



PMB

913.apl.533-24.doc

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.533 OF 2024

UTTATAM DAGDU KARANDE

..APPLICANT

VS.

THE STATE OF MAHARASHTRA

..RESPONDENT

Adv. Anil J. Jadhav for the applicant.

Mr. S. A. Karmakar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : APRIL 18, 2024.

P.C. :

1. Heard learned counsel for the applicant and learned APP for the State.

2. Learned counsel for the applicant challenges the order dated 14.03.2024 passed by trial Court rejecting the application Exhibit-41. Application Exhibit-41 was filed under Section 311 of the Code of Criminal Procedure for recalling of PW-1 and 2. I have perused the order of the trial Court. Learned counsel for the applicant wants to examine PW-1 and the victim. In paragraph 4 the trial Court has recorded thus :-

"4. Heard the learned advocate appearing on behalf of the accused, the learned Special Public Prosecutor Smt. Kalpana Hire Perused charge-sheet. Record shows that, on PW-1 and the victim is examined by prosecution on 23/01/2023 and on the same day both the witnesses are cross-examined at length by the defense. The record further shows that, the Ld. Advocate appearing for the accused examined defense witness no.1 on 17/02/2024, and on the same day filed defense evidence closure pursis at Exh. 40. Immediately he filed present application for recalling of witnesses FW-1 and 2. As mentioned above PW-1 and Victim are already cross-examined by previous advocate for accused. As per section 33 (5) of POCSO Act, the victim should not be called repeatedly to testify in the court. Mere change of advocate is not a ground to recall the witnesses who are already cross examined. Therefore, the application deserves to be rejected."

3. Learned counsel for the applicant submitted that the previous advocate has not put up a proper defense which is seriously causing prejudice to the accused. It is submitted that to ensure a fair trial to the accused, the application Exhibit-41 deserves to be allowed. It is submitted that no prejudice will be caused to the witnesses if they are recalled in the interest of justice and for fair trial.

4. Having perused the order passed by the trial Court and as proper opportunity was given to the applicant to cross-examine the witnesses, I am not inclined to interfere with the order passed by the trial Court. The witnesses and the victim are also entitled to a fair trial. The ground is change of advocate which is untenable in the present facts.

PMB

913.apl.533-24.doc

5. The application is rejected.

(M. S. KARNIK, J.)