

Exh. 56 in POCSO Spl.Case 263-15 : 1 :

Dt. 17.09.2021

**IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, AT GREATER BOMBAY**

**ORDER BELOW EXHIBIT NO. 56
IN
POCSO SPECIAL CASE NO. 263 OF 2015
(CNR No. MHCC02-007977-2015)**

Pankaj Arjunbhai Koli) ... Applicant

Versus

The State of Maharashtra)
(Through Sir J.J. Marg Police Station)) ... Respondent

Ld. Adv. Nilesh Oza, Adv. Nizam and Adv. Mishra
for Applicant / Accused.

Ld. SPP. Kalpana Hire for State / Respondent.

**CORAM : HER HONOUR THE SPECIAL JUDGE
SMT. SANJASHREE J. GHARAT
FOR THE PROTECTION OF CHILDREN
FROM SEXUAL OFFENCES ACT, 2012,
(C.R. NO. 39)**

DATED : 17.09.2021.

ORDER

This is an application filed by the Accused to investigate and launch prosecution against the person responsible for forced vaccination of Accused against his Will.

2. It is submitted that by Order dated 18.08.2021 this Court pronounced the judgment and convicted the Accused. On same day, the Accused was taken into judicial custody. However, before taking to the jail he was taken to the Hospital and despite his strong refusal / oppose, he is forcefully given the Corona Vaccine by the concerned Police officials and Doctors. Therefore, necessary action be initiated

Exh. 56 in POCSO Spl.Case 263-15 : 2 :

Dt. 17.09.2021

against the concern Doctors and Police officials.

3. The Ld. Advocate for Accused placed reliance on following citations :-

i.	<i>Common Cause Vs. Union of India</i> reported in (2018) 5 SCC 1
ii.	<i>Aruna Ramachandra Shanbaug V. Union of India</i> reported in (2011)4 SCC 454.
iii.	<i>K.S.Puttuwamy Vs. Union of India</i> reported in (2017)70 SCC 7.
iv.	<i>Montgomery Vs. Lanarshire Health Board</i> reported in (2015) UK SC 11.
v.	<i>Webster Vs. Burton Hospitals NHS Foundation Trust</i> reported in (2017) EWCA Civ 62.
vi.	<i>Airedale N.H.S. Trust Vs. Bland</i> reported in (1993)1 All ER 821
vii.	<i>Meghalaya Vs. State of Meghalaya</i> reported in 2021 SCC OnLine Megh 130.
viii.	<i>Dinthar Incident Aizawl Vs. State of Mizoram</i> reported in 2021 SCC OnLine Gau 1313.
ix.	<i>Osbert Khaling Vs. State of Manipur</i> reported in 2021 SCC OnLine Mani 234.
x.	<i>Madan Mili Vs. UOI</i> reported in 2021 SCC OnLine Gau 1503.
xi.	<i>A. Varghese Vs. Union of India</i> reported in 2020 SCC OnLine Kar 2825.
xii.	<i>Master Haridaan Kumar (Minor through Petitioners Anubhav Kumar and Mr. Abhinav Mukherji) Vs. Union of India</i> reported in W.P.(C) 343/2019 & CM Nos. 1604-1605/2019.
xiii.	<i>Baby Veda Kalaan & Others Vs. Director of Education & Others</i> W.P.(C) 350/2019 & CM Nos. 1642-1644/2019.

4. The Reply is filed by J.J. Marg Police Station. It is submitted that while the Accused was taken to the Arthur Road Jail, the Jail Authority directed to get RTPCR Test and vaccination done before admitting the Accused to the Hospital. Therefore, he was taken for

Exh. 56 in POCSO Spl.Case 263-15 : 3 :

Dt. 17.09.2021

vaccination. It is further submitted that at that time the Accused not opposed in any manner for vaccination.

5. The Reply is also filed by the Jail Authorities. It is submitted that the Accused was brought to the Arthur Road Jail on 18.08.2021. However, at that time the Report of RTPCR was not available. Moreover, the oral instructions were given to verify the status of vaccination of Accused.

6. It is further submitted that in view of the directions given by the Hon'ble High Court in sue motto P.I.L. No. 1/2021 it is mandatory to get the Accused vaccinated who are more than 45 years. Accordingly, the directions were issued by Maharashtra State. Moreover, in the Meeting dated 07.05.2021 and 11.05.2021 the High Power Committee given directions for getting the RTPCR Test and getting the vaccination of Accused. It is submitted that the vaccination is important looking into the social health of the prisoners. However, nobody was vaccinated against their wish.

7. Heard Ld. Advocate appearing on behalf of Accused and Ld. SPP. for State.

8. The present Application is filed by the Accused alleging that he was forcefully vaccinated when he was remanded to the judicial custody. It is submitted on behalf of the Ld. Advocate for the Accused that he is against the vaccination and therefore, he also preferred Writ Petition / appropriate proceeding before the Hon'ble High Court and same is pending.

Exh. 56 in POCSO Spl.Case 263-15 : 4 :

Dt. 17.09.2021

9. Per contra, it is the contention of prosecution that vaccination is necessary while admitting the Accused in judicial custody.

10. Heard Ld. SPP. for State and Ld. Advocate for the Accused.

11. In the present matter on 18.08.2021, I hold Accused guilty and judgment was suspended for hearing Accused on the point of sentence awarded to the Accused.

