

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.466 of 2021

Azaruddin N. Mirsilkar .. Applicant
Versus
The State of Maharashtra .. Respondent
...

Ms.Aishwarya Agarwal with Azimuddin N. Kazi for the applicant.
Mrs.Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 21st JUNE, 2022

P.C:-

1 With an avowed purpose in protecting the children from offences from sexual assault, sexual harassment and pornography, the POCSO Act, 2012 came to be enacted by establishing special courts for trial of such offences.

The Special statute in Chapter VII provided for designation of Special Courts for ensuring a speedy trial. The provision contained for designation of Special Courts was appended with a proviso, to the effect that if the Court of Sessions is notified as a Children's court under the Commissions for Protection of Child Rights Act or a Special Court, designated for similar purpose under any other law for the time being in force,

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then such Court shall be deemed to be a Special Court. Chapter VIII enumerates the procedure and power of Special Courts and with special reference to the recording of evidence, in departure the normal cases, where the evidence is accorded by creating a child friendly atmosphere. Several special provisions in the Enactment is an exception to the normal procedure of trial and Section 37 contemplate a trial to be conducted in-camera. Section 35 which prescribe the maximum period within which the evidence of a child shall be recorded, and sub-section (2) make it imperative for the Special Court to complete the trial, as far as possible within a period of one year from the date of taking cognizance of the offence.

2 In the backdrop of the above statute, on 2/3/2022, while dealing with an unfortunate incident when a girl aged 14 years was alleged to have been sexually ravaged by the applicant, who had given birth to a child, the learned APP was directed to ascertain the status of the trial.

Today, the picture that comes before me is not only very bleak but disappointing too. It is only when the writ was issued by this Court, the trial commenced with a snail speed, with a result that as on date only one witness has been examined in Special Case No.420/2016. The statement of the victim girl itself came to be recorded after five years. The manner in which the Special Courts are proceeding with the POCSO trial, dealing with the offenders under the Special Statute, enacted with a specific

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avowed purpose, to prevent exploitation of minor/children and punish the offenders itself is being defeated by the procedure that is adopted by the Special Courts. It is informed that the Committees are constituted at the level of the High Court for over viewing the progress of the POCSO cases, but today, when the learned APP has placed before me the order sheet of the proceedings, with a request that 14 witnesses are yet to be examined, and therefore, the trial will take some time, I deem it appropriate to issue certain directions to be implemented by all POCSO Courts.

3 The Special Courts created for the purpose of trying POCSO cases, it seems, are also entrusted with the charge of some other Court and at the instructions of the Investigating Officer, who attend the POCSO cases in Dindoshi Court, the learned APP state that only one Court is a Special Court for trying the offences under the POCSO Act, 2012, whereas other Courts which are assigned with POCSO cases are also required to take some other assignment. This is a disturbing feature and it's veracity has to be first ascertained.

4 Let the Principal Judge of the Court of Sessions at Greater Mumbai, submit a report about the pending POCSO cases in Mumbai and also giving the details about how many POCSO Courts are designated as 'Special Courts' along with number of cases pending with these Courts.

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The In-charge Judge shall also submit a report about the appointment of Special Public Prosecutors in the POCSO Court as well as compliances which are mandated, including the interpreter or expert as contemplated u/s.38 of the POCSO Act. On collating the necessary information, let the report be placed before this court within a period of one week.

5 List on 4/7/2022.

Let the learned APP communicate this order to the Principal Judge of this Court.

(SMT. BHARATI DANGRE, J.)