

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

10 CRIMINAL WRIT PETITION NO.1315 OF 2021

IMTIYAZ SHAIKH MOIDDIN SHAIKH

..PETITIONER

V E R S U S

THE STATE OF MAHARASHTRA

..RESPONDENT

...
Advocate for Petitioner : Mr. S. J. Salunke
APP for Respondent: Mrs. G. L. Deshpande
...

CORAM : N.R. BORKAR, J.
DATE : 22.11.2021

PER COURT :-

This petition takes an exception to the order dated 22.10.2021 passed by the learned Special Court, Jalna below Exh.46 in Special Case No. 1 of 2020.

2. The petitioner is facing trial for the offences punishable under Section 506 of the Indian Penal Code and under section 8 and 12 of the Protection of Children From Sexual Offences Act, 2012 (POCSO).

3. The prosecution moved an application under Section 311 of the Code of Criminal Procedure. The learned trial Court allowed the said application by the order impugned.

4. I have heard the learned counsel for the petitioner and learned A.P.P for respondent State.

5. Learned counsel for the petitioner submits that the witness to whom the prosecution wants to examine was not cited as witness in the charge sheet. It is submitted that the prosecution wants to examine the witness in question to prove the birth certificate of the victim, which came to be filed on record after one year of filing of charge-sheet. It is submitted that the prosecution has already examined the witness to prove the date of birth of the victim on the basis of school record. It is further submitted that according to school record, the birth place of the victim is Jalna, whereas as per birth certificate, the birth place of the victim is Ranjani Tq. Ghansavangi Dist. Jalna. It is submitted that this fact would indicate that the birth certificate is fabricated document and it came to be prepared after filing of the charge sheet with a view to fill up lacuna in the case. It is submitted that the order impugned, thus needs to be set aside.

6. On the other hand, learned A.P.P for the respondent State submits that right from beginning the case of the prosecution is that the date of birth of the victim is 24.01.2007. In the birth certificate the same date of birth is mentioned. It is submitted

that thus there arises no question of filling up of lacunas. It is submitted that the trial Court has thus rightly allowed the application.

7. It appears that during investigation the school record of the victim was collected and according to the school record the date of birth of the victim is 24.01.2007. It appears that after filing of charge sheet, birth certificate of the victim came to be filed on record and according to birth certificate also the date of birth of the victim is 24.01.2007. By the order impugned, the trial Court has allowed the application filed by the prosecution and permitted it to examine the authority, who has issued the said birth certificate as witness. Therefore, there arises no question of filling up of lacunas by the prosecution. The contention that date of birth certificate is fabricated document cannot be gone into at this stage. Considering these facts and circumstances, no interference is called for in the order impugned.

8. In the result, petition is dismissed.

(N. R. BORKAR)
JUDGE