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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

934 CRIMINAL WRIT PETITION NO. 1899 OF 2024

TUKARAM @ SAKHA DNYANDEV GHULE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.Swapnil S.Rathi, Advocate for the petitioners.

Mr.S.B.Jadhav, APP for the respondent/State.

Mr.Dashrath R.Dhumal, Advocate for respondent No.2. (Appointed through legal aid)

(CORAM : SUSHIL M. GHODESWAR, J.)

DATE : 18 SEPTEMBER 2025

PER COURT :

1. The petitioners are praying for quashing and setting aside order dated 04.07.2024 passed below Exh.28 in Spl.Case No. 162/2022. The petitioners are accused in the above sessions trial for committing offence punishable under Sections 363, 366-A, 376(2)(i), 376(2)(j), 376-d-b, 323, 506, 34 of the Indian Penal Code and Sesions 4, 6, 8, 12, 21 of POCSO Act. During the trial on 08.05.2024, the learned Advocate appearing on behalf of the accused made an application for adjournment, as he was engaged in another Court. However, the learned Sessions Court rejected the said application and

‘no cross’ order came to be passed. Subsequently, on 06.06.2024, application Exh.78 also came to be filed by the petitioners requesting therein that the victim may be recalled for cross examination. However, the learned Sessions Judge also rejected the said application. The learned Advocate for the petitioners submits that the impugned order was passed by the learned Sessions Judge observing that the filing of the application for cross examination of witness is nothing but the tactics of the accused persons just to prolong the matter. The said order is also violative of principles of natural justice. The impugned order is not supported by valid reasons. If the petitioners / accused persons are not permitted to cross examine the witness, they will suffer irreparable loss and accordingly prayed for permission to cross examine the witness.

2. Per contra, the learned APP and the learned Advocate (appointed) appearing on behalf of respondent No.2 strongly opposed the prayer and relief sought by the petitioners / accused. According to them, the order passed by the learned Sessions Court is correct and proper. They submits that the victim cannot be called repeatedly and the Sessions Court has rightly passed the ‘no cross’ order and therefore

prayed for dismissal of this petition.

3. After going through the petition and hearing the learned Advocates for the parties, it is seen from the roznama that the matter was listed on 29.04.2024, 07.05.2024 and 08.05.2024.

4. The learned APP has invited the attention of this Court to paragraph No.3 in order dated 04.07.2024. The learned Sessions Judge, in the said paragraph, was pleased to observe that the matter is postponed at the behest of the accused persons and the prosecution was not responsible for recalling the victim again and again.

5. It is settled position in Law that cross examination of prosecution witness is an essential right of the accused. The accused has right to defend himself before he is punished for the same. In **Natasha Singh Vs. CBI (State) reported in 2013(5) SCC 741**, the Hon'ble Supreme Court has observed that the fair trial is the main object of criminal procedure and it is the duty of the Court to ensure that such fairness is not hampered or threatened in any manner. The Fair trial entails the interests of the accused, the victim and of the

society and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person's right to fair trial be jeopardized. Adducing evidence in support of the defence is a valuable right. Denial of such right would amount to the denial of a fair trial.

6. Therefore, the right to fair trial also entails the right to cross examine the witness and the same is an ingredient of natural justice inherent in the criminal trial process. No doubt, the Court has a duty to protect vulnerable victims from repeated trauma and the possibility of secondary victimization. But it is through cross examination that the defence is afforded a real and meaningful opportunity to test the accuracy, credibility and consistency of the evidence brought against the accused.

7. The petitioners are having right to cross examine the victim. However, the said right can be granted by considering the provisions of POCSO Act, wherein it is mentioned in clause 5 of Section 33 of the POCSO Act that it is for the Special Court to ensure that the

child is not called repeatedly to testify in the Court. Considering the circumstances, this court is obligated to balance the rights of the accused to a fair trial and the victim's right to dignity and protection from distress.

8. Though the prayer of the petitioners is for cross examination of the victim, the said prayer can be granted, however, that shall be by way of last chance. It is informed to the Court that the matter is fixed on 07.10.2025. On that day, the victim be called for cross examination. The petitioners are at liberty to cross examine the victim on the date fixed by the Sessions Court. It is made clear that no further adjournment shall be granted to the petitioners/accused to cross examine the victim, unless, if prayed for, the Sessions Court is satisfied with the said reason.

9. In view of the above, the petition is disposed of.

(SUSHIL M. GHODESWAR, J.)