



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 1638 OF 2025

APPLICANT :- Pravin Bisen Dahare,  
Aged 23 years, Occu: Labour,  
R/o Ward No. 5, Ruyad Wagh,  
Nagpur, Kuhi, Maharashtra -441210.

..VERSUS..

NON- :- 1) State of Maharashtra,  
APPLICANTS through P.S.O., Veltur, Kuhi Nagpur.  
  
2) XYZ (Victim)  
through P.S.O. Veltur, Kuhi Nagpur.

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Mr. Gurpreet Chandok, counsel for applicant.  
Mr. A.M. Kadukar, APP for non-applicant/State.  
Mrs Varsha Warade, counsel (appointed) for non-applicant No.2.  
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CORAM : URMILA JOSHI PHALKE, J.

DATE : 13/03/2026

ORAL JUDGMENT :

1. Heard.
2. **ADMIT.** Heard finally by consent of learned counsel for the applicant, learned APP for non-applicant/State and learned appointed counsel for non-applicant no.2.
3. By this application, the applicant has challenged the order

dated 29/9/2025 passed by the Extra Joint District Judge and Additional Sessions Judge, (Special Judge, POCSO Court), Nagpur, in Special Child Case No. 548/2022, rejecting his application filed under Section 311 of the Code of Criminal Procedure, 1973, for recalling prosecution witnesses Nos. 1, 2 and 3 and 5, and permitting him to cross-examine the said witnesses according to the applicant.

4. The FIR was lodged against the applicant and other co-accused on 21/8/2022 by a minor victim against the applicant and one Vilas Mane. As per the allegations of the victim, the accused persons forcefully established sexual relations with her despite knowing she was a minor. In pursuance of the said report, the crime was registered against the present applicant under Section 376(2)(n), 376(3), and 506 read with Section 34 of the Indian Penal Code; as well as Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'),

5. After completion of investigation, the charge-sheet was submitted against the present applicant and other co-accused. The charge was framed, and the prosecution has examined the witnesses. The applicant filed an application below Exhibit 144 for recalling the witnesses as stated above. It is contention of the applicant that on an earlier occasion, he filed an application at Exhibit 138 for recalling the Prosecution Witness Nos. 1 to 11 for the reasons stated therein. The said application was partly allowed by the learned Sessions Judge on 17/4/2025, permitted the applicant to cross-examine the Prosecution Witness Nos. 4, 6,7 and 8 to 11 only. The applicant challenged the said order before this Court by filing Criminal Application (APL) No. 933/2023. This Court directed the applicant to approach the learned Sessions Court for seeking permission to cross-examine Prosecution Witness Nos. 1 to 3 and 5, and the learned Sessions Court was directed to

decide the same on its own merits.

6. It is further contention of the applicant that the application at Exhibit 144 was moved in pursuance of the direction of this Court dated 8/7/2025. However, the reasons given by the applicant for recalling of the said four witnesses which does not stand the scrutiny of law even for the moment.

7. The Non-applicant/State objected to the said application on the ground that the applicant was given ample opportunity to cross-examine the prosecution witnesses. It is a matter of record that by availing the said opportunities, the applicant has exhaustively cross-examined the said witness. The learned Sessions Court observed that the applicant was awarded the opportunity to cross-examine the remaining witnesses in pursuance of the order passed below Exhibit 138. Therefore, this application is filed by the applicant for seeking permission to recall and cross-examine the witnesses.

7. The said application was strongly opposed by the non-applicant No.2 on the ground that despite sufficient opportunity granted to the present applicant, he failed to carry out the cross-examination, and thereafter this application came to be filed.

8. Before entering into the merits of the application, the order passed by the learned Sessions Judge deserves to be considered. The order passed by the Sessions Judge shows that after going through the entire case, the law submitted before him on the point of recall of the witnesses, and to give the fair opportunity to the accused that meaningful cross-examination of the witnesses must be necessary. The power of the Court to recall of the witness suo-motu exists, and witnesses can be recalled at any stage of the prosecution witnesses. He observed that an ample opportunities had already been given by the Court to accused No.1 to

cross-examine the prosecution witnesses. Accused No.1 availed the said opportunity and even cross-examined those witnesses whose cross-examination was depend to be conducted on behalf of the accused No.1, was already ordered to be recalled by this Court by its court order passed below Exhibit No. 138. Accused no.1 did not comply with the order passed below Exhibit 138, and the second application of recall was moved by the accused No.1. For all above the reasons, the Sessions Court comes to the conclusion that the application deserves to be rejected.

