

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**38 CRIMINAL WRIT PETITION NO.953 OF 2022
VIJAY SAMBHAJI CHAVAN
VERSUS
THE STATE OF MAHARASHTRA**

Mr.Vaibhav V. Kulkarni, Advocate for the petitioner.

Mrs.P.V. Diggikar, APP for the respondent/State.

Mr.S.G. Kawade, Advocate for respondent No.2.

**CORAM : KISHORE C. SANT, J.
DATED : 18.04.2023**

PC :-

01. Heard learned Advocates for the parties. The petition is taken up for final disposal by consent of the parties.

02. The petitioner has challenged an order dated 22.06.2022 passed by the learned Special Judge (POCSO), Aurangabad on an application below Exh.27 in Special Case No.128 of 2019. The application of the petitioner under section 311 of the Cr.P.C. for recall of P.W.2 i.e. victim for cross-examination, has been rejected by the learned Special Judge, stating that already exhaustive cross-examination is done by the accused. The application is vague. No specific reason is mentioned.

03. The learned Advocate for the petitioner with the support of judgment reported in (2013) 5 SCC 741 in the case of Natasha Singh Vs. Central Bureau of Investigation (State), submits that the accused should get fair opportunity to defend his case. For that purpose it is necessary to allow the application under section 311 of the Cr.P.C. as certain questions were not asked to the witness during cross-examination, due to inadvertence and as the accused had not given proper information.

04. The learned APP submits that in-fact the victim was subjected to lengthy cross-examination. She invites attention of this Court to the observations made by learned Trial Judge that the application is vague. She submits that even by considering the judgment of the Hon'ble Supreme Court, the learned Special Judge has passed the impugned order and no interference is called for.

05. The learned Advocate for respondent No.2 vehemently opposes the petition stating that no case is made out to recall the witness. Ample opportunity is given to the petitioner to put questions in the cross-examination. Now if again re-examination is permitted, it would be only

filling up lacuna in the case. The victim is now married.

06. After hearing the parties, this Court finds that PW-2 is a victim herself in the POCSO case. Further, no specific reason is assigned in the application for recalling the said witness for cross-examination. I do not find any reason to disagree with the reasons assigned by the learned Special Judge. Looking to the fact that PW-2 is a victim herself, who is already subjected to cross-examination, it is desirable that the victim is not called to the Court again and again. Calling victim in a POCSO case again would amount to causing humiliation and embarrassment to the victim. As submitted by her Advocate, she is now married. This Court finds that when no case is made out to show absolute necessity to call the victim again in sensitive matter, there is no propriety to allow the application. No case is made out by the petitioner to call the victim again for cross-examination. Even in the judgment of the Hon'ble Apex Court, which is passed in the facts of that case, the Hon'ble Apex Court has considered right to have fair trial via-viz delay in the trial and held that in no circumstances a person's right to fair trial be jeopardised. Right to adduce evidence in support of the defence is a valuable right and if such right is denied, it would amount to the denial of a

fair trial. This Court finds that though there is no dispute about the said ratio of the judgment, considering the facts of this case, this Court finds that no case is made out by the petitioner to call for interference in the impugned order. Hence, the petition stands dismissed.

[KISHORE C. SANT, J.]