



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

913 CRIMINAL WRIT PETITION NO. 20 OF 2024

1. Suraj S/o. Deepak Wathore,
Age. 24 years, Occu. Mason,
2. Deepak S/o. Devba Wathore,
Age. 46 years, Occu. Labour,
3. Ashabai W/o. Deepak Wathore,
Age. 40 years, Occu. Household,

All R/o. Sarsam, Tq. Himayatnagar,
Dist. Nanded.

....Petitioners

Versus

1. The State of Maharashtra
2. XYZ

...Respondents

Advocate for the Petitioners : Mr. Hande Avinash D.
APP for Respondent No. 1 : Ms. Chaitali Chaudhari-Kutti
Advocate for Respondent No. 2 : Mr. Suraj R. Bagal
h/f. Mr. Gadegaonkar Bharat N.

CORAM : Y. G. KHOBRAGADE, J.

Dated : 05th March, 2025

JUDGMENT :-

1. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally at the stage of the admission.
2. By the present petition, under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal

Procedure, the petitioners have challenged the order dated 10.11.2023, passed by the learned Extra District Judge-1 and Assistant Sessions Judge, Nanded, below exhibit 103 and 105 in Special (POCSO) Case No. 62/2021, thereby permitting the prosecution to produce additional documents i.e. original birth certificate issued by the competent authority to prove the age of the victim on the date of commission of offence.

3. The learned counsel appearing for the petitioners vehemently canvassed that the petitioners are facing trial in Special (POCSO) Case No. 62/2021 for offences punishable under Sections 363, 376(2) (N) read with Section 34 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO'). After due investigation, the I. O. filed charge sheet against petitioners/accused. Thereafter, the charge was framed on 27.12.2022 for the offences under Sections 363, 376(2) (N) read with Section 34 of the Indian Penal Code and Section 6 of POCSO Act.

4. During the course of trial, the prosecution examined the PW.1 and PW. 2. However, both the witnesses PW.1 and PW. 2 have stated that, they do not have birth certificate of the victim (PW2). Both the witnesses undergone cross-examination. Thereafter, the prosecution has filed Exh. 103 and 105 application seeking permission to produce original birth certificate issued by the Health Department N.W.C.M.C., Nanded of the victim and Nirgam Utara (Extract of School Admission Register) issued by the School of the victim to prove date of birth of the victim (PW2). The petitioners/accused filed their reply at exhibit 107 and resisted

both applications on the ground that, the prosecution has not produced documents along with chargesheet under Section 173 (8) of Cr.P.C., 1973. However, the prosecution wanted to refer both documents first time to the witness in evidence.

5. It is further canvassed on behalf of the petitioners that, the provisions of Cr.P.C. do not provide for production of documents after filing charge-sheet and after cross-examination of the witnesses are over. However, on 10.11.2023, the learned trial Court passed the impugned order and permitted the prosecution for production of documents i.e. original birth certificate issued by the Health Department N.W.C.M.C., Nanded of the victim and Nirgam Utara (Extract of School Admission Register) issued by the School of the victim to prove date of birth of the victim (PW2). Therefore, the impugned order is illegal and bad in law. Hence, prayed for quash and set aside.

6. In support of this submissions, the learned counsel appearing for the petitioners placed reliance on case of ***Bhagyashree Prashant Wasankar Versus State of Maharashtra***, 2021 ALL MR (Cri) 3030 : 2021 (6) Mh.L.J. (Cri.) 336, wherein, it is held that, there is no procedure contemplated under Criminal Procedure for permitting the prosecution witness directly for production of documents in Sessions trial which were not part of the chargesheet filed before the Court and additional document could be produced by filing the procedure of further investigation as contemplated under Section 173(8) of Cr.P.C., and the prosecutor taking a call as to whether such documents need to be produced in order to prove the charge against accused.

7. On the other hand, learned APP and Mr. B.N. Gadegaonkar, learned counsel appearing for the victim/respondent no. 2 submitted that, during course of investigation, the Investigation Officer filed chargesheet against the accused persons for the offences punishable under Sections 363, 376(2) (N) r/w Section 34 of the Indian Penal Code and Section 6 of the POCSO Act. The I. O. collected various documents and produced the same with charge-sheet including identity card of the victim, bonafide certificate issued by the school of the victim, Nirgam Utara (Extract of Admission of School Register of the victim), progress card and Unique Aadhar Card, which shows that, the victim was minor on the date of commission of offence. However, the prosecution wanted to produce original birth certificate of the victim issued by the Health Department N.W.C.M.C., Nanded and original copy of extract of school register of the victim issued by her School. The Victim's date of birth shown in the school extracts as well as in identity card, bonafide certificate issued by the victim's school, Nirgam Utara (extract of admission of school register of the victim), progress card and Unique Aadhar card is one and same. However, the birth certificate issued under the Birth and Death Registration Act was not available with the prosecution at the time of filing of the charge-sheet. Therefore, in order to prove the Victim's date of birth, the prosecution wanted to produce original birth certificate and Extract of School Admission Register. Therefore, by allowing the prosecution for production of documents no prejudice would be caused to the accused, hence, prayed for dismissal of the petition.

