

In the Court of Additional Sessions Judge, Wardha.

Special Case No.23/2021

State of Maharashtra
..V/s..
Jayram Tukaram Mule

Order below Exh.38
(Passed on 4th of July, 2025)

1] The present application is filed under Section 348 of the Bharatiya Nagarik Suraksha Sanhita, 2023 to recall witness PW2 for the purpose of cross-examination. It is contended that the examination-in-chief of PW2 was recorded when the accused was in jail and unable to engage an Advocate. Therefore, the examination-in-chief remained unchallenged, which has caused prejudice to the accused. Hence, it is prayed that the witness be recalled.

2] The application is opposed by the learned A.P.P. Heard respective Advocates. It is contended on behalf of the learned Advocate for the accused that the examination-in-chief of the victim was recorded by the prosecution on 26.09.2024, but on that date, the learned Advocate for the accused was not present, and therefore, the cross-examination was closed. On the other hand, the learned A.P.P. submitted that recalling the witness would cause prejudice to the victim and would also be inconvenient, as she is a victim of a sensitive offence.

3] I have given anxious consideration to the submissions made at the bar. It is evident that the examination-in-chief of PW2 was recorded, and on the date of her deposition, the learned Advocate

for the accused was absent. However, it needs to be mentioned that the applicant is facing charges under Sections 363, 366(A), 376(A-B) of the Indian Penal Code and Sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act, 2012. PW2 is a significant and important witness for the prosecution. Therefore, to ensure a fair trial and to provide an opportunity to the accused to challenge the evidence, it is necessary to allow the application, albeit with some conditions.

Order

- (i) The application is allowed.
- (ii) Summons be issued to PW2 for the purpose of cross-examination. If the Advocate for the accused remains absent on the date fixed, the witness shall be discharged.
- (iii) The learned Advocate for the accused to take due note of this order.

Dated : 04.07.2025.

(S.A.S.M. Ali)
Additional Sessions Judge,
Wardha.

CERTIFICATE

I affirm that the contents of this P.D.F file are the same word to word, as per the assigned order

(Madhav A. Chaudhari)
Stenographer