

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2586/2023

Ranjeet Raigar Son Of Shri Chitarmal, Aged About 22 Years,
Resident Of Gohandi, Phagi, District Jaipur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Public Prosecutor.
2. Victim, R/o

-----Respondents

For Petitioner(s)	:	Mr. Shashi Shekhar Gaur, Advocate assisted by Mr. Aman Sharma, Mr. Ninad Khandelwal and Ms. Meenakshi Gaur, Advocates.
For Respondent(s)	:	Mr. Jitendra Singh Rathore, Public Prosecutor assisted by Mr. Gaurav Gupta, Assistant Government Advocate.
For Complainant/victim	:	None.

JUSTICE ANOOP KUMAR DHAND

Order

26/05/2026

1. The instant misc. petition is listed before this Court in pursuance of the directions issued by the Hon’ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan** (Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon’ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder, rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.

3. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 25.04.2023 passed by the learned Special Judge (POCSO Cases), District Jaipur in Sessions Case No. 08/2021 whereby the application filed by the petitioner under Section 91 Cr.P.C. has been rejected.

4. Learned counsel for the petitioner is facing the trial for the offences under Section 5/6 of the POCSO Act, 2012 (for short 'the Act of 2012') and Section 376 IPC. Counsel submits that the prosecutrix was a major lady when the alleged incident occurred. He submits that when the statements of the prosecutrix were recorded before the Court of the Judicial Magistrate under Section 164 Cr.P.C, there also she revealed her age as above eighteen years.

5. Counsel submits that the prosecutrix is a major lady and she has given birth to a child on 08.06.2021 at the Community Health Centre, Phagi, District Jaipur. Counsel further submits that the prosecutrix was admitted in the aforesaid Community Health Centre, Phagi and her age is mentioned as 19 years on 08.06.2021 whereas the date of the alleged offence is 06.03.2020. Hence, the prosecutrix was a major lady, above the age of eighteen years on the date of the alleged incident. Counsel submits that the petitioner had sought for the information regarding the birth of the child of the prosecutrix along with the admission ticket of the prosecutrix issued by the Community

Health Centre, Phagi under the provisions of Right to Information Act, 2005 and the aforesaid information was provided to him by the Primary Health Officer, Community Health Centre, Phagi, District Jaipur on 17.01.2023, and immediately thereafter, an application, under Section 91 Cr.P.C was preferred by the petitioner, submitting the aforesaid documents and the said application has been rejected on a technical count that this application has been submitted at the final stage of the trial and the cross-examination with regard to the age of the victim has already been completed by the accused.

6. Counsel submits that under Section 29 of the Act of 2012, there always exists a presumption against the accused and the burden also lies upon the accused to prove his innocence. Unless and until the admission ticket of the prosecutrix is summoned from the Community Health Centre, Phagi, he will not be in a position to defend his case with regard to the age of the victim. Hence, interference of this Court is warranted.

7. *Per contra*, learned Public Prosecutor opposes the prayer and submits that as per the school record of the victim, her date of birth is 15.01.2010. Therefore, she was minor at the time of the alleged incident. Counsel submits that the application has been submitted by the petitioner at the final stage of the trial only with a view to delay the disposal of the trial and the Trial Court has not committed any error in rejecting the application filed by the petitioner. Counsel submits that under these circumstances interference of this Court is not warranted.

8. In spite of service of notice, none has put in appearance on behalf of the complainant/victim.

9. Heard and considered the submissions made at Bar and perused the material available on the record.

10. This fact is not in dispute that when the statements of the victim were recorded before Trial Court on 29.02.2021, this fact was not within the knowledge of the petitioner that the victim has given birth to a child at the Community Health Centre, Phagi, District Jaipur where she has mentioned her age as nineteen years. This fact came into his notice at a later stage. Thereafter, an application was submitted by him to seek information regarding the birth of the child of the prosecutrix from the Community Health Centre, Phagi under the provision of Right to Information Act, 2005 and the aforesaid information was provided to the petitioner by the Primary Health Officer, Community Health Centre, Phagi on 17.01.2023. Immediately thereafter, an application was submitted by the petitioner under Section 91 Cr.P.C for summoning the admission ticket of the victim from the Community Health Centre, Phagi, Jaipur. In the considered opinion of this Court, no delay has been caused by the petitioner in filing the aforesaid application.

11. The Court below has rejected the application not on merits but on a technical count that the statements of the victims of the prosecutrix have already been recorded and sufficient time was granted to the petitioner for cross-examination with regard to the contention on the age of the prosecutrix.

12. It is a settled proposition of law that an accused cannot be deprived of the opportunity of a fair trial, if any fact comes under the notice of the accused or the Court at a later stage, prior to the conclusion of the trial and if that fact is relevant for just decision

of the case then opportunity should be provided to the accused to produce the subject document which could be relevant for just decision of the case.

13. The denial of an adequate opportunity to the accused by non-production of any record, which is admissible under the Indian Evidence Act in criminal trial, would amount to miscarriage of justice. Section 91 Cr.P.C. helps in facilitating a fair and just resolution to the case by ensuring that relevant evidence is made available to the Court for making informed decisions and arrive at a just and fair outcome. It enables the Court to secure important documentary evidence that may be in possession of individuals or organization and helps prevent the destruction, tampering or loss of crucial documents, thereby maintaining the integrity of the judicial process. The power under 91 Cr.P.C. must be exercised for production of such evidence, which would assist the Court in discovering the truth in the pursuit of justice. However, the right of privacy of the police officials cannot be breached at the *ipse dixit* of the accused. Before any such order for production of call details/tower location is passed, the accused is required to prove necessity and desirability of such evidence, which would be relevant to establish the guilt or innocence of the accused.

14. As principles of natural justice are integral part of fair trial under Article 21 of the Constitution of India, any denial of the best available evidence or effective and substantial hearing to accused in proving defence would amount to denial of free and fair trial.

15. In the instant case also, an application has been submitted by the petitioner for summoning the admission ticket issued by the Community Health Centre, Phagi wherein the age of the victim

is alleged to be mentioned as nineteen years on 08.06.2021. In the considered opinion of this Court, the application submitted by the petitioner needs part acceptance. The Court below is directed to summon the admission ticket from the Community Health Centre, Phagi, District Jaipur and allow the petitioner with last opportunity to cross-examine the prosecutrix on the aforesaid admission ticket. The Trial Court is directed to fix a date for the said purpose, and thereafter, proceed with the matter in accordance with law.

16. In view of the above, the impugned order dated 25.04.2023 stands partly modified with the directions stated thereinabove.

17. In view of above discussion, the instant criminal misc. petition stands disposed of. Stay application and all pending applications, if any, also stand disposed of.

(ANOOP KUMAR DHAND),J