

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1136 of 2023

Siddharth Dadaram Gaikwad .. Petitioner
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr. Prashant Hagare for the petitioner
Mr. N.B. Patil, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd APRIL 2023

P.C:-

1 A petition is filed by the accused/appellant being aggrieved by the decision of the Additional Sessions Judge, Baramati, on his application vide exhibit-38, seeking an opportunity to cross-examine the victim by setting aside the 'No cross-examination' order.

 Since the procedural aspect is involved in the petition, I do not deem it necessary to issue notice to the victim girl as the learned APP has pointed out the necessary facts to me and this order will also secure her interest, in an appropriate manner.

2 Perusal of the impugned order would reveal that the trial was directed to be expedited by this Court and directed to

be concluded on or before 30th June 2023, while rejecting his Bail Application filed for the fourth time.

3 In furtherance of the imperative mandate, for concluding the trial in time bound manner, summons were issued to the witnesses and the evidence of the victim girl was recorded on 3/11/2022. Even the evidence of the victim's mother was also recorded on the same date, but the Special Judge observed that the counsel for the accused did not cross-examine the witnesses.

It is also recorded that on an earlier date, i.e. on 16/8/2022, evidence of PW 1 was recorded and at the request of the defence, the matter was adjourned to 30/08/2022 and the Advocate appearing, once again declined to cross-examine the witness.

4 The learned Judge was perfectly right in recording that though fair trial is a right of the accused, even the victim has rights to have the trial concluded expeditiously and an appropriate punishment to be imposed for the wrong done to her.

The learned Judge record that purposely the cross-examination was declined to humiliate the victim and her relatives and the application was rejected.

5 I am unable to accept the said finding rendered by the learned Judge as it is not borne from the record and proceedings of the case that this was the intention in deferring the cross-examination.

Since the trial is expedited and directed to be concluded before 30th June 2023, I deem it appropriate to grant

permission to the accused to cross-examine the three witnesses i.e. the victim girl and her parents on the date that shall be fixed by the trial court, which shall not be later than 30 days from the date of passing of order.

It is informed that on 13/04/2023 the trial is scheduled for recording evidence of other witnesses and if the Court deems it fit upon issuance of summons, to those witnesses, it is left to the discretion of the Court whether to permit the cross-examination before recording of examination in chief of other witnesses. If not, it can be deferred to some other date, which shall not be later than 31st April 2023.

On the given date, if the counsel for the accused do not undertake the cross-examination, the indulgence shown by this Court shall be recalled and the trial court shall proceed towards conclusion of the trial.

6 Pertinent to note that the recalling of the aforesaid witnesses would cause great inconvenience to them and by way of compensatory order, let the applicant deposit cost of Rs.5,000/- per each witness in the Special Court before they are permitted to be cross-examined. The cross-examination shall be permitted only after the amount is deposited.

7 In the wake of the above, the Writ Petition No.1136 of 2023 stand allowed.

No order as to costs.

(SMT. BHARATI DANGRE, J.)