12. On that day the Ld. Adv. requested time to argue on the point of sentence awarded to the Accused. The said prayer came to be allowed. Thereafter, the matter was adjourned to 21.08.2021. On that day the Accused was not produced from Jail. Even on that day the Ld. Advocate for Accused prayed time and submitted that he has to take instructions from Accused. Therefore, the adjournment was granted.

13. Thereafter, the matter was fixed on 24.08.2021. On that day the Accused was produced from J.C. The Ld. Advocate for Accused instead of arguing on the point of sentence filed two applications, one is for taking action for forceful vaccination and secondly for providing copy of Judgment.

14. The Ld. Advocate for Accused argued the application. From the line of his argument it appears that the Ld. Advocate Oza is against the 'vaccination itself'. He submitted that he filed Writ Petition before the Hon'ble High Court against the decision of vaccination making compulsory. He further submitted that the vaccination is not giving protection from corona. It is to be noted that the Advocate

Exh. 56 in POCSO Spl.Case 263-15 : 5 :

Dt. 17.09.2021

representing party has to plead the grievance of his party. Therefore, there should be grievance of party and not of Advocate. Whenever there is right there is remedy. The provisions are available for safeguarding the right of parties.

15. As stated earlier Ld. Advocate for Accused filed an application for forceful vaccination on 24.08.2021. The said application is having 33 pages. Therefore, in order to verify contents of Application I have made inquiry with the Accused in open Court. At that time the Accused submitted that after he was taken in Jail Custody on 18.08.2021 he had no occasions to interact with Advocate till application is filed. He further submitted that from 18.08.2021 till 24.08.2021 his advocate neither met him in jail nor contacted in any manner. So also, during said period his relatives / family members also not met him in jail.

16. He claims that on 24.08.2021 after 18.08.2021 for the first time he met his relatives / family members in Court. At that time he disclosed to his relatives / family members about vaccination given to him. He claims that his family members might have shared the said information to his Advocate. Therefore, question arises at whose instructions the present application is drafted which is running 33 pages and produced on very same day.

17. I have made enquiry with the Accused about his grievance of vaccination. He stated that he watched some video and therefore, he was not intending to take vaccination. Therefore, I have made enquiry with Accused whether he brought the said fact to the notice of the

Exh. 56 in POCSO Spl.Case 263-15 : 6 :

Dt. 17.09.2021

police staff who took him for vaccination, or to the staff who gave vaccination that he do not wanted to take vaccination, to which, he replied in negative. Thereafter, I made inquiry whether he brought the said fact to the notice of jail staff, after he was taken to jail, then he replied in negative. Therefore, it appears that the Accused not objected while RTPCR Test and vaccination is done. Therefore, the contention made in the application that accused was forcibly vaccinated is devoid of any merit. In fact it appears that he is not aware about contents of present application.

18. Secondly, as per Reply filed by the Superintendent of Jail in view of direction given in the suo moto PIL No. 1/21 by Hon'ble Chief Justice and in view of guidelines of High Power Committee it is mandatory to give vaccination for Accused above 45 years. Moreover, as per the policy decision of government and looking into the possibility of getting infected the fellow prisoners it is necessary to give vaccination. So also, the vaccination is made compulsory for travelling in local train, plane for working in any establishment by the Government.

19. So far as grievance of Ld. Advocate Oza for Accused is concerned, same is pending before the Hon'ble High Court. Therefore, this Court can't give opinion on the issue of making vaccination mandatory / compulsory.

20. Moreover, the Accused not made any grievance that he was hand cuffed while taking to the jail. The reasonable force is required even for the safety of Accused in transmitting him to jail.

Exh. 56 in POCSO Spl.Case 263-15 : 7 :

Dt. 17.09.2021

21. Considering the reasons stated hereinabove there is no grievance of Accused as alleged in the application. Therefore, the citation relied by the Accused are not discussed.

22. As stated earlier, the accused claims that he had not made aware anybody that he is not intending to take vaccination. Therefore, it can't be said that there was forceful vaccination. Moreover, it is mandatory to admit the Accused in prison after vaccination. (Accused above 45 years) . It appears that the Ld. Advocate already pursuing the decision of making vaccination mandatory. Considering the reason mentioned hereinabove I do not find any merit in the present application. The Accused is at liberty to approach the proper authority for relaxation of condition of making vaccination compulsory. This Court is not having any jurisdiction to deal with the said subject. Therefore, I proceed to pass following order :-

ORDER

The Application filed vide Exh. 56 stands rejected.

(SANJASHREE J. GHARAT)

Special Judge,
POCSO Act.

Date :- 17.09.2021.

Dictation Typed on : 17.09.2021.

Checked & Signed on : 17.09.2021.

Exh. 56 in POCSO Spl.Case 263-15 : 8 :

Dt. 17.09.2021

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”

18.09.2021 at 5.50 pm
UPLOAD DATE AND TIME

(Y.M. SAKHARKAR)
NAME OF STENOGRAPHER

Name of the Judge (With Court
room no.)

SMT. SANJASHREE J. GHARAT
(C.R. NO. 39)

Date of Pronouncement of
JUDGMENT/ ORDER

17.09.2021

JUDGMENT/ORDER signed by P.O.
on

17.09.2021

JUDGMENT/ORDER uploaded on

18.09.2021