

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

914 CRIMINAL WRIT PETITION NO.76 OF 2021

**SHRIKRUSHNA BALASAHEB KACHAVE
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Swapnil S. Rathi, Advocate for the petitioner
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 02-12-2021

P. C.

. This petition challenges the order dated 10-12-2020 passed by the Special Judge (POCSO), Parbhani below Exh. 57 in Special Case (POCSO) No. 15 of 2019.

2. The petitioner is an accused in the aforesaid special case and is facing trial for the offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code and Section 6 of the Protection of Children from the Sexual Offences Act.

3. By an application at Exh. 57 under Section 311 of the Code of Criminal Procedure the prosecution sought permission to examine Registrar

of Birth and Death, Municipal Council, Gangakhed to prove the date of birth of the victim so also one Fulbai Kachave, a Anganwadi Sevika through whom, the victim got vaccinated, after few months of her birth, as prosecution witnesses. Said application came to be allowed by the order impugned.

4. I have heard the learned counsel for the petitioner and the learned APP for the State.

5. The learned counsel for the petitioner submits that the application at Exh. 57 came to be moved at the fag end of the trial i.e. after the court has heard the final arguments in the matter. It is submitted that by the application at Exh.57 the attempt of the prosecution is to fillup the lacunas in its case. It is submitted that the trial court, thus, ought not to have allowed the application at Exh.57.

6. On the other hand the learned APP submits that the evidence of witnesses mentioned in the application at Exh. 57 is essential for the just decision of the case. It is submitted that, considering the facts and circumstances, no

interference is called for in the impugned order.

7. According to the prosecution on the day of incident the victim was minor. To prove the said fact the school record of the victim was collected wherein her date of birth is mentioned as 18-04-2005. It appears that the prosecution has examined necessary witnesses to prove the school record. However, it appears that at the time of final arguments the submission came to be made on behalf of the defence that the school record cannot be held to be sufficient to prove the date of birth of the victim. It appears that this submission prompted the prosecution to file an application at Exh. 57.

8. Though it appears that the application at Exh. 56 came to be moved belatedly, but it cannot be said that the intent of the prosecution behind filing of the said application is to fillup the lacunas in its case as the evidence which the prosecution is proposing to adduce is not in relation to any new fact. Thus, the trial court was justified in granting permission to the prosecution to examine the Registrar of Birth and Death, Municipal Council, Gangakhed. However, in my view,

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the trial court was not justified in granting permission to examine Anganwadi Sevika Fulabai Eknath Kachave, as the prosecution has not mentioned in its application that the birth details of the victim were obtained at the time of her vaccination and records in that respect are being maintained by the Anganwadi Centres. In the result following order is passed.

ORDER

i. The petition is allowed.

ii. The impugned order to the extent of seeking permission to examine the Anganwadi Sevika Fulabai Eknath Kachave is set aside.

ii. Rest of the order is confirmed.

[N. R. BORKAR, J.]

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