


**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,**  
**BULDHANA**

(Presided over by **Shaikh Akbar Shaikh Jafar**)

<b>MHBU010013942021</b>	<b>Special Case No. 84/2021</b>
	The State of Maharashtra ..Versus.. Rangnath Sakharam Ghube

**ORDER BELOW EXH.58**

(Passed on this 10<sup>th</sup> day of March 2026)

1] This application is filed by accused for recall of witness i.e. victim contending that question regarding age and date of birth of victim and certificate of school are remained to be asked to the witness inadvertently. Therefore, to decide the matter on merit, accused is required to be permitted to put question to the victim regarding her age and date of birth. Hence, it is necessary to recall witness by giving permission to conduct further cross-examination of victim and prayed for allowing the application as per Section 311 of Criminal Procedure Code [Section 348 of BNSS].

2] Application is strongly resisted by the prosecution vide reply at Exh.59 contending that during the trial, accused did not challenge age of the victim as well as her date of birth and after completion of final argument of the prosecution, this application is moved by the defence which is not tenable. It is further pointed out that at the time of incident, age of victim was 9 years and at the time of giving evidence, she was 14 years of age. She being child victim of the offence punishable under the

provisions of the POCSO Act, she cannot be recalled and it will amount mental harassment to the victim and prayed for rejection of application.

3] Heard rival parties at length. The Counsel of accused is relying on following judgments-

- A] Ruzan Samit Pathan Vs. The State of Maharashtra, 2024 NCBHC-AS-4423,
- B] Atul Ganeshrao Choudhari Vs. The State of Maharashtra, 2013 ALL MR (Cri) 1736,
- C] R.Gnanaprakash Vs. State, Cri.A.No.217 of 2015, decided by Hon'ble Supreme Court on 15.1.2025,
- D] Varsha Garg Vs. The State of Madhya Pradesh, 2023(1) JKJ 151,
- E] Sandeep Kothavale Vs. The Police Inspector and Ors, 2016 All MR (Cri) 830,
- F] Sri Shantha Kumar G.R.Smt.Rekha Vs. State, 2025 Supreme (Online)(Kar) 13331,
- G] Shri Kishor s/o Anandrao Gaidhane Vs. The State of Maharashtra, 2018 Supreme (Bom) 1024,
- H] Mannan Sk. & Ors. Vs. State of Bengal & Anr, 2014 AIR (SC) 2950,
- I] Anand Kumar Singh Vs. State of Bihar & Anr, 1996(2) Crimes (HC) 366
- J] Zahira Habibulla H.Sheikh & Anr Vs. State of Gujrat, 2004 AIR SCW 2325,
- K] Vineeth Vs. State of Kerala, 2023(1) Crimes 187.

4] I have gone through all the cited cases. Result of each cited

case depends on the facts and circumstances of that particular case. Counsel of accused is referring the judgment of Hon'ble Supreme Court in the case of **R.Gnanaprakash Vs. State** [cited supra], wherein recall of witness was allowed. However, while confirming the order of recalling witness, Hon'ble Supreme Court has considered the facts and circumstances of that case and upheld the order of learned trial Court of recalling the witness and her mother. In the instant case, accused is praying for recall of victim whereas prosecution has examined in all 6 witnesses. It appears that accused did not challenge the age of victim during cross-examination of all witnesses. The evidence of mother and grand-mother of victim was recorded. Likewise, he did not challenge the date of birth of victim while cross-examining the Investigating Officer also. Thus, the age and the date of birth of victim remained unchallenged. Therefore, mere recalling of victim so as to cross-examine her on the point of age and date of birth would make no effect.

5] It is to note that at the time of incident, victim was of 9 years and at the time of recording her evidence, she was 14 years of age. Her cross-examination was conducted on 24.2.2025 and 15.3.2025. Thus, sufficient opportunity was availed by the defence to conduct cross-examination of the victim. Moreover, considering the age of victim at the time of incident, any question put to her will not be fruitful to the accused as there cannot be application of rule regarding margin of error of the age. Had it been the fact that age of victim was of 15 or 16 years at the time of incident, the cross-examination of the victim regarding age and date of birth would have been material. When the age of victim was

9 years at the time of incident, it will make no effect of putting suggestion to the victim regarding the age. She cannot be at all treated as major after putting suggestion or the cross-examination by the accused. Therefore, I am of the view that the application is devoid of merit and considering the facts and circumstances of the case, application cannot be allowed. In the result, I proceed to pass the following order.

**ORDER**

Application [Exh.58] stands rejected.

Buldhana  
Date: 10.3.2026

**(Shaikh Akbar Shaikh Jafar)**  
Judge, Special Court,  
Buldhana