

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

CRIMINAL APPLICATION NO. 524 OF 2021

Khalid Muhmmad Pathan

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr. Shailesh Kharat, for the Applicant.

Mr. A. R. Patil, A.P.P for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 24th AUGUST, 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application preferred under Section 482 of the Code of Criminal Procedure, the applicant has impugned the order dated 13th February 2020, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 170 in Spl. Child Prot. Case No.227 of 2014, by which the learned Judge refused to issue summons to the 9 persons mentioned in the application (Exhibit – 170) under Section 319 r/w Section 223 of the Code of Criminal Procedure for trying them as accused for having committed an offence punishable under Section 19 r/w Section 21 of Protection of Children from Sexual Offences Act ('POCSO' Act').

3. Learned Counsel for the applicant submits that a perusal of the evidence of PW 1 will show that PW 1 (father of the prosecutrix) himself, the teachers of the school and the concerned police officers had not complied with the mandate of Section 19 r/w Section 21 of the POCSO Act. He submits that the evidence of PW 1, (father of the prosecutrix) will show, that despite having knowledge that an offence under the POCSO Act had been committed, PW 1 did not lodge an FIR against the applicant and other accused. He submits that PW 1's evidence also shows that later when he approached the police station, the concerned police officer failed to register an offence as mandated under the POCSO Act. During the course of arguments, the learned counsel for the applicant did not press for issuance of summons against the prosecutrix's mother and sisters, for arraigning them as accused, despite having named them in the application. According to the learned counsel, even the teachers despite having knowledge of the commission of an offence under the POCSO Act, did not take any steps for registration of an offence.

4. Learned APP opposes the application. He submits that no interference is warranted in the impugned order. Learned APP relied on the evidence of PW 1 (father of the prosecutrix), in support of his submission, to show that the police had taken prompt steps on learning of the sexual

assault.

5. Perused the papers. The applicant was a bus conductor of a bus plying students to the School. The prosecutrix, a minor girl along with her friends would attend the school by the said school bus, in which the applicant was a bus conductor. The allegation as against the applicant is that he took the prosecutrix to his house and forcibly committed sexual assault on her on more than one occasion. The allegation is that the applicant and another co-accused molested and sexually assaulted her even in the school bus and threatened her not to disclose the the incident to any person. It appears that the mother of the prosecutrix inquired with her sometime in November 2013 as to why she was silent, pursuant to which she disclosed the sexual assault on her. The prosecutrix's mother in-turn disclosed the incident to her husband (PW 1) and her other daughters. On learning about the sexual assault, the prosecutrix's father approached the Principal of the School, however, it appears that the Principal did not take any action against the applicant nor did she report the incident to the police. It appears that thereafter, the prosecutrix alongwith her father (PW 1) approached the police station and lodged an FIR on 16th April 2014. Pursuant thereto, the accused including the applicant were arrested and the accused were charge-sheeted for the offences punishable under Sections

376, 354, 506, 109 of the Indian Penal Code and under Sections 4, 5, 6, 8, 9(17), 19 and 21 of the POCSO Act. The Principal of the school as well as the Director of the school were also prosecuted under Section 19 r/w Section 21 of POCSO Act, for failure to report the incident. During the course of trial, the prosecutrix's father was examined as PW 1. Till date, the prosecution has examined as many as 6 witnesses, including teachers of the school and one doctor.

6. The evidence of PW 1 (father of the prosecutrix) commenced on 27th September 2016 and was over on 1st October 2019. The applicant filed an application under Section 319 r/w Section 223 of Cr. P.C on 20th July 2019. The prayer sought in this application was that the 9 persons mentioned in the application be arrested, charged and tried together along with the applicant – accused. The 9 persons mentioned in the application, were the father of the prosecutrix (PW 1); mother of the prosecutrix, 2 sisters of the prosecutrix; class teacher of the School where the prosecutrix was studying; 2 teachers of the School; Shri B. N. Kale, the then Sr. P.I of Wanowrie Police Station and Shri B. N. Holkar, the then PSI of Wanowrie Police Station. According to the learned counsel for the applicant, the evidence of PW 1 shows that despite having specific knowledge of an incident of sexual assault on his daughter i.e. the informant, he failed to

report the incident to the authorities, as mandated under Section 19 of the POCSO Act. According to the learned counsel for the applicant, the said persons by not reporting the sexual assault, committed an offence under Section 21 of the POCSO Act.

