

MHCC050002642020



**IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
MISCELLANEOUS APPLICATION (EXHIBIT - 56)**

IN

POCSO SPECIAL CASE NO. 26 OF 2020

Lallan Rajkumar Das

Aged : - 27 Years,

Residing at : Ghoda Chawl, Room No. 4,

Upper Floor, Dhobi Ghat,

Amrutlal Wadi, Near Vaishali Hotel, Juhu,

Vileparle (West), Mumbai.

.... Applicant/Accused

V/s.

The State of Maharashtra

(Through Juhu Police Station

vide C. R. No. 379/2019)

..... Respondent

Appearances :-

Advocate Abdul Rehman h/f Advocate Wahab Khan for
Applicant/original accused.

Ld. APP Usha Jadhav for State.

CORAM : H. H. THE SPECIAL JUDGE,

Ms. S. N. Sachdeo, (C. R. NO. 12)

DATED : 20th August, 2026

ORDER

This is an application filed by prosecution for recalling
witness.

2. It is contended that the evidence of PW 1 is completed and at the time of her evidence, the original birth certificate of the victim was not filed alongwith the charge-sheet. Therefore, the photocopy came to be given as Article A. Now, the original birth certificate is available. To prove the age of the victim, the birth certificate is proper and legal document. Therefore, it is prayed to recall PW 1 alongwith original birth certificate of the victim.

3. The learned counsel for the accused has raised strong objection contending that the application is not maintainable, as the evidence of the prosecution is over. It will amount to filling up lacuna in the present case. PW 1 is already examined and the case is made Time Bound by the Hon'ble High Court. Thereby, the accused has prayed for rejection of the application.

4. Heard both the sides.

5. Admittedly, the case is made Time Bound by the Hon'ble High Court to be disposed off on or before 04/02/2027 on merits and till date the prosecution has examined eight witnesses. The evidence of PW 1 who is mother of the victim is completed on 01/08/2025. But, merely on this ground it can not be concluded that the prosecution has filed such application at fag end. As per Section 311 of Cr.PC., the powers of the Court are to be exercised neither to help the prosecution nor the defence, but to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence, which is necessary for just and proper disposal of the case.

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6. In the present matter, the age of the victim is material in the light of definition of victim provided under Section 2(d) of the POCSO Act. The age of the victim is to be proved as per Section 94 of Juvenile Justice Board Act. In such circumstances, the object of Section 311 of Cr.P.C. cannot be ignored, which states that there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statement of witnesses examined from either side. The determinative factor is whether it is essential to just decision of the case. The Section is not limited only for the benefit of the accused, and it will be an improper being produced for the purpose of examination-in-chief or cross-examination in the exercise of the power of the Court, merely because the evidence support the case for prosecution and not the accused. In such circumstances, facts of the case and the circumstances needs consideration. It is not that the prosecution intends to bring different or new evidence on record to fill up lacuna.

7. In case in hand already photocopy of the birth certificate Article C is already on record. In such circumstances, the prosecution merely wish to produce original birth certificate to prove it through PW 1. Even otherwise, if the birth certificate is issued by appropriate authority and it is authored by proper person in the form of certified copy, it amounts to public document in view of Section 74 of the Evidence Act. Likewise, even if PW 1 is recalled for proving birth certificate, to that extent the accused would have an opportunity to cross-examine said witness. In such circumstances, I do not find that it amounts to filling up lacuna from the side of prosecution. On the contrary, it is essential for just decision of the case. Hence, the

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ORDER

application needs to be allowed. Hence, I proceed to pass the following order.

ORDER

1. Miscellaneous Application (Exhibit – 56) in POCSO Special Case No. 26 of 2020 is allowed.
2. Issue witness summons to PW 1.
3. Miscellaneous Application (Exhibit – 56) in POCSO Special Case No. 26 of 2020 stands disposed off.

Date : 20.08.2026

(S. N. Sachdeo)
Special Judge under POCSO Act,
Sessions Court, Borivali Division,
Dindoshi, Goregaon, Mumbai

Directly Dictated by HHJ on computer
Checked & Signed by HHJ on

: 20.08.2026
: 20.08.2026

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CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
Date : 20/08/2026 Time : 5.42 P.M. UPLOAD DATE AND TIME	Miss. Tejal C. Rane (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Smt. S. N. Sachdeo (Court Room No. 12)
Date of Pronouncement of JUDGMENT/ORDER	20.08.2026
JUDGMENT/ORDER signed by P.O. on	20.08.2026
JUDGMENT/ORDER uploaded on	20.08.2026