

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.120 OF 2021

Ankush s/o Manikrao Bansod
Aged about 31 yrs., Occ: Service,
R/o SRPF Qtr No. 39/1, Group-9,
Wadali Naka, Chandur Bazar Road,
Amravati, Tah. & Dist. Amravati. **PETITIONER**

...V E R S U S...

State of Maharashtra through
Police Station Officer,
Police Station Frezarpura, Amravati,
Tah. & Dist. Amravati. **RESPONDENT**

Mr. R.D. Wakode, Advocate for Petitioner.
Mr. S.S. Doifode, APP for Respondent/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **9th FEBRUARY, 2021.**

ORAL JUDGMENT:

Heard.

2. **Admit.**

3. With consent the petition is finally heard at the
admission stage.

4. The petitioner has a limited grievance. He sought two fold relief from the learned Sessions Judge, Amravati who is presiding over Special Case 281 of 2019 in which the petitioner is facing trial for offences punishable under Section 376(2)(i)(j) of the Indian Penal Code and Section 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012. The first relief which is of recalling PW-2 and PW-3 is granted. However, the prayer of the petitioner – accused that he be produced before the court physically is rejected.

5. The learned Sessions Judge reasons thus:

15. Learned advocate for the accused prayed that the presence of the accused be secured before the court physically by giving directions to the jail authorities. Nowadays, we are going through the pandemic Covid-19 situation. There are certain directions from the Hon'ble High Court and physical hearing is also restricted. Accused is under trial prisoner. His presence can be secured through video conferencing after ascertaining whether he is able to hear the evidence or not. The production of the accused physically in such a situation is not practicable. The under trial prisoners are also going through the Covid-19 pandemic situation and suffering from the said virus. Therefore, the prayer of the accused of his physical production cannot be entertained.

6. Notably, the High Court has issued Circular dated 29th

January, 2021 directing that all subordinate courts shall function physically from 01.02.2021 in the manner in vogue pre-pandemic. This aspect apart, if the accused apprehends that virtual appearance, as opposed to physical appearance/production, would cause injustice in the sense that the issue of identification of the accused is involved, due weight shall have to be given to such apprehension. Ultimately, justice must not only be done, it must be seen to have been done.

7. The order impugned is quashed to the extent physical production of the accused is disallowed.

8. The petitioner – accused shall be physically produced in the court when the statements of witnesses are being recorded.

9. The petition is allowed.

JUDGE