

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

**CRIMINAL APPLICATION NO.864 OF 2018**

Furkhan Hidayatullah Khan

.. Applicant

**Vs.**

The State of Maharashtra & Anr.

.. Respondents

.....  
Ms.Ratna R. Jaiswal, Advocate for the Applicant.  
Mrs.N.S. Jain, APP for the Respondent – State.  
.....

**CORAM : PRAKASH D. NAIK, J.**

**DATED : JULY 20, 2018.**

**P.C. :**

Applicant is original accused no.2 in the proceedings pending before the Special Court for Protection of Children From Sexual Offence, Act, 2012 (hereinafter referred to as “POCSO”, for short), vide Special Case No.2 of 2015.

2           The applicant is aggrieved by order dated 29<sup>th</sup> June, 2018, passed by the Learned Additional Sessions Judge, Greater Mumbai in the aforesaid proceedings. The evidence of P.W.2 was recorded by the Court on 29<sup>th</sup> June, 2018, the accused was present in the Court. Since the advocate representing the

applicant was held up in another Court, the applicant preferred an application Exhibit - 33, for adjournment. The said application was rejected by the Court. On perusal of order dated 29<sup>th</sup> June, 2018, it is apparent that the Court rejected application for adjournment and further stated that the opportunity was given to the accused to cross-examine the witness personally to which he declined.

3            Learned counsel for the applicant submits that the advocate representing the applicant-accused was held up in other case and, therefore, could not remain present before the trial Court for conducting cross-examination. However, an application for adjournment was preferred, which was rejected. In the circumstances, it is prayed that the applicant be permitted to cross-examine P.W.2, by recalling the said witness.

4            Learned APP submitted that the advocate for the applicant was absent and an opportunity was given to the applicant-accused to conduct the cross-examination.

5            On perusal of the documents on record, which it appears that the prosecution has examined P.W.1 on 31<sup>st</sup> May,

2018. Advocate representing the applicant-accused had conducted cross-examination of the said witness, and, thereafter, the matter was adjourned to 1<sup>st</sup> June, 2018, and, subsequently, to 29<sup>th</sup> June, 2018. There is nothing on record to indicate that the accused had protracted the proceedings in any manner. The applicant-accused had declined to cross-examine, since the advocate representing the applicant-accused was not available and the applicant was not in a position to conduct cross-examination. Indeed an application for adjournment was preferred which was rejected. Prejudice would be caused to the accused in the event an opportunity is declined to conduct the cross-examination. In the circumstances, the order dated 29<sup>th</sup> June, 2018, closing the evidence of P.W. 2, is set aside. The advocate for the applicant can be directed to cross-examine the witness on 21<sup>st</sup> July, 2018.

6                    Hence, I pass the following order:

**:: ORDER ::**

- (i) Criminal Application is allowed;
- (ii) P.W.2 is directed to be recalled for cross-examination by the advocate for the applicant  
- accused;

- (iii) Learned counsel for the applicant shall proceed with the cross-examination on 21<sup>st</sup> July, 2018;
- (iv) Criminal Application stands disposed of;
- (v) Parties to act upon an authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**