9. On hearing both sides and on perusal of the entire record, it reveals that the Sessions Court, while passing the order below Exhibit 138, already allowed the application of accused No.1 to recall witnesses of medical officer Dr. Smt. Aishwarya Prashant Rangari, Smt. Vanita alias Jija Harichand Nanhe, Pradip Pralhad Khillare, Vijay Yeshwant Bante, Swati Rupesh Kolhe, Vilas Shivaji Thange and Smt. Suchita Uday Mandavale. All the above applications were allowed. The accused No.1 did not taken steps for issuance of summons to the above witnesses in order to cross-examine them. Even the present applicant failed to pay costs of the prosecution. Instead, he challenged the said order below Exhibit 138 before this Court and subsequently withdrawn the said proceedings and thus prolong the matter. Now, the second application was filed by the accused to recall those witnesses which are already ordered to be recall by the Sessions Court on 17/4/2025. Thus, the intention of the present applicant is apparent from the same.

10. As far as the law regarding recalling of the witnesses is concerned, it is settled. Section 311 of the Cr.P.C. has to be exercised in a judicious manner so as to ensure just decision of the case. If the Court is of the opinion that, in order to arrive and just decision in the case, it is necessary to recall or re-examine witnesses, the power must be exercised. It is also held that power should be exercised in a manner that no

prejudice is caused to the accused if permission is given to the prosecution to fill up the lacuna. Similar ratio is to be applicable in case of the application filed by the accused. The power should be exercised in a judicious manner, and no prejudice is to be caused to the prosecution also.

11. On perusal of the application filed by the present applicant before the Sessions Court, it shows that it is mentioned in the application that the accused No.1 is behind the bars in Central Jail, Nagpur, for last more than three years. Prior to this application, the present applicant had filed an application seeking recall of prosecution witnesses on the ground that all those witnesses were examined by the prosecution on different dates, but the counsel for the accused remained absent though recalled repeatedly by the Sessions Court for the reasons best known to him. Therefore, the cross for accused No.1 was declined, as he was unaware of the proceedings and did not understand or follow the consequences, and not knowing the reasons. The aforesaid order was challenged before this Court, and thereafter again the application came to be filed. The same was allowed, but no steps were taken. Therefore, one more opportunity is to be granted to the present applicant.

12. The scope of Section 311 of Cr.P.C. is to the extent that it is a cardinal rule of the law of evidence that the best evidence available must be brought before the Court to prove a fact or a point in issue. It observed that the Court has a duty to determine the truth and to render a just decision. This is the object of Section 311 of Cr.P.C., which gives discretion to the Court, at any stage of the inquiry, trial, or other proceedings, to summon any person as a witness though not yet examined as a witness or to recall or re-examine any person who is expected to be able to throw light upon the matter in dispute. If the Judgments happen to be rendered, inconclusive and speculative presentation of facts, the ends of justice would be defeated. At the same time, the power of the

Court under Section 311 of Cr.P.C. can be exercised at any stage of the trial, even before the pronouncement of the judgment. The object and scope of the provision is to enable the Court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts in order to arrive at a just decision of the case. The power under Section 311 has to be exercised judiciously. The power under Section 311 cannot be exercised to fill up any lacuna in the prosecution case or to cure defects or to cause disadvantage to the accused or serious prejudice to the accused or to give unfair advantage to the opposite party. Neither can such evidence be received as a disguise for a retrial, so as to change the nature of the case as against any of the party. The said extraordinary power can be exercised only if the evidence that is likely to be tendered by a witness is germane to the issue involved.

13. It cannot be disputed that the duty of the Court is not only to do justice but also to ensure that justice is done. The power under Section 311 is circumscribed by truth, mainly that the evidence is necessary for a 'just decision of the case' and it is the duty of the Court to determine the truth, and to render a just decision.

14. In the light of the above principles rendered in catena of decisions, if the facts of the present case are taken into consideration, admittedly sufficient opportunities have already been granted to the present applicant to cross-examine the witness, which he has not availed. Initially, the witnesses were already cross-examined, and the opportunity of cross-examination was already completed. It is apparent from the record that despite the opportunities was granted to the present applicant, he has not taken steps and therefore, the witnesses are not examined before the Court. It is nothing but the prolonging of the case. It is settled that as far as the matter, which is registered under the provisions of Protection of Children from Sexual Offences Act are concerned, the child

is not to be called repeatedly before the Court for recording evidence, and the child should not be humiliated. By taking into consideration, admittedly the application is devoid of merits and therefore, liable to be **rejected**. Accordingly, I proceed to pass the following order:

**Order**

- a) The criminal application is **rejected**.
- b] The fees of the appointed counsel be quantified as per rule.

**(URMILA JOSHI PHALKE, J.)**