. The Juvenile Justice Board to take into consideration the said documents and pass appropriate orders in accordance with law, having regard to the mandate of the Juvenile Justice (Care and Protection of Children) Act.

10 In the meantime, till appropriate orders are passed in the aforesaid petition, we direct the Superintendent, Thane Central Prison to forthwith shift the petitioner to the Children Observation Home at

Dongri. The petitioner be kept in the said Children Observation Home until further orders are passed in the aforesaid petition.

11 In the meantime, we direct the Additional Commissioner of Police, North Region, Mumbai, to conduct an inquiry with respect to the allegations made by the petitioner against the respondent No. 3. In the course of the inquiry, the Additional Commissioner of Police to hear the petitioner with respect to the grievance made by him.

12 In the meantime, the proceedings before the Sessions Court being Sessions Case No. 59/2022 *qua* the petitioner is stayed.

13 The Juvenile Justice Board to consider the report tendered by the new officer along with all the documents and pass appropriate orders in accordance with law, as early as possible and in any event, within one week from the date of filing of the report.

14 Learned A.P.P to forward the copies of this order to the Additional Commissioner of Police, North Region, Mumbai and to the Superintendent of Central Prison, Thane, for its prompt compliance.

15 Stand over to 22nd September 2022. To be listed at 4:00 p.m.

16 All concerned to act on the authenticated copy of this order.

MADHAV J. JAMDAR, J.

REVATI MOHITE DERE, J.