

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

REVISION APPLICATION NO.262 OF 2021

Yasim Mohammad Ali Kazi

...Applicant

Vs

The State of Maharashtra & Anr.

... Respondents

...

Ms. Vrishali Rajee for the Applicant.

Mr. A.R.Patil , APP for the Respondent-State.

Mr. Mangesh Patel for the Respondent No.2.

CORAM : SANDEEP K. SHINDE J.

DATE : DECEMBER 21, 2021.

P.C. :

Heard, Ms. Rajee, the learned counsel for the applicant,
Mr. Patil, the learned Additional Public Prosecutor and Mr. Mangesh
Patel for the Complainant.

2 This Revision under Section 397 of the Code of Criminal
Procedure ('Cr.P.C.' for short) questions, legality, propriety and
correctness of the order dated 3rd December, 2021 below Exhibit 94
passed in Special Case No.04 of 2017 by the learned Additional

Sessions Judge, Palghar.

Facts, essential for just decision in this application are;

3 Applicant accused, is facing the trial in the Special Case No.04 of 2017 for the offences punishable under Sections 363, 376, 366(A), 354C, 354 of the Indian Penal Code, 1860 and Sections 3,4,7,8,9 and 10 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short). Prosecution in the course of the trial, had examined Sandip Suryawanshi, Investigating Officer as P.W.11 and brought on record birth certificate (dated 19th December, 2012) of the victim, which was marked as Exhibit 80. Later, when the trial crossed the stage of final arguments, prosecution moved an application on 1st December, 2021 and sought to exhibit birth certificate of the victim dated 5th March, 2020, issued by the Chief Officer, Dahanu Municipal Council. Although the say of the accused was called for, it appears, on the very date without hearing the accused, it was marked, as Exhibit 93. Afterwhich, on 3rd December, 2021, accused moved an application requesting, that the order of

exhibiting birth certificate at Exhibit 93 be recalled and the applicant be permitted to file say. That application was rejected by the learned Additional Sessions Judge on the ground that birth certificate marked Exhibit 93 is a public document issued by the public authority and, therefore, certificate can be admitted in the evidence without further proof.

4 Feeling aggrieved by the said order, the accused has moved this Revision Application.

5 Indisputably, prosecution moved an application on 1st December, 2021. Although say of the accused was called for, it could not be filed on the same date. Yet, without hearing the accused, the trial Court exhibited the birth certificate dated 5th March, 2020 of the victim as Exhibit 93. In my view, course of action, followed by the learned Additional Sessions Judge to mark Exhibit 93 without hearing the accused cannot be countenanced, as it would defeat the, valuable right of the accused to challenge the validity and correctness of the said certificate. The fact, cannot be overlooked in the cases under the

POCSO Act, age of the victim is the most ‘relevant’ and ‘crucial’. May be, for whatever reasons, if the prosecution desires to bring on record another birth certificate of the victim, it would always be subject to process of law, and upon affording reasonable opportunity to the accused. Here, in this case since the order, exhibiting birth certificate has been passed without hearing the accused, it is required to be quashed and set aside.

6 As a result, the impugned order dated 3rd December, 2021 passed below Exhibit 94 in Special Case No.04 of 2017 is quashed and set aside.

7 In consideration of the facts of the case, since the trial has crossed the stage of final arguments, I deem it appropriate to direct the learned Additional Sessions Judge, Palghar to decide the prosecution’s application in accordance with law by affording reasonable opportunity, to the applicant.

8 Applicant-accused shall appear before the learned

Additional Sessions Judge, Palghar on 24th December, 2021 at 11.00 a.m. Whereafter, the learned Additional Sessions Judge, Palghar shall hear the accused on the application moved by the prosecution and conclude the same on the same date in accordance with law.

9 The learned Additional Session Judge, Palghar shall defer the date of pronouncing the judgment beyond 27th December, 2021.

10 Revision Application is allowed and disposed of in the aforesaid terms.

11 All parties to act upon an authenticated copy of this order.

(SANDEEP K. SHINDE, J.)