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15.REVN.346-23.doc

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

**CRIMINAL REVISION APPLICATION NO.346 OF 2023**

NISAR AHMED MOHIUDDIN SHAIKH ..APPLICANT  
VS.  
THE STATE OF MAHARASHTRA AND ANR. ..RESPONDENTS

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Adv. Gaurav Bhawnani i/b. Adv. Khan Abdul Wahab for the  
applicant.

Mr. S. H. Yadav, APP for the State.

Adv. Prathmesh P. Bhosale for respondent No.2.

Mr. Jaywant Mate, PI, MHB Colony Police Station, Mumbai.  
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**CORAM : M. S. KARNIK, J.**

**DATE : JANUARY 24, 2024**

**ORAL ORDER :**

- 1.** Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.
- 2.** The application made by the applicant-accused came to be rejected by the trial Court holding that the entitlement to seek order under Section 91 of the Code of Criminal Procedure ("Cr.P.C.", for short) for the accused will arise only at the stage of defence. The charge is yet to be framed.
- 3.** Learned APP and learned counsel for respondent No.2

relied upon the decision of the Hon'ble Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi**<sup>1</sup> more particularly paragraph 25 in support of the order passed by the trial Court.

**4.** I do find some substance in the contention of learned counsel for respondent No.2 and learned APP as it is always open for the accused to seek an order under Section 91 of the Cr.P.C. at the stage of defence. However, to ensure that such an application under Section 91 if made later at the appropriate stage is not rendered *fait accompli*, I propose to pass the following order.

**5.** This Court on 30.11.2023, when this Revision had earlier come up for admission, passed the following interim order :-

"2. The Applicant made a prayer for issuing summons under Section 91 of Code of Criminal Code, 1973 for production of certain footage from CCTV cameras installed at three places. It was rejected on 1<sup>st</sup> July 2023. One of the offence is under the provisions of POCSO Act, that is why notice was issued to Respondent No.2.

3. Intimation is given to Respondent No.2 by the Police. It is placed on record and marked as Annexure 'X'. Let the Secretary, High Court Legal Services Authority to provide legal aid.

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1 (2005) 1 SCC 568

4. I have read the prayer clause : -

i) Refers about CCTV cameras installed at MHB Police Station;

ii) Refers about CCTV cameras installed at Gokhale College wherein the victim was studying and allegation is applicant chased her and;

iii) Cameras installed at public places on way to Gokhale college.

5. Today, prayer is sought for issuing direction to preserve this footage. It is opposed by learned APP for two reasons:-

(a) Necessary instructions are awaited and;

(b) It is not clear whether those footages are there and whether they are collected.

6. Today, direction can be given to preserve them if cameras are installed and in operation.

7. In view of that, direction to preserve is given today only in respect of the cameras at MHB Colony Police Station and cameras installed at Ghokhale College. This direction will come into picture only if cameras are installed and functioning.”

**6.** The difficulty expressed by learned counsel for the applicant is that the CCTV footage is preserved only for one year. He submits that the trial is not likely to conclude soon. If the footage is deleted, the application to be filed at the stage of his defence will be rendered *fait accompli*. The accusations against the applicant are for having committed the offences under the provisions of the Protection of Children from Sexual Offences Act, 2012 (hereafter “POCSO Act”, for short). It is the submission of learned counsel for

the applicant that even an application under Section 35 of the POCSO Act was made for recording of the evidence of the child witness. However, the trial Court has disposed of the application by observing that the evidence of the child witness would be recorded after the charge is framed.

Section 35 of the POCSO Act reads thus :-

**"35. Period for recording of evidence of child and disposal of case.** - (1) The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence."

**7.** It is seen that sub-section (2) of Section 35 ordains that the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence. The present trial is not likely to be concluded within a period of one year. This Court by an interim order dated 30.11.2023 already directed that if the cameras are installed and in operation, the CCTV footage may be preserved. In this view of the matter, the present Criminal Revision Application can be disposed of in terms the interim directions of this Court to preserve the CCTV

footage in the cameras if they are installed and in operation even in respect of Gokhale college as regards the relevant details of which are provided in prayer clause a(i) to a(iii). Gokhale college to co-operate with the Investigating Officer in preserving the CCTV footage if not already deleted and if the cameras were installed and in operation. The modalities for preserving the footage be worked out by the Investigating Officer.

**8.** In the peculiar facts of this case, in my opinion, the accused should not be prejudiced as the trial cannot be concluded within a period of one year by which time the footage will be deleted by default. At the appropriate stage it is open for the applicant-accused to make an application under Section 91 of the Cr.P.C. seeking reliefs in terms of the application made before the trial Court on which the impugned order came to be passed. The impugned order of the trial Court stands modified to the above extent.

**9.** Keeping all contentions open, the Criminal Revision Application is disposed of.

**(M. S. KARNIK, J.)**