



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

CRIMINAL WRIT PETITION (ST) NO.21681 OF 2023

1. Tohid Rehman Shaikh
2. Fareeda Rehman Shaikh ...Petitioners

vs.

1. The State of Maharashtra
2. The Investigating Officer
- 2A. Sajidakhatun Mohhamad Moeez Shaha
3. The Officer in charge
Bhiwandi City Police Station
4. The Probation Officer ...Respondents

Mr. Saugata Hazra a/w Mr. Shahanawaz Pathan, Advocate for the Petitioners.

Mr. S.R. Agarkar, APP for Respondent - State.

Mr. Pramod R. Pardeshi, API, Bhiwandi City Police Station present.

CORAM :S. M. MODAK, J.

DATE :19th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for the Petitioners - Accused and learned APP.
2. The present Petitioner No.1 is charge-sheeted by the Police of Bhiwandi City Police Station for the offence

punishable under sections 363, 376(A,B) of the Indian Penal Code, 1860 ("IPC") and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").

3. Along with him, there are two more accused. The FIR is dated 11th December 2018. When the present Petitioner No.1 appeared before the Court of Additional Sessions Judge he has requested the trial Court to send his case to juvenile Court. It is for the reason that when he was arrested his age was 17 years old. On that application, the trial Court has called say of Investigating Officer / APP. Even trial court was pleased to issue a notice to the Investigating Officer for not filing say. The trial Court has passed the following order on 14.06.2022 :-

"Read application. Perused the School Leaving certificate of the accused. However, this certificate has not been issued by his first school. The accused to furnish documents in respect of his DOB in accordance with Section 12(3) of JJ Rules & to lead evidence accordingly."

4. Being aggrieved by the said order, the Petitioner has filed this Petition. His contention is as follows:-

- (a) Learned Judge has quoted the provisions of Rule 12(3) of the Juvenile Justice (Care and Protection

of Children) Rules. These Rules are of the year 2007. Now, the Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force and there are Juvenile Justice Rules, 2016.

(b) Learned trial Judge has asked him to produce the certificate from the first school which is not contemplated as per the new Act of 2015, whereas certificate can be from any school.

5. This Court directed the Petitioner to join the first informant as party Respondent as per the order dated 1st December 2023.

6. Yet notice is not issued by the office. However, considering the limited controversy as to which provisions of Juvenile Justice Act and Rules are applicable, I have heard both the sides.

7. It is true that as per Rule 12(3) of Juvenile Justice Rules, 2007, an inquiry has to be conducted to determine the age of the Juvenile. There are various documents which can be considered in the alternative. It consists of matriculation certificate and in absence of the same, birth certificate. Rule 12(3)(a)(ii) refers:-

“The date of birth certificate from the school

(other than play school) first attended----

8. According to the learned Advocate for the Petitioners such provision does not find place in Section 94 of the JJ Act 2015. I have read clause (i) of sub-section (2) of section 94 of the said Act. It reads **thus:-**

- (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;”*

9. If we see that it only talks about birth certificate from the school, it does not say about the first school. The Hon’ble Supreme Court has also considered this issue in a judgment of ***Rishipal Singh Solanki vs. State Of Uttar Pradesh & Ors.***¹ in paragraph 25(ii) of the said judgment which reads as under :-

“(ii) With regard to the documents to be provided as evidence, what was provided under Rule 12 of the JJ Rules, 2007 has been provided under sub-section 2 of section 94 of the JJ Act, 2015 as a substantive provision.”

10. There are two aspects for which I am inclined to set aside the order:-

- (i) The trial Court has considered Rule 12(3) of 2007

¹ Criminal Appeal No.1240 of 2021

Rules but now 2015 Act and 2016 Rules are enacted. So, earlier rules does not exist. Rule 94 of 2016 Rules reads thus:

“The Juvenile Justice (Care and Protection of Children) Rules, 2007..... are hereby repealed”

- (ii) Secondly, Section 9(2) of the Act talks about conducting an enquiry by the Court by taking the evidence. As per the proviso, such enquiry has to be conducted as per the Rules. Whereas, Section 94(2) of the 2015 Act refers to date of birth certificate from the school. It no more says about second school.

11. For the above reasons, the Impugned Order cannot be sustained and needs to be set aside. The matter needs to be remanded back to the Trial Court for inquiry.

12. Learned Advocate submitted that the certificate from the first school is produced when admission was taken in the second school. In view of that, the Petitioner is at liberty to ask the management of the second school to produce any certificate from the first school if they possess. With these observations, I pass the following order :-

ORDER

- (i) Writ Petition is allowed;
- (ii) The order dated 14th June 2022 passed by the learned Additional Sessions Judge in Special Case No.68 of 2019 is quashed and set aside;
- (iii) The matter is remanded back to the learned Additional Sessions Judge for conducting inquiry as contemplated under section 94(2) of the Juvenile Justice (Care and Protection of Children) Act, 2015.
- (iv) Writ Petition is disposed of.

[S. M. MODAK, J.]