7. The learned Judge after considering the submissions advanced by the respective parties, rejected the applicant's application vide order dated 13th February 2020. The learned Judge apart from merits, has also observed that the applicant was trying to protract the trial. The learned Judge also observed that till date the prosecutrix has not been examined and that the trial should be decided expeditiously.

8. As far as the father of the prosecutrix i.e. PW 1 is concerned, it appears that he learnt of the incident of sexual assault from his wife i.e. mother of the victim sometime in November 2013 after which he approached the Principal of the school for lodging a report, since the accused was working as a bus conductor on a School bus. The evidence of PW 1 also shows that as the applicant was residing in the vicinity and as he apprehended trouble to his daughter, he did not lodge the report immediately. He has stated that he thought with the help of the school authorities, a report would be lodged. He has further stated that thereafter,

he was required to visit his native place at Patna for personal work and returned back in December 2013, after which he again met the Principal of the school and narrated the incident of sexual assault to her. He has further stated that his grievance was ignored by the Principal and that on one occasion, the Principal even asked him to remove his daughter from the school. He has further stated in his evidence that he had also complained to the Director of the school. He has stated that when he asked the Director what was done of his written complaint, he replied that it was sent to the proper place, however, did not disclose, where it was sent. PW 1, approached the Vanawadi Police Station and met PSI Holkar and told him about the incident. PSI Holkar is stated to have directed him to approach the Senior Inspector, pursuant to which PW 1 met Shri Kale. He has stated that he enquired with Shri Kale whether any communication was received from the school, he replied in the negative. Shri Kale is stated to have told PW 1 that he was free to lodge a report, however, PW 1 sought some time. PW 1 has further stated that in March after the exams were over, he again approached the school authorities and that finally on 15th April, he lodged a written complaint with the Commissioner of Police, who directed him to approach the Vanawadi Police Station. He has stated that as per the directions of the Commissioner of Police, he visited Vanawadi Police Station on 16th April 2014 alongwith his daughter and lodged a complaint.

The evidence PW 1 *prima facie* shows that PW 1 was repeatedly following with the school authorities and finally approached the police, after which the complaint was lodged.

9. Considering the aforesaid evidence, it cannot be said that the police refused to lodge a complaint or there was any failure on their part to register an offence. The teachers of the school, on their part, had also informed the Principal. As noted earlier, the Principal and the Director of the School have already been prosecuted under Section 19 r/w Section 21 of POCSO Act. The Principal and the Director have been prosecuted in the said case for not reporting to the police the incident of sexual assault. The applicant's application seeking to make the father of the prosecutrix and others, accused is clearly not bonafide nor tenable. The object of the applicant in filing the application is to only protract the trial in some way or the other. The said conduct is deprecated.

10. Considering the aforesaid, there is no merit in the application filed by the applicant seeking impleadment of the said 9 persons to be arraigned as accused under Section 319 r/w Section 223 of Cr. P.C.

11. Accordingly, no infirmity can be found in the said order dated 13th February 2020, passed by the learned Additional Sessions Judge, Pune, below Exhibit – 170 in Spl. Child Prot. Case No.227 of 2014.

12. Accordingly, the application is dismissed.

13. Considering that the case is of 2014, the trial is expedited. The learned Judge to conclude the case, as expeditiously as possible, and in any event within 3 months from the date of receipt of this order.

14. Registry to forthwith communicate the above order to the learned Additional Sessions Judge, Pune, who is seized of the said case being Spl. Child Prot. Case No.227 of 2014.

REVATI MOHITE DERE, J.