

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

CRIMINAL WRIT PETITION NO.410 OF 2023

[Rakesh S/o Umakant Marjive ..V/s.. State of Maharashtra and Ors.]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr R. K. Tiwari, Advocate for Petitioner.

Mr S. S. Doifode, APP for Respondent No.1/State.

Mr S. V. Manohar, Senior Advocate with Mr A. Manohar, Advocate for Respondent No.3.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.

DATE : 20th JUNE, 2023.

. Heard.

2. An unusual prayer has been made in the present petition seeking the relief of change of Additional Public Prosecutor, who is conducting POCSO Case bearing No.115 of 2019 pending on the file of Special Judge, POCSO Act, Nagpur. The petitioner is an accused of the concerned case, who apprehends that there would be no fair trial, if the prosecution is continued through the concerned APP i.e. respondent No.3 in the present petition. The petitioner's apprehension is based on some prior instances occurred during pendency of POCSO Case.

3. The petitioner was chargesheeted for the offence punishable under Sections 8 and 10 of the Protection of Children from Sexual Offences Act, 2012. Since inception, the trial was conducted by respondent No.3 in the capacity of Additional Public Prosecutor. It is informed that till date, six witnesses have been examined and the evidence of Investigating Officer has only remained. Earlier, one Advocate Mr Narendra Vaidya was

appointed by petitioner (accused) to defend himself, who has conducted the case to some extent. Later on, there were some events giving rise to allegations and counter allegations against each other. Particularly, respondent No.3 (Lady APP) has lodged a report on 20.03.2023 alleging the offence punishable under Section 354-D, 186 read with Section 34 of the Indian Penal Code, 1860 against Advocate Mr Vaidya as well as the petitioner. Particularly, serious allegations have been levelled against the petitioner that he was pressurizing and stalking the respondent No.3 (Lady APP), and therefore, crime was registered at Sadar Police Station, District Nagpur in Crime No.134 of 2023 and investigation is going on.

4. It is the petitioner's apprehension that already the concerned lady APP has lodged a report against him, and thus, it would not be fair on her part to conduct the further prosecution of POCSO case bearing No.115 of 2019.

5. In response, learned APP Mr Doifode would submit that the petitioner has not shown any prejudice in the petition. According to learned APP, the concerned prosecutor is well experienced and has conducted several POCSO cases as well as secured convictions. If, in the midway, the concerned APP is changed, then it would be taken as an adverse in future carrier of the APP. Moreover, learned APP is more concerned with such a practice if allowed to prevail, then in future also such type of complaints would be filed against APP with a view to seek desired change. Learned APP has also submitted that the very petitioner has already filed a complaint against respondent No.3

(Lady APP) to the Assistant Director and Public Prosecutor, who has conducted in-house inquiry and found no substance in the allegations made against respondent No.3 (Lady APP). Moreover, it is the contention that the accused has no choice of prosecutor, and thus, the petition is meritless.

6. Learned Senior Advocate Mr Manohar appeared for respondent No.3 submitted that in the existing scenario, the concerned APP is not interested to prosecute the said case and she will be discharged.

7. It is a matter of fact that during pendency of POCSO case, the concerned APP has lodged police report against the petitioner (accused). In the scenario, accused feels apprehension that the concerned APP may not put true facts before the Court, which would result into failure of fair trial. Needles to say that the duty of APP is not to secure the conviction, but to place the true facts before the Court. Exactly on this point, the petitioner apprehends that there is likelihood of biasness against the petitioner in the mind of APP due to past instances, and therefore, it is not conducive to conduct the case further through the same APP.

8. We have no doubt in our mind about the credentials of APP and her bright carrier. Neither we can express anything nor it is a subject matter of this petition to make any comments about the merits of the criminal prosecution, which has been lodged at the instance of APP. Obviously, the law will take its own course. However, the fact remains that already police report has been lodged by APP in her personal capacity against the

petitioner (accused) and that may give a reasonable apprehension of bias, and thus, to uphold the cherished principle of law about fair trial, we deem it appropriate to allow the prayer of change of APP. Moreover, concerned APP has also shown her reluctance to go on with case in correct scenario.

9. While parting with the order, we have taken note that serious allegations have been levelled by APP against the miscreant for which report has been lodged. We hope and expect that the said matter shall be taken to its logical end with all seriousness by the concerned.

10. In view of the above, the respondent/State is directed to relieve respondent No.3 from the case and the further trial shall be conducted by any other competent APP.

11. The criminal writ petition is disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)