

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

CRIMINAL WRIT PETITION NO. 196 OF 2022

Abhishek Dinesh Parihar

..PETITIONER

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. N.S. Ghanekar, Advocate for petitioner

Mr. S.P. Sonpawale, A.P.P. for respondent no.1 – State

Mr. S.N. Menchiral, Advocate for respondent no.2

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CORAM : R.G. AVACHAT, J.

DATED : 27st APRIL, 2022

PER COURT :

1. Heard.

2. The challenge in this petition is to the common order dated 23rd November, 2021 passed by the Special Judge (under POCSO Act), Aurangabad on applications below Exhibits 85, 87 and 88. The main challenge is to the order forfeiting the petitioner's/accused right to conduct further cross examination of the victim. The learned Judge in paragraph no.10 of the impugned order has observed thus :-

“10. If these facts and circumstances is taken into consideration reveals the conduct of accused to harass the witness by remaining absent when his Advocate is present in the court and

to seek adjournment on that ground. In its addition, now he came with a prayer of adjournment for change of Advocate as his Advocate on role is busy and could not conduct the matter. These circumstances relied on to seek the adjournment by the accused if considered with lenient view certainly will cause injustice to the victim who is not supposed to suffer either for the absence of accused during the trial or for the busy schedule of Advocate for defence. The busy schedule of Advocate cannot be a good ground for grant of adjournment in old pending case of the year 2015 when the victim's material cross-examination has been conducted on 19.6.2017 and thereafter on 10.7.2017 and 20.8.2019. So also, the victim was present on 20.11.2021 and today on 23.11.2021.

In this background, the concept of fair trial has also to be seen from the point of victim and not only from the point of accused and protection of his rights specifically when the conduct of accused is evident and his intention to prolong the matter supported with the record.”

3. Learned counsel for Respondent No.2 - victim relied on Section 35 of the Protection of Children from Sexual Offences Act, 2012 ('the POCSO Act') to submit that evidence of the child shall be recorded within thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court. The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

4. There can be no two views over what has been submitted by learned counsel for Respondent No.2 – victim relying on Section 35 of the POCSO Act. Learned counsel for the petitioner has now come around to submit no unnecessary adjournments would be asked for in the proceeding before the trial Court. It needs no mention that right of cross examination is a part of fair trial. True, the trial Court might have been justified in passing the order impugned herein. The fact however, remains that in all fairness this petition needs to be allowed in terms of following order :-

The order forfeiting the petitioner's right to further cross-examine the victim is hereby set aside. Learned counsel for the petitioner shall complete the cross-examination of the victim on the date to be specified by the trial Court in this regard. The amount of cost, if deposited with this Court, be transmitted to the trial Court for being paid to the victim. Criminal writ petition stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD