



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.2891 OF 2024

Basantlal Budhiram BindPetitioner
Vs.
The State of MaharashtraRespondent

Ms. Priyanshu Mishra, Appointed Advocate for the Petitioner.
Mrs. Kranti T. Hiwrale, APP, for Respondent-State.
Mr. P. K. Maske, API, Waliv Police Station is present.

CORAM : REVATI MOHITE DERE &
DR. NEELA GOKHALE, JJ.
DATE : 13th JANUARY 2025.

P.C.:-

1. On 17th December 2022 the following order was passed:

“1. By this petition, preferred through the Legal Services Authority, the petitioner essentially seeks fast tracking of his case, which is pending for the last five years. According to the petitioner, he is in custody for five years; and that till date, he is not produced before the concerned Court nor is his case being heard by the trial Court.

2. It appears that the prosecutrix/victim was aged five years at the time of the incident. We, in Criminal Bail Application No.3242 of 2019 had issued certain guidelines to the Trial Courts conducting cases under the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”), particularly where the victim is young. The said guidelines are as under;

(i) The Special Courts to ensure that the deposition of the child/victim is recorded as expeditiously as possible, keeping in mind the mandate

of the POCSO Act, and the observations made by this Court hereinabove;

(ii) The Special Courts to conclude the recording of evidence i.e examination-in-chief and cross-examination of the victim, as expeditiously as possible, preferably on the same day, unless adjournment is warranted;

(iii) The Courts to also ensure that the victim/child is not called frequently to the Court, as this would add to victim/child's trauma;

(iv) Adjournments whilst examining the child/victim should be minimal and if granted, reasons be recorded warranting adjournment. Unwarranted adjournments should not be entertained;

(v) When the child/victim is examined, all precautions/safeguards i.e. child friendly practices be taken/adopted to ensure that the child/ victim feels safe, is comfortable, and that the child/victim is not in any way exposed to the accused; that the proceedings are conducted in-camera; that all measures as stipulated in the Act and directions given by various judgments are duly complied with. It is always open for the learned Judge in cases, where necessary, to call the child/victim to Court, prior to recording of the deposition, so that, the child/victim is acclimatized/familiarized with the set-up, so that the child/victim has no fear of what to expect in Court on the day of the deposition, which can aid in the child/victim in deposing freely, without fear or anxiety;

(vi) The Court to ensure that the parents of the child or any other person in whom the child has trust or confidence, is present at the time of examination of the child, as mandated under Section 37 of the POCSO Act.

If the Court is of the opinion that the child needs to be examined at a place other than the Court, it shall do so in terms of the proviso to Section 37;

*(vii) The directions of the Apex Court in **Children in Street Situations, In Re, 2022 SCC OnLine SC 189** and other judgments in this regard be followed scrupulously whilst conducting trials under the POCSO Act”.*

The girl would be 10 years by now. Despite directions issued to all courts with respect to examination of POCSO victims, till date, the victim has not been examined.

3. *Considering the aforesaid, we deem it appropriate to call for a report from the concerned Court i.e District Judge-2 and Addl. Sessions Judge, Vasai, as to why the said guidelines issued by this Court to all the Trial Courts have not been complied with and why the victim has not been examined till date, despite the mandate of the POCSO Act as well as the guidelines issued by this Court. The said report be submitted by the concerned Judge in the Registry on or before 10th January, 2025.*

4. *Stand over to 13th January, 2025 at 2.30 p.m.*

5. *Registry to forthwith communicate the said order to the learned District Judge-2 and Addl. Sessions Judge, Vasai by Fax/email or through a special messenger, so as to enable the learned Judge to comply with the order passed.”*

2. Pursuant thereto, the Additional Sessions Judge has sent his report dated 7th January 2022. From the said report it appears that

this Court has granted time of six months to dispose of Special Case No.120 of 2019 vide order dated 13th December 2024.

3. It appears that on 15th December 2023, the Petitioner's Bail Application No.1434 of 2022 was allowed to be withdrawn and as such disposed of. While disposing of the said Application, this Court (Coram: Shivkumar Dige, J.) in paragraph 5 observed as under:

“As the Applicant is behind bar since more than four years, hence, Trial Court is requested to expedite the Trial and dispose of it as early as possible, preferably within six months from the receipt of the order.”

4. It appears that the learned Additional Sessions Judge sought extension of time to dispose of the said case. Hence, vide order dated 29th April 2024, this Court (Coram: Prithviraj K. Chavan, J.) granted six months extension, as sought.

5. Thereafter, again vide letter dated 14th November 2024 extension of six months was sought to dispose of the said Sessions Case. This Court (Coram: Manish Pitale, J.) vide order dated 13th December 2024 granted extension of six months.

6. The Petitioner is languishing in jail since 2019. Despite so many extensions, there is no progress in the case. It appears from the

report of the learned Sessions Judge that till date only witness summons has been issued, however, not a single witness has been examined.

7. Considering the aforesaid, we expect that the learned Judge will dispose of the said case within the period extended by this Court vide order dated 13th December 2024. The learned Judge shall not seek any further extension, considering that the Petitioner is already in custody for almost five years, waiting for his trial to commence. If necessary, the case be heard on day-to-day basis. We have noted in our order dated 17th December 2024 that there was no impediment for the learned Judge to record the statement of the victim/prosecutrix, considering her age, 5 years then and now 10 years and considering that the case was one under the Protection of Children from Sexual Offences Act, 2012 (For the sake of brevity referred as “POCSO Act”). The learned Judge to keep in mind the directions given to all in POCSO cases.

8. The Petition is accordingly disposed of.

9. Registry to forthwith communicate this order to the Additional Sessions Judge, Vasai seized of Special Case No.120 of

2019 by e-mail or through a Special Messenger by hand, to enable him to dispose of the case expeditiously.

10. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J.)

(REVATI MOHITE DERE, J.)