

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

CRIMINAL WRIT PETITION No. 578/2022.

Shailendra Bhudeo Jha,
Aged 65 years, Occupation – Advocate,
Resident of Pokhriya, Hasanganj
District Katihar, Bihar. ... **PETITIONER.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Police Sitabuldi, Nagpur. ... **RESPONDENT.**

Mr. P. Naidu, Advocate for the Petitioner.
Mr. H.D. Dubey, A.P.P. for the Respondent-State.

CORAM : VINAY JOSHI, J.

DATE : AUGUST 23, 2022.

ORAL JUDGMENT :

Heard learned Counsel for the parties. Considering the
controversy raised and by consent of the parties, the matter is taken

Rgd.

up for final disposal by issuing Rule, making the same returnable forthwith.

2. The petitioner is arraigned as an accused in Special POSCO Case No.118/2019 for the offence punishable under Sections 376[2][i][j][n] of the Indian Penal Code, read with Sections 3,4,5[1], 6 of the Protection of Children from Sexual Offences Act, 2012 together with Sections 75 and 9 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

3. The precise grievance is that, right to cross-examine the victim by the petitioner [accused] has been forfeited by the trial Court vide order dated 05.08.2022. It is the contention that on the assigned date the accused as well as his counsel were very much present before the Court to cross-examine the victim, however, in the second session, when the learned Counsel for the accused left the Court, the victim was examined. On the very day the accused suffered heart attack for which he was hospitalized. On the following day again the victims further evidence was recorded, but, due to heart attack the accused was not present for which an

adjournment was sought, which came to be rejected, but, the Trial Court directed to proceed without cross-examination.

4. The facts are such that the victim girl is from Bihar State. Record indicates that the victim did not respond to the summons as well as warrant, therefore, the police appointed special squad for bringing the victim to the Court for recording her evidence. Some how the victim was traced and brought to Nagpur on 22.07.2022, and housed in the safe custody. The trial Court fixed the matter on 04.08.2022 for recording victims evidence. On that date, the accused as well as his counsel were present in the Court in first session, but, the victim was not examined. Record further indicates that the learned Counsel for the accused in the second session left for other work, on which the victim was brought and her evidence was recorded. At the relevant time, the accused was present, however, as he suffered heart attack, he was hospitalized. The trial Court fixed the matter on the following day, but, since the accused was hospitalized, his counsel sought for adjournment, which was refused. The trial Court recorded remaining part of the evidence of the victim and passed no cross order.

5. It is specifically pointed out that there is no fault on the part of the accused, as he along with his counsel were present on 04.08.2022, but, for entire first session the victim was not brought. On the following day, due to unavoidable circumstances i.e. on account of hospitalization of the accused, they were not in a position to cross examine the victim. The same resulted into passing of the impugned order of 'no cross'.

6. Right of cross-examination is one of the essential feature of criminal trial. Rather this is the only tool available to the accused to put up his defence, as well as to test the veracity and credibility of the witness. In criminal cases of like nature, the fate of case largely depends upon the evidence of the victim. If the victim is not allowed to cross examine, then certainly it does not amount to a fair trial.

7. True the victim is from Bihar State, however, that cannot be a reason to deny the right of cross-examination to the accused. It reveals that the accused has not avoided to cross examine the witness, but, the circumstances forced him to seek adjournment.

The learned Counsel appearing for the petitioner / accused undertakes to cross examine the victim on the assigned date, without seeking any adjournment.

8. Having regard to the above facts Criminal Writ Petition is allowed. The order passed by the Extra Joint District Judge, Nagpur below Exh.91 in Special (POSCO) Case No.118/2019 dated 05.08.2022 to proceed without cross examination of the victim, is quashed and set aside. The petitioner / accused is permitted to cross examine the victim. The prosecution shall once again secure presence of victim for cross examination. The accused shall cross examine the victim on the very day without seeking adjournment on any count, including inability of the accused to attend the Court.

9. Criminal Writ Petition is accordingly disposed of. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE