

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 13493 of 2026**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

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| Approved for Reporting | Yes | No |
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Versus  
STATE OF GUJARAT & ANR.

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Appearance:

MR MUSAIB I SHAIKH(10565) for the Applicant(s) No. 1

MR T G CHAVDA(13468) for the Applicant(s) No. 1

MR KANVA ANTANI, APP for the Respondent(s) No. 1

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**CORAM:HONOURABLE MR.JUSTICE MOOL CHAND TYAGI**

**Date : 27/10/2026**

**JUDGMENT**

1. Issue rule returnable forthwith. Learned APP accepts rule on behalf of respondent no.1 and waives service.

2. The captioned petition is filed under Article 226 and 227 of the Constitution of India for seeking the following reliefs, as set out in para 9 hereinbelow:-

*“a. Your Lordships may be pleased to admit and allow the present petition.*

*b. Your Lordships may further be pleased to direct the learned Special Judge, POCSO Court, Ahmedabad (Rural), in POCSO Case No. 35 of 2025, to reconsider and determine, in accordance with Section 308 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the law applicable thereto, the appropriate manner of recording the evidence of the prosecutrix, keeping in view that she has attained the age of majority and the Petitioner's right to a full and effective opportunity of cross-examination.*

*c. Your Lordships may further be pleased to direct the learned Special POCSO Court to adopt such reasonable and proportionate protective measures as may be necessary for the prosecutrix, including in-camera proceedings and regulation of the manner of questioning, without mechanically curtailing the Petitioner's right to effectively cross-examine the prosecutrix;*

*d. Your lordship be pleased to dispense off with need to file an affidavit as the present applicant is in judicial custody.*

*e. Your Lordships may be pleased to grant such other and further relief(s) as may be deemed fit, just and proper in the interest of justice."*

3. Heard learned counsels for the parties.

4. Learned counsel for the petitioner submitted that the FIR in question came to be registered under Sections 137(2), 64(2)(m) and 77 of the Bharatiya Nyaya Sanhita, 2023 and Sections 3(a), 4, 5(L), 6, 7 and 8 of POCSO Act. He further submitted that consequent upon filing the FIR, the charges have been framed and the trial has commenced. He further submitted that during the pendency of the trial, learned counsel for the petitioner has filed an application below Exh.16, thereby seeking the direction that the deposition of the victim girl be recorded in

camera as per provisions of Sections 36 and 37 of the POCSO Act. He submitted that the said application came to be rejected vide order dated 08.08.2026. He submitted that the learned Exclusive POCSO Court ought to have adopted the procedure as prescribed under Sections 33(2), 36 and 37 of the POCSO Act, therefore, he prayed that the order passed by the learned Exclusive POCSO Court deserves to be set aside.

5. On the other hand, learned APP vehemently submitted that the learned Exclusive POCSO Court ought to have adopted the procedure as prescribed under the provisions of POCSO Act as at the time of incident, the victim girl was aged about 17 years and 11 months, therefore, the provisions of POCSO Act governing the recording of deposition would apply to the trial of the present case.

6. Having considered the submissions of the learned counsels for the parties and having gone through the record, it emerges from the record that the FIR came to be lodged for the aforesaid offence on 15.03.2026. As per FIR, the age of the victim girl was 17 years and 11 months at the time of commission of offence. The offence was also registered under the provisions of POCSO Act as well as Bharatiya Nyaya Sanhita, 2023, therefore, the provisions of Section 33(2), 36 and 37 of the POCSO Act would apply in the present case. Mere the fact that when the trial was commenced, the age of the victim girl was more than 18 years would not tantamount that the provisions of POCSO Act regarding recording of deposition would not apply, therefore, the impugned order passed by learned Exclusive POCSO Court, Ahmedabad (Rural) deserves to be set aside and the present petition deserves to be allowed. The learned Exclusive POCSO Court is

directed to record the deposition of the victim girl in camera in accordance with the provisions of Section 33(2), 36 and 37 of the POCSO Act.

7. In view of the above direction, the captioned petition stands disposed of. Rule is made absolute to the aforesaid extent.

**(MOOL CHAND TYAGI, J)**

Harshit

Original copy of this order has been signed by the Hon'ble Judge.  
Digitally signed by: HARSHIT SANCHETI(HCD0070), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 29/10/2026 09:36:29