



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

CRIMINAL WRIT PETITION NO. 858 OF 2023

PETITIONER : Mr. Kashiram S/o Hariji Rewatkar,
Age about - 67 years, Occup - Agriculturist,
R/o Tinkheda, Tq. Narkhed and
District Nagpur.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
Through its Secretary,
Department of Home, Mantralaya,
Mumbai-32.
2. State of Maharashtra,
Through Police Station Officer,
Police Station, Narkhed, Nagpur
Rural, District Nagpur.
3. Superintendent of Police,
Nagpur Rural, Nagpur.
4. Sub-Divisional Police Officer, Katol,
District Nagpur.

Shri R. R. Vyas, Advocate for petitioner.

Shri M. J. Khan, Additional Public Prosecutor for respondent Nos.1 to 4.

**CORAM:- VINAY JOSHI AND
M. W. CHANDWANI, JJ.**

DATED : 04/12/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. The offence punishable under Sections 376(2)(I) and
506 of the Indian Penal Code has been registered against the

petitioner's son vide Crime No.400/2023 with Police Station, Narkhed, Dist. Nagpur.

3. It is petitioner's contention that the prosecutrix was deaf and dumb. At the time of alleged occurrence, the petitioner's son (accused) was somewhere else meaning thereby, a plea of alibi has been raised. Moreover, it is submitted that as per material adduced even the victim was not at the place where it was alleged. According to the petitioner, he has material to convincingly establish that his son was not involved in the occurrence. For that purpose, petitioner has applied to the Commissioner through Superintendent of Police, Nagpur to consider the material sought to be adduced while carrying investigation. It is submitted that the said material was also brought to the notice of the Investigating Officer, however, he has declined to consider. On such factual background, it is petitioner's urge to direct the concerned police to consider the material, which petitioner seeks to adduce.

4. Shri Vyas, learned counsel for petitioner would submit that by the time, already charge sheet has been filed. However, according to him, still the police can carry out further investigation in terms of Section 173 (8) of the Code of Criminal Procedure, if found it fit on the basis of material.

5. Shri Khan, learned APP opposed by submitting the material sought to be adduced is purely a matter of defence which can be adduced in the trial. Moreover, investigation is complete and charge sheet has been filed.

6. Shri Vyas, learned counsel relied on the decisions of this Court in Criminal Application (APPP) No. 1346/2023 in Criminal Application (APL) No.573/2022 dated 18/10/2023 (Nikhil Ashokrao Waghmare and others Vrs. The State of Maharashtra and another) to substantiate his contention.

7. In said decision, we have extensively dealt with the issue whether the police can consider the material adduced by the accused during the course of investigation and ultimately held that the Investigating Officer shall accept the material and consider the same while carrying investigation.

8. Herein, the facts are somewhat different as already investigation is complete and charge sheet has been filed. However, sub-clause (8) of Section 173 of the Code of Criminal Procedure starts with non-obstante clause emphasizing that the power of police to carry out further investigation has not been curtailed though charge sheet has been filed. Having regard to the said fact, we direct the Investigating Officer to accept the material

adduced by the accused and take appropriate decision if he deems it fit. We make it very clear that it is totally discretion of the Investigating Officer to act or not to act on said material.

9. Petition stands disposed in above terms.

10. Inform the concerned accordingly.

[M. W. CHANDWANI, J.]

[VINAY JOSHI, J.]