

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.641 OF 2017

Dilip Laxman Kadam : Petitioner.
Versus
The State of Maharashtra : Respondents.

Mr. R V Bansode for the Petitioner.
Mr. V B Konde-Deshmukh, Addl. PP for the Respondent/State.

**CORAM : R. M. SAVANT &
SANDEEP K. SHINDE, JJ.**
DATE : 07th September 2017

P.C.

1 The above Writ Petition has been filed for quashing and setting aside the FIR bearing No.606/2016 dated 04/08/2016 registered with the Dindoshi Police Station Mumbai for the offences punishable under Sections 363 and 376 of the Indian Penal Code read with Sections 7 and 8 of the POCSO Act.

2 The above Writ Petition has been filed by the first informant i.e. the father of the child Kajal. The accused is one Mahendra Madhukar Jadhav. The quashing is sought on the ground so as to protect the interest of his minor daughter Kajal who was supposedly in a relationship with the said accused Mahendra Madhukar Jadhav. It is averred in the Writ Petition in ground (a) that continuation of the said case would cause great hardship to Kajal and would also affect her future. It is further averred that Kajal is also not

interested in prosecuting the said FIR. Hence it is contended that continuation of the prosecution would only result in valuable time of the Criminal Court being wasted which is already over burdened.

3 Having regard to the fact that the FIR has been registered for the offence punishable under Section 376 as well as offences under Sections 7 and 8 of the POCSO Act, we had deemed it appropriate to interview Kajal who is the prosecutrix and her mother in our chamber today. During the course of our interview with the prosecutrix and her mother both have unequivocally stated that they would not like to continue with the prosecution. Thereafter the Petitioner i.e. the first informant was also interviewed in our chamber wherein he reiterated what has been stated in the Writ Petition that he does not want to go ahead with the prosecution lest it affects the future of the child Kajal.

4 It is on the basis of our interaction with the prosecutrix and her mother that we have reached a conclusion that no useful purpose would be served by proceeding with the prosecution and the same would only have the result of affecting the life of the prosecutrix and her future. The prosecutrix Kajal has also crossed the age of 16 and therefore has reached the age where she is able to fathom what is good and bad for her.

5 Hence in the peculiar facts and circumstances of the instant case,

though the offence alleged is one under Section 376 of the Indian Penal Code and under Sections 7 and 8 of the POCSO Act, we deem it appropriate to exercise our jurisdiction under Article 226 of the Constitution of India and under Section 482 of the Criminal Procedure Code. We are persuaded to do so having regard to the judgment of the Apex Court in the matter of **Narinder Singh vs. State of Punjab**, reported in **(2014) AIR SCW 2065** as also the judgment of the Apex Court in the matter of **Gian Singh vs. State of Punjab and anr.** reported in **(2012) 10 SCC 303** especially having regard to the tests laid down in the judgment of the Apex Court in **Narinder Singh's** case (supra). As indicated above, we deem it appropriate to follow the instant course of action having regard to the interest of the child and her future. We are also of the view that such a course of action would result in the child Kajal getting an opportunity to start life afresh. The above Writ Petition is accordingly allowed in terms of prayer clause (a). However we make it clear that the relief granted is in the peculiar facts and circumstances of the case.

6 In view of quashing of the FIR the logical corollary of the same would be that the accused who is incarcerated would have to be released forthwith, if not required in any other offence. The above Writ Petition is accordingly disposed of.

[SANDEEP K. SHINDE, J]

[R.M.SAVANT, J]