8. Section 294 of Cr.P.C., provides as under :

“294. No formal proof of certain documents.

(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed :Provided that the Court may, in its discretion, require such signature to be proved.”

9. In ***Niwas Keshav Raut Versus The State of Maharashtra***, (2015) SCC Online Bom 4214, the co-ordinate bench of this Court considered the provision of Section 294 of Cr.P.C., and permitted the prosecution for production of documents. No doubt, the learned counsel appearing for the petitioners though relied on case of *Bhagyashree Prashant Wasankar* (supra), wherein the witness was tried to produce additional document directly during the course of trial. Therefore, the co-ordinate bench of this Court

held in paragraph nos. 19 and 20 as under :

“19. Recourse to Section 294 of the Cr.P.C. can also not be taken for a witness to claim that he could directly produce additional documents during the course of trial or during the course of recording of his evidence. Section 294 of the Cr.P.C. pertains to no formal proof of certain documents and it opens with the words "Where any document is filed before any Court by the prosecution or the accused", thereby demonstrating that the said provision is applicable only when a document is sought to be produced either by the prosecution or the accused and not any third party like a witness. In fact, in the judgment in the case of Shamsher Singh Verma Vs. State of Haryana (2016) 15 SCC 485, the Hon'ble Supreme Court has referred to the object of Section 294 of Cr.P.C., 1973 and it has been held that same is for accelerating the pace of trial, by avoiding waste of time in recording unnecessary evidence. The judgment of this Court in the case of Niwas Keshav Raut Vs. The State of Maharashtra (supra) lays down that Section 294 of Cr.P.C., 1973 does not place any embargo upon the prosecution or the accused to file a document at a stage subsequent to filing of the charge-sheet. There can be no quarrel with the said

proposition. Yet, it cannot come to the aid of the witness in the present case, who has sought permission of the Sessions Court to directly produce documents during the course of trial and at the time of recording his evidence.

20. A perusal of the impugned order shows that there is a reference made to Section 242 of the Cr.P.C., 1973. A perusal of the said provision would show that it pertains to the power of the Magistrate to issue summons to any witness on the application of the prosecution, directing such witness to produce any documents or thing. In this provision also, the words "on the application of the prosecution", have been used. Even otherwise, Section 242 of the Cr.P.C., 1973 is found in Chapter XIX pertaining to trial of warrant cases by the Magistrate. But, in the present case, the Court below is concerned with a sessions trial under Chapter XVIII of the Cr.P.C. Therefore, reference to Section 242 of the Cr.P.C. by the Court below is also misplaced."

10. However, in case in hand, the learned Special Court passed the impugned order dated 10.11.2023 below exhibit 103 & 105 and permitted the prosecution for production of original birth certificate and the victim's extract of School Admission Register. The birth certificate issued under the Birth and Death Registration

Act, is a public document and it is admissible under Section 35 of the Evidence Act.

11. It is not a case of the petitioners/accused that, the victim's date of birth recorded in the documents i.e. identity card, school bonafide certificate, extract of School admission Register, School progress card Aadhar Card and the date of birth recorded in the Birth Certificate issued under the Birth and Death Registration Act and the School Admission Extract are different. The Petitioners/Accused are already supplied charge-sheet with documents including identity card, bonafide certificate issued by the victim's school, Nirgam Utara (Extract of School Admission Register of the victim), progress card and Unique Aadhar Card. Therefore, the petitioners/accused are very much aware about date of birth of the victim. Since the prosecution wanted to produce original victim's birth certificate and original Extract of School Admission Register of the victim in order to corroborate birth certificate of the victim. Therefore, it cannot be said that the petitioners accused not known about date of birth of the victim. The petitioners/accused have not denied about service of identity card, school bonafide certificate, extract of school admission register, progress card Aadhar card of the victim. Therefore, no

prejudice would cause to the Petitioners, if the prosecution permitted to produce said documents.

12. Needless to say that, the prosecution examined the P.W.1 victim's father at exhibit 82, who faced cross-examination conducted on behalf of accused nos. 1 to 4. It is a matter of record that P.W. 1, the victim's father, deposed that his daughter/victim (P.W. 2) was born on 07.08.2004, but he does not have the birth certificate of the victim. The P. W. 2 Victim deposed at exhibit 100 and stated that, she had taken admission in first standard in the school at Vazirabad, Nanded but admitted at she is not having birth certificate.

13. Since, both the witness stated that they are not having birth certificate, therefore, the prosecution wanted to produce victim's birth certificate. Therefore, merely because the trial Court permitted the prosecution to produce the victim's birth certificate issued under the Birth and Death Registration Act, the petitioner's defence is not going to be washed out. Needless to say that if documents are referred to in examination-in-chief to the witness, the petitioners/accused will have the right to cross-examine the said witnesses. In view of above discussion, impugned dated

10.11.2023 passed by the learned trial Court does not appear illegal bad in law and no grounds are set out to interfere with said findings. Therefore, petition is deserved to be dismissed. Accordingly, petitioner is dismissed. Rule is discharged.

(Y. G. KHOBRAGADE, J.)

SPC-