

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

CRIMINAL APPLICATION (APL) NO. 429 OF 2022

Vinesh s/o Ashok Sardar (Jail),
Age – 21, Occupation – Labour,
R/o Batwadi, Taluka – Balapur,
District – Akola.

.... **APPLICANT**

VERSUS

1) State of Maharashtra,
through Police Station Officer,
Police Station, Balapur, Akola.

2) XYZ Victim,
through its complainant,
vide Crime No.246/19, PSO Balapur,
District – Akola.

.... **NON-APPLICANTS**

Mr. A.S. Londhe, Counsel for the applicant,
Mr. S.M. Ukey, Addl.PP for non-applicant No. 1/State,
None for non-applicant No.2.

CORAM : VINAY JOSHI, J.
DATED : 13th JUNE, 2022

ORAL JUDGMENT :

Heard.

2. **Admit.**

3. Heard finally by consent of both parties.

4. The applicant, who is facing prosecution under the provisions of the Protection of Children from Sexual Offences Act (POCSO Act), seeks to challenge the order dated 21-2-2022 by which the Special Court has rejected applicant's urge to cross-examine the witness.

5. The learned Counsel for the applicant would submit that the trial Court erred in refusing to cross-examine the material witness namely victim, which amounts to denial of fair trial. The learned Additional Public Prosecutor while opposing the application, brought to notice the impugned order noting the conduct of the applicant, which amounts to interference in course of justice.

6. It reveals that a victim girl, aged 19 years, was examined on 24-11-2021 by the trial Court in a case of sexual assault. Partial cross-examination was recorded on 13-12-2021 and then it was deferred as the victim was not feeling well. Then on 11-1-2022 the victim remained present to face cross-examine. At that time, the victim put the grievance that the accused is pressuring her to desist from giving evidence. In view of that, the trial Court has discharged the witness as well as by passing impugned order refused to allow the accused to cross-examine the victim. In the result, the fact remains that the victim, who is the material witness in case of such a kind, is not cross-

examined. The fate of entire case depends upon the worth and reliability of the victim's evidence. Denial of cross-examining victim amounts to denial of principle of natural justice. It is to be noted that the accused is pressuring the victim so as to keep herself away from giving evidence against him. It is informed that by noting the conduct of accused already Special Court has cancelled the bail and taken the accused in custody. In the circumstances, the aspect of pressurising victim no longer remains. The learned Counsel Mr. A.S. Londhe appearing for the applicant-accused has submitted that he himself has filed Vakalatnama in trial Court and would conduct the cross-examination on the very day without seeking adjournment.

7. Having regard to above facts, the application stands allowed. The impugned order dated 21-2-2022 passed by the Special Court is hereby quashed. The applicant is permitted to cross-examine the victim on assigned date. It is hereby made clear that cross-examination shall be conducted on the very day without seeking adjournment. Needless to say that on the assigned date if victim is not cross-examined, then due to conduct, accused would lose his right to cross-examine the witness. The trial Court shall take steps accordingly.

8. The application stands disposed of in above terms.

JUDGE

adgokar