

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 66 OF 2019
(THROUGH POST)**

Sajid Naseem Ahmed Khan	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Veerdhawal Deshmukh, *amicus curiae* for the Applicant

Mr. S. V. Gavand, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
WEDNESDAY, 20th MARCH 2019

P.C. :

1 This is an application sent by the applicant through jail. The applicant seeks transfer of his case from the Court of the learned Additional Sessions Judge (Court Room No. 35), Greater Mumbai, hearing POCSO Special Case No. 17/2017 to any other Court. On 15th March 2019, Mr. Deshmukh was appointed as an *amicus* to espouse the cause of the applicant.

2 Mr. Deshmukh, learned *amicus curiae* submits that the ground on which transfer is sought is that the concerned Court dealing

with his case is biased, as the learned Judge had not given time to the applicant to hire a good lawyer for defending his case. He further submits that the applicant in his application has stated that no appointed advocate/legal aid advocate has been representing him and that the learned Judge is insisting that the applicant conducts the cross-examination himself.

3 Learned A.P.P submits that the examination-in-chief of PW 1-mother of the prosecutrix, and PW 2-the prosecutrix is over, however, since the applicant's advocate was absent and the applicant declined to cross-examine the said witnesses personally, the said witnesses were not cross-examined.

4 It appears that the applicant has denied the appointment of an advocate from legal aid and the same is reflected in the order dated 19th January 2019 passed by the trial Court. The learned Judge has observed that the applicant is refusing legal aid; that the applicant's advocate is not appearing; and nor is he ready to cross-examine personally, and as such, she was left with no option but to

discharge both the witnesses i.e. PW 1 ad PW 2, without their cross-examination.

5 Perused the application sent by the applicant through jail. Heard learned counsel for the applicant and learned A.P.P. Also perused the report dated 2nd March 2019 sent by the Additional Sessions Judge.

6 It is not in dispute that two witnesses have been examined till date i.e. PW 1 and PW 2 and that the said witnesses have not been cross-examined. It appears that the applicant wants to engage an advocate of his choice and that although offered legal aid, has refused the same. The allegations as against the applicant are serious and hence, it is important that the applicant is represented either by a counsel of his choice or an advocate from the legal aid panel, who is sufficiently senior and experienced to conduct the case. The applicant cannot be insisted upon to cross-examine the witnesses himself, considering he has no legal expertise. It is the duty of the Court to ensure that the applicant is given legal aid and that an experienced

advocate from the Legal Aid Panel is appointed, considering the serious charges the applicant is facing.

7 Having regard to the facts of this case, although I am not inclined to entertain the application seeking transfer of the case, it would be in the interest of justice to give an opportunity to the applicant to engage an advocate of his choice within two weeks from the date of receipt of this order. In the event, the applicant is unable to appoint an advocate, the trial Court shall appoint an experienced advocate to conduct the case on behalf of the applicant, so that, the applicant's interest is well protected, considering the serious charges that have been levied against him.

8 Needless to state, that after the advocate is appointed either by the applicant or by the Court through legal aid, the applicant be given liberty to cross-examine the witnesses i.e. PW 1 and PW 2 and thereafter, the Court to proceed with the recording of other witnesses.

9 Application is disposed of on the aforesaid terms.

10 The Registry to communicate this order forthwith to the applicant through the Superintendent Mumbai Central Prison as well as the learned Judge who is seized of the said case.

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

REVATI MOHITE DERE, J.