

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

CRIMINAL WRIT PETITION NO. 326 OF 2022

Sandeep Anandrao Gawai, aged 39
years, Occ. Nil, r/o Emrold Colony,
Geeta Nagar, Akola, Tq. And Dist. Akola.

... PETITIONER. _

VERSUS

1. State of Maharashtra,
Through Police Station
Officer, Police Station Old City,
Akola, Tq. and Distt. Akola.
2. XYZ (Victim), through her
mother (ABC) in crime No.
214/2017, r/o within the
jurisdiction of Police Station Old
City, Akola, Tq. and Distt. Akola.

... **RESPONDENTS.**

Shri P.S. Gawai, Advocate for the petitioner.
Shri S.M. Ukey, A.P.P. for respondent no. 1/State.

CORAM : VINAY JOSHI, J.

DATED. : 06.07.2022.

ORAL JUDGMENT :

RULE. Rule is made returnable forthwith.

2. Though respondent no. 2 -prosecutrix was served, she remained absent. Heard finally by consent of both the parties.

3. The short challenge is raised by the petitioner-accused to the order dated 25.02.2022 passed in ST (POCSO) No. 176 of 2017 (Exhibit 42) by which the Special Court has declined to send the CD to Expert for examination and further declined cross-examination of prosecution witnesses i.e. the victim (PW-1) and her mother (PW-2). It reveals from the impugned order that the State has opposed this application on the premise that the prosecution is not relying on the CD, which is sought to be sent to the Expert. In view of said statement, the Trial Court is well justified in rejecting the first prayer of sending the CD to the Expert.

4. On the second count, the Trial Court has declined to cross-examine the witnesses on account of delay tactics. In criminal cases, the right of cross-examination is quite valuable as it is the only mode available for the defence to test the veracity of the witnesses. If the defence is not allowed to cross-examine the witnesses then it would not amount to a fair trial. Only with an object to give fair opportunity to the defence to put its case, the petitioner can be permitted to cross-examine the witnesses, obviously with a rider. It is informed that the Trial Court has fixed the matter tomorrow for recording the evidence of other witnesses.

5. In view of that, the petition stands partly allowed. The impugned order dated 25.02.2022 passed by the Special Court in ST (POCSO) No. 176 of 2017 (Exhibit 42) is quashed to the extent of closure of cross-examination of prosecution witnesses i.e. PW-1 and PW-2. The petitioner is permitted to cross-examine both the witnesses on the date of their appearance itself. The petitioner shall cross-examine the witnesses on the very day without seeking adjournment. The learned Trial Court shall fix a date for cross-

examination of PW-1 and PW-2 after one week from today.

6. The petition stands disposed of in the aforestated terms.

(VINAY JOSHI, J.)

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