

VRJ

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

WRIT PETITION NO.2549 OF 2022

Vijay Deoram Kandalkar	... Petitioner
V/s.	
The State of Maharashtra & Anr.	... Respondent

Ms. Namrata A. Darvesh i/by Mr. Kishore Gaikwad for
the petitioner.

Mr. A.R. Patil, APP for the respondent/State.

Mr. Ajinkya Udane for the respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2022

P.C.:

- 1. Rule.** Rule is made returnable forthwith.
- 2.** The petitioner is prosecuted for the offence under sections 354(d), 506 of the Indian Penal Code and section 12 of the Protection of Children from Sexual Offences Act, 2012. The petitioner filed an application seeking examination of defence witnesses.
- 3.** Learned Special Court by order dated 7th April, 2022 rejected the said application stating that ample opportunity was granted to the defence. The petitioner has, therefore, filed present

petition.

4. Learned advocate for the petitioner submitted that at the relevant time learned advocate for the petitioner was suffering from Covid-19 and, therefore, he could not remain present and conduct the examination. He submitted that the learned advocate for the accused is ready to examine the witnesses on two dates and they will not seek further adjournment from the Special Court.

5. Learned advocate appointed to represent the victim strongly objected for grant of relief in favour of the petitioner. According to him, filing of this application is nothing but an attempt to delay the trial. Ultimately, it is the victim who is suffering and, therefore, no interference is called for.

6. Mr. A.R. Patil, APP for the State opposed the submissions stated that the application is not bona fide. He submitted that the enough indulgence was shown by the learned Special Court.

7. Having considered the submissions made on behalf of both the sides, in my opinion, it would be in the interest of justice to allow the petitioner to examine the defence witnesses as per the time schedule mentioned in the operative part of the order.

8. Considering the nature of the offences alleged against the petitioner, in my opinion, the opportunity to lead defence evidence needs to be granted as the same would be in the interest of justice. It needs to be noted that the reason mentioned in the application for not conducting the examination is that the advocate for the accused was suffering from Covid-19 at the relevant time. Hence, following order:

- a) The impugned order dated 7th April, 2022, below Exhibit-66 is quashed and set aside.
 - b) The application below Exhibit-66 is allowed.
 - c) The petitioners are permitted to examine their witnesses on two dates as decided by the learned Special Court.
 - d) The parties shall appear before the learned Special Court on 12th December, 2022.
 - e) The learned Special Court shall fix the schedule of two dates to enable the accused to examine the defence witnesses.
9. Rule is made absolute in above terms.

(AMIT BORKAR, J.)