

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

CRIMINAL APPLICATION (APL) NO. 747 OF 2022

Gopal Ganpat Karankar, age – 41 years,
 Occ : Service, R/o Ram nagar,
 Barshitakli, Tq. Barshitakli, Dist. Akola.

... APPLICANT _

VERSUS

The State of Maharashtra, through
 Police Station Officer, Police Station,
 Barshitakli, District : Akola.

... NON-APPLICANT

Ms. Garima Jain, Advocate h/f Shri S.V. Sirpurkar, Advocate for
 the applicant.
 Shri S.M. Ukey, A.P.P. for the non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED. : 15.09.2022.

ORAL JUDGMENT :

Heard. **ADMIT.** By consent of both the learned Counsel
 appearing for the parties, the matter is taken up for final hearing.

2. The applicant who is accused in the Sessions Case No.223
 of 2016 has challenged the order dated 09.06.2022 by which the Trial
 Court has declined to recall PW1 – father of the Victim, PW2 – the

victim and PW6 – the Investigating Officer.

3. It is the applicant's contentions that the victim as well as her father has not stated the date of birth in their police statement, however, they have made said improvement during the course of evidence. The applicant wanted to bring the said omission on the record to substantiate his stand. It reveals that though the victim has stated her date of birth in her statement recorded by the Magistrate in terms of Section 164 of the Code of Criminal Procedure, however the fact remains that in her initial report, she did not disclose her date of birth.

4. The learned Counsel for the applicant has submitted that the recall is strictly to the extent of bringing the omission in respect of date of birth on record and not for any other purpose. It is a matter of record, that the victim as well as her father did not state date of birth and thus, in the interest of justice, opportunity can be given to the applicant to that extent, since the offence if prove, may attract the punishment which may extent to five years of imprisonment. Of-course, if the omissions are proved through the evidence PW1 and PW2, then it is not necessary to recall the Investigating Officer for doing further exercise.

5. In view of that the application is allowed. The impugned order dated 09.06.2022 is hereby quashed and set aside.

6. The applicant's urged for recalling PW1 – father of the victim, PW2- the victim and PW6 – the Investigating Officer, is allowed restricted only to the extent of proving the omission regarding date of birth to the victim. It is hereby made clear that the Trial Court shall not permit to ask any other questions even relating to date of birth except bringing omission on record.

7. The application stands disposed of accordingly.

(VINAY JOSHI, J.)

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