

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

CRIMINAL WRIT PETITION NO. 3620 OF 2019

Pankaj Arjunbhai Koli
Versus
The State of Maharashtra

...Petitioner

...Respondent

Mr. Nilesh Ojha i/b Mr. Abhishek Mishra and Ms. Manasi Jain for the
Petitioner

Mrs. S. V. Sonawane, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.

FRIDAY, 23rd OCTOBER 2020

(THROUGH VIDEO CONFERENCING)

P.C. :

1 Heard learned counsel for the parties.

2 By this petition, the petitioner has impugned the order dated
27th June 2019 passed by the learned Special Judge, POCSO Court,
Mumbai, by which, the learned Special Judge was pleased to reject the
petitioner's application for conducting Narco-Analysis test of the
complainant and the victim. The substantive prayers read as under :

“(a) To set aside the order dated 27th June, 2019 passed by Ld. Special Judge, Mumbai whereby unlawfully rejecting the application for rejecting application for conducting Narco Analysis test of complainant and victim filed by the Petitioner accused in POCSO SPL CASE NO. 263/2015.

(b) Direct Ld. Special Judge to direct Police officer for making arrangement of Narco Test of Complainant and Victim.”

3 Learned counsel for the petitioner submits that the petitioner/accused has a right to seek Narco-Analysis of the complainant and the victim in the present case, so that the truth can be brought on record. Learned counsel for the petitioner has filed written arguments as well as a compilation of judgments on which he seeks to rely. According to the learned counsel, the examination-in-chief of the victim's aunt reveals that she is not disclosing the truth, as there are several discrepancies in her deposition and hence, it is necessary to subject the complainant and the victim to Narco-Analysis test, so that the truth can surface.

4 Learned A.P.P opposes the petition. She submits that the petitioner is an accused, who is facing trial for the offences punishable

under Sections 376(1), 376(2B), 377, 354, 506 of the Indian Penal Code and Sections 3, 4, 5 and 9 of the Protection of Children from Sexual Offences Act ('POCSO'). She submits that the prosecution has examined all its witnesses and that the present petition seeking Narco-Analysis test of the complainant and the victim is filed at the fag end. She submits that the matter is posted for final arguments on 27th October 2020 and that the complainant and the victim cannot be directed to undergo Narco test on the premise that there are discrepancies in their evidence. She submits that no interference is warranted in the impugned order dated 27th June 2019 passed below Exhibit 26 by the learned Special Judge, POCSO Court.

5 Perused the papers. The petitioner was arrested in connection with C.R. No. 128/2015 registered with J.J. Marg Police Station, Mumbai, for the alleged offences punishable under 376(1), 376(2B), 377, 354, 506 of the IPC and Sections 3, 4, 5 and 9 of the POCSO. According to the prosecution, the petitioner/accused sexually assaulted the victim girl aged 10/12 years, who is the complainant's niece. After completion of investigation, charge-sheet was filed and the petitioner was released on bail. Thereafter, the trial commenced and the prosecution examined all its witnesses. It appears that thereafter the petitioner's 313 statement was recorded. It appears that at this stage, the petitioner/accused filed an

application for conducting the Narco-Analysis test of the complainant and the victim girl, an orphan aged 10/12 years. In the application i.e. Exhibit 26, the petitioner has stated that the examination-in-chief of the victim's aunt i.e. the complainant reveals that she is not telling the truth and that there are several discrepancies in her deposition as well as the victim's deposition and that the victim girl, an orphan, is deposing under the pressure of her aunt. It is stated that under these circumstances, it is necessary to conduct the Narco-Analysis test of the complainant and the victim to ascertain the truth. Accordingly, it was prayed that an appropriate order be passed directing the Authority to conduct Narco-Analysis test of both, i.e. the victim and her aunt i.e. the complainant. The said application (Exhibit 26) was rejected by the learned Special Judge vide order dated 27th June 2016. Para 2 of the impugned order reads as under:

“2. Perused application. In the present matter the searching cross examination of complainant and witnesses is already recorded. Moreover the evidence of all the prosecution witnesses is over. The accused prayed for NARCO Analysis of the prosecution witnesses. The application is filed after conclusion of trial. The prosecution can ask for NARCO Test of the accused at the time of investigation. However accused can not ask for NARCO Test of complainant and victim. Moreover the trial is concluded and matter is fixed for final arguments. There

is no provision by which accused can direct the prosecution witnesses to undergo NARCO Test. So also the NARCO Test can not be carried out without the consent of the witnesses. Therefore I do not found merit in the present application. Hence I proceed to pass following order :-

ORDER

The Application Exh. 26 stands rejected.”

6 It is not in dispute that the trial is at its fag end. None of the judgments relied upon by the learned counsel have any bearing in the facts of the present case. Amongst all the judgments annexed to the written submissions, learned counsel for the petitioner relied on the judgments of the Rajasthan High Court in the case of ***State of Rajasthan vs. Jasveersingh Jat***¹ and the judgments of the Gujarat High Court in the case of ***(Dr.) Purushottan Swaroopchand Soni vs. (The) State of Gujarat***² and ***Sunilkumar Virjibhai Damor vs. State of Gujarat***³.

7 As far as ratio in the case of ***Jasveersingh Jat (Supra)*** is concerned, the case essentially deals with the right of an accused to appear as a witness in his defence and has no bearing to the facts of the present case. As far as the judgment in ***(Dr.) Purushottan Swaroopchand Soni***

1 2018 (3) RLW 1935 (Raj.)

2 2007 SCC OnLine Guj 58

3 2018 SCC OnLine Guj 2153

(Supra) is concerned, it is a case where the petitioner therein was an accused who was demanding brain-mapping test, to prove his innocence, which was allowed by the Court. Again, the facts in the said case are clearly distinguishable with the facts of the present case. In ***Sunilkumar Virjibhai Damor (Supra)***, the learned Judge of the Gujarat High Court had, whilst granting bail to the accused therein, had observed and suggested that the first informant in that case, her son and mother of the victim to be subjected to lie detector narco-analysis and brain-mapping test. The said case was carried to the Apex Court, by the grandmother of the victim and the Apex Court, vide order dated 29th October 2018 passed in Criminal Appeal No. 1309 of 2018, set-aside the said order in the case of ***Sunilkumar Virjibhai Damor (Supra)***.

8 Discrepancies in the evidence of the complainant and the victim cannot be a ground for subjecting the complainant and the victim girl to Narco test. The application filed by the petitioner seeking narco-test of the complainant and the victim, is misconceived. Having considered the submissions of the learned counsel for the petitioner and the learned A.P.P, no infirmity can be found in the impugned order dated 27th June 2019 passed by the learned Special Judge, POCSO Court, Mumbai, on Application (Exhibit 26).

9 The petition is accordingly dismissed.

10 All concerned to act on the copy of this order, digitally signed
by the Senior Private Secretary of this Court.

REVATI MOHITE DERE, J.