

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 5 OF 2015

The State of Maharashtra .. Applicant

Versus

Nagraj Sudam Shinde .. Respondents

Mr. D. P. Adsule, APP for the applicant-State.

Mr. Harshad V. Nimbalkar, Hrishi Ghorpade, Satyam Nimbalkar, Advocate for the respondent.

CORAM:-M.L. TAHALIYANI,J.

DATED : -09/02/2015

P.C.

Heard learned APP for the applicant-State.

2 This revision application challenges the order passed by the Special Judge under Protection of Child from Sexual Offence Act ("POSCO Act" for short). The applicant-State was aggrieved by the order refusing to grant police custody of the respondent to the police. The respondent had surrendered on 10th of November, 2014 before the Special

Judge. He was accused of the offences punishable u/s 376 of IPC and u/s. 3(i), (xi), (xii) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and u/s 3 and 4 of the POSCO Act. The learned Special Judge took the respondent in custody and remanded him to judicial custody till 14th of November, 2014. It appears that he was again produced and remanded to judicial custody. An application was made by the applicant on 24th of November, 2014 for police custody of the respondent. The learned Special Judge refused to grant police custody on the ground that the initial period of fifteen days was over.

3 The learned Addl. PP has submitted that 10th of November, 2014 was to be excluded and one day's police custody could have been granted. In this regard, it may be noted here that the respondent had surrendered on 10th of November, 2014 and he was remanded to judicial custody till 14th of November, 2014. As such the first remand order was

passed on 10th of November, 2014. Fifteen days period is to be counted from the first day of remand application and not from the date of arrest. In the present case the respondent was never arrested by the police. As already stated, he had surrendered and he was remanded to judicial custody, therefore, the applicant could have prayed before the Special Judge for police custody, before expiry of fifteen days. Fifteen days expired on 24th of November, 2014. Technically speaking at the most few hours' custody could have been granted by the Magistrate. Such an order would have been meaningless.

4 Moreover, there is no satisfactory explanation as to why the application for custody was not made between 11th of November, 2014 to 23rd of November, 2014. It is submitted by the learned Addl. PP that the respondent had suffered injuries and he was on stretcher when he surrendered before the Special Judge. It is further submitted that the respondent was hospitalized. Therefore, police custody could not be prayed.

This explanation cannot be accepted. In view of statutory provisions, the applicant could have prayed for police custody and could have interrogated the respondent in hospital. There is no law that the accused shall necessarily be interrogated in the police station.

5 In view thereof, I do not find any substance in the revision application. It is dismissed.

(JUDGE)

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