

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO. 244 OF 2015

1. Shahadev s/o. Vitthal Munde,
Age 25 years, Occu. Agriculture,
2. Kamalbai w/o. Arjun Munde,
Age 41 years, Occu. Household,
Both R/o. At post Bhawanwadi,
Tq. & Dist. Beed.

....Applicants.

Versus

The State of Maharashtra
Through the A.P.I. Wadwani Police
Station, Tq. Wadwani, District
Beed.

....Respondent.

Mr. R.G. Hange, Advocate for applicants.

Mr. P.G. Borade, APP for respondent/State.

CORAM : T.V. NALAWADE, J.

DATED : December 22, 2017.

JUDGMENT :

1) The revision is **admitted**. Notice after admission returnable forthwith. The learned APP waives notice. Heard both the sides for final disposal.

2) The revision is filed to challenge the order made on Exh. 50 in Special Case (POSCO) No. 13/2014 by the learned Judge of Special Court, Majalgaon appointed under the provisions of Prevention of Children from Sexual Offences Act ('POCSO Act' for short). The said application was filed by the present petitioners for

discharge in a case filed against them for the offences punishable under sections 376, 363, 366-A r/w. 34 of Indian Penal Code ('IPC for short) and section 3 and 4 of POCSO Act. After considering the material produced along with the chargesheet, the learned Judge of the Sessions Court has rejected the application.

3) This Court has carefully gone through the entire material collected by the police during investigation. The crime was registered on the basis of report given by father of victim girl. The father had no knowledge about the incident and he had received information from others. There was information against the present applicants that they had helped the main accused, accused No. 1 for taking the victim girl away from the village. Petitioner No. 2 is mother of main accused and petitioner No. 1 is from the same village.

4) This Court has gone through the statement of victim girl. The statement is mainly against accused No. 1 Navnath Munde. In respect of the incident of that night, night between 22.4.2014 and 23..4.2014, the victim girl has given statement that on that night Navnath and Pandurang had come to her house and they were waiting outside of her house on motorcycle and they took her away from village. The record of medical examination shows that hymen had the tear. She has not made allegation of sexual intercourse even

against Navnath. But, there is that circumstance. There is statement of one Shivram of the same village and he had seen the victim girl in the company of Navnath. He has vaguely contended that present petitioners had helped Navnath in the offence. There is no direct evidence as such against the present petitioners. It can be said that various statements of the witnesses show that they only learnt that present petitioners had helped Navnath in commission of offence, but nobody had seen both the petitioners in the company of either victim girl or Navnath at the relevant time. Thus, there is virtually no material for framing charge against the present petitioners. This Court holds that the Trial Court ought to have allowed the application and so, interference is warranted in the order made by the Trial Court. In the result, following order.

ORDER

The revision is allowed. The order made by the learned Judge of the Sessions Court, Majalgaon on Exh. 50 in Special Child Case No. 13/2014 is hereby set aside. The application at Exh. 50 is allowed. Revision petitioners viz. Shahadev s/o. Vitthal Munde and Kamalbai w/o. Arjun Munde stand discharged.

[T.V. NALAWADE, J.]

ssc/