

**IN THE HIGH COURT OF MADHYA PRADESH**

**AT INDORE**

**BEFORE**

**HON'BLE SHRI JUSTICE ANIL VERMA**

**ON THE 29<sup>th</sup> OF SEPTEMBER, 2022**

**CRIMINAL REVISION No. 1945 of 2022**

**BETWEEN:-**

**KAMLESH S/O SHRI MALJI KATARA,  
AGED ABOUT 24 YEARS,  
OCCUPATION: AGRICULTURE AND  
LABOUR, R/O GRAM SARPOT  
PATAN, BANSWARA (RAJASTHAN)**

**.....APPLICANT**

***(MR. ASHISH GUPTA, LEARNED COUNSEL FOR THE APPLICANT)***

**AND**

**THE STATE OF MADHYA PRADESH  
STATION HOUSE OFFICER  
THROUGH POLICE STATION  
SARWAN, DISTRICT RALTAM  
(MADHYA PRADESH)**

**.....RESPONDENT**

***(MS. HARSHLATA SONI, LEARNED PL APPEARING ON BEHALF OF  
ADVOCATE GENERAL)***

*This revision coming on for hearing this day, the court  
passed the following:*

**O R D E R**

The applicant has preferred this criminal revision under Section 397 read with Section 401 of Cr. P.C. being aggrieved by

the impugned order dated 17/05/2022 passed by Special Judge (POCSO Act), Ratlam in Special Case No.41/2021, whereby an application preferred on behalf of the applicant / accused for examination of defence witness has been rejected.

The facts giving rise to the present revision are that the complainant Thawara launched a missing person report at Police Station Sarvan by stating that her minor daughter went for labour work from his home but she didn't come back. During the investigation, prosecutrix was recovered from the possession of the present applicant and it has been gathered that the present applicant abducted the prosecutrix and committed rape upon her several times. Accordingly, offence has been registered against the applicant.

After examination of the prosecution witnesses accused statement under Section 313 of the Cr.P.C. has been recorded and defence evidence has been closed by the trial Court and now the case is fixed for final argument.

The applicant before the trial Court has filed an application for affording an opportunity to examine the defence witness and the trial Court after considering the facts and circumstances of the case rejected the application by saying that it has been earlier determined that the applicant / accused was not minor at the time of incidence and the same was also upheld by the High Court. Therefore, there is

no need to give again an opportunity to examine the defence witness on the same point. Being aggrieved by the impugned order, applicant has filed present criminal revision before this Court.

Learned counsel for the applicant submitted that the applicant / accused was minor at the time of incident. His date of birth is 08/08/2003, therefore, evidence regarding the Scholar Register of the applicant is necessary for proper adjudication of this matter. The trial Court has erroneously rejected his application without considering the aforesaid facts. Hence, he prays that the impugned order be set aside and he be permitted to examine the defence witnesses.

On the other hand, learned counsel for the respondent / State opposes the revision and prays for its rejection.

From perusal of the documents, it appears that the applicant has taken a plea that the applicant was minor at the time of incident, although the same point has already been decided at earlier stage, but this ground may be a proper defence for the applicant. It is the settled law that fair trial is the main object of the criminal procedure and fair trial includes the grant of fair and proper opportunity to the person concerned. Adducing the evidence in support of the defence is a valuable right and denial of such right would amount to denial of fair trial. In these circumstances, it would be appropriate to give an opportunity to the applicant / accused for examination of the

defence witness.

Looking to the aforesaid facts and circumstances of the case, this revision petition is allowed and the impugned order dated 17/05/2022 passed by the Special Judge (POCSO Act), Ratlam in Special Case No.41/2021 is hereby set aside and the trial Court is directed to give an opportunity to examine the witnesses regarding the age of the applicant. It is made clear that the applicant shall be entitled for only one opportunity for the same purpose, if he fails in examining the defence witness on the scheduled date given by the trial Court in this regard, the trial Court shall be free to close the defence witness.

With the aforesaid, criminal revision stands disposed of.

Let a copy of this order be sent to the concerned trial Court for information and necessary compliance.

Certified copy as per rules.

**(ANIL VERMA)**  
**J U D G E**

*Tej*