

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.1672 OF 2020**

Sandeep Ramkumar Gautam @ .. Applicant
Mourya

Versus

The State of Maharashtra .. Respondent

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Mr.Dinesh G. Mishra with Mr.Tanmay H. Gujrathi for the Applicant.

Mr.S.V.Gavand, A.P.P. for the State/Respondent.

PSI Nitin Gaikwad attached to Powai Police Station, present.

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**CORAM: BHARATI DANGRE, J.
DATED : 05th AUGUST, 2022**

P.C:-

1. In compliance of the earlier direction, learned 1st Additional Principal Judge, City Civil & Sessions Court, Dindoshi (Borivali Division), Mumbai, has forwarded a report dated 22/07/2022, offering reason of long pendency of Special Case No.257 of 2017, since 2017.

2. A detailed report, cite various reasons, as to why evidence could not proceed and the foremost reason appears to be non-production of the accused from the jail custody. The

learned Judge has given the happening of each date and has recorded that on 25/01/2022, the victim was present for evidence, but the Advocate for accused was absent and even the accused was not produced from custody. Further, due to technical problem, the VC could not be connected and, therefore, evidence could not be recorded. The conduct of the Advocate for the accused is also reflected in the report of learned Judge, when he refused to cross-examine the witnesses on the ground that the accused is not produced before the Court.

In the concluding paragraph, the learned Judge has committed for expeditious disposal of the special case, if the Advocate for the accused is ready to cross-examine the witnesses, in absence of the accused.

3. Learned counsel for the applicant is insisting upon the provision of Section 36 of the POCSO Act and submits that in every contingency, the accused should be in a position to hear the statement of the child and communicate with his Advocate. By relying upon sub-section (2), he would submit that it is open for the Special Court to record the statement of a child through video conferencing or by utilising single visibility mirrors or curtains or any other device.

By reading Section 36, learned counsel would interpret it in a way, to suggest that in no case, the evidence of the witnesses can be recorded through VC and on every date, he should be present, when the evidence of the child is being recorded.

4. The attention of the learned counsel is invited to the decision in the case of *State of Maharashtra Vs. Dr.Praful B. Desai*¹ as regards Section 273 of Cr.P.C., which has accepted the recording by video conferencing as permissible mode of recording of evidence. It has been categorically held that, “The evidence so recorded is being recorded in ‘presence’ of accused would fully meet requirements of Section 273”.

Surely, the applicant cannot claim the right more than the one, which is available to an accused under Section 273 of Cr.P.C.. The attention of the learned counsel is also invited to Section 31 of the POCSO Act, which reads thus :-

“31. Application of Code of Criminal Procedure, 1973 to proceedings before a Special Court.- Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 or 1974)(including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Sessions and the person

1 AIR 2003 SC 2053

conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.”

5. In the light of above provision, the contention of the Advocate that, he shall examine the witnesses only in the physical presence of the accused, cannot be accepted. It is always permissible to conduct the proceeding on video conferencing and the evidence of the witnesses can be recorded.

6. In any case, considering that the applicant is incarcerated since 2017, the learned Judge shall issue necessary direction to the jail authorities for production of the accused on the date when the evidence is scheduled, but in case of grave emergency where for exceptional circumstances, the accused could not be produced, the facility of video conferencing shall be ensured so that on this count, there is no further delay in the trial.

7. The learned Judge is requested to conclude the proceedings in Special Case No. 257 of 2017 within a period of six months from today, since the learned A.P.P. has submitted that three witnesses are already examined and five more witnesses are likely to be examined.

8. With the aforesaid direction, the application is disposed off.

(SMT. BHARATI DANGRE, J.)