

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

CRIMINAL WRIT PETITION NO. 3553 OF 2021

Navnath Bapu Patole ... Petitioner
V/s.
The State of Maharashtra and another. ... Respondents

Mr. P.A. Pol a/w. Mr. Ranjit S. Hatkar i/b. Pol Legal Juris
for the Petitioner.

Mr. K.V. Saste, APP for the Respondent - State

Mr. Sharad Suryavanshi for the Respondent No.2.

CORAM : NITIN JAMDAR AND
SARANG V. KOTWAL, JJ.

DATE : 6 December 2021.

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P.C. :

Heard the learned counsel for the parties.

2. The Petitioner has filed this petition seeking to quash the FIR No.651/2021 registered with the Sakinaka Police Station with following prayer:

“(b) That this Hon’ble Court by invoking the provisions of Article 226 of the Constitution of India and the powers vested under Section 482 of the Code of Criminal Procedure, may issue a writ, order, or direction to quash the FIR No.651 of 2021 registered against the petitioner at the Sakinaka Police Station, Mumbai at the instance of the Respondent No.2 for the alleged offences punishable under

Sections 363 and 376 of IPC r/w u/s 4, 8, and 12 of Protection of Children from Sexual Offence Act, 2012 and all investigation therein.”

3. The FIR was lodged by the Informant on the allegation that her granddaughter aged 17 years old had gone missing and an unknown person had kidnapped her. The offence under section 363 was specified in the FIR. The Petitioner was arrested on 9 July 2021. During the investigation, offence under section 376 of the Indian Penal Code read with sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2020 were added. The case of the Prosecution is that the survivor girl was kidnapped by the Petitioner and thereafter they had physical relations.

4. At the time of occurrence, survivor girl was 17 years old and the Petitioner was 20 years old. The learned counsel for the Petitioner submitted that thereafter the grandmother of the survivor girl, Respondent No.2 has filed an affidavit stating that her granddaughter wishes to marry the Petitioner and it is only in April 2022 that she will attain the age of 18 years. The learned counsel for the Petitioner submitted that in the light of this development, since the Petitioner and the survivor girl intend to marry after the survivor girl becomes major, it is in the interest of justice that FIR may be quashed and matter be brought to an end. The learned counsel for Respondent No.2 has supported the request of learned counsel for the Petitioner for quashing of the FIR.

5. Though we note the affidavit filed by Respondent No.2, we cannot be unmindful of the fact that as the FIR stand, section 376 of IPC and sections 4, 8 and 12 of POCSO Act are attracted. These offences are against the society. It may be that there is subsequent development that the Petitioner and the survivor girl have intend to marry each other but that would not wash out the incident that has taken place earlier. The exercise of extra ordinary jurisdiction of this Court in respect of cognizable offence though permissible with the consent of the Complainant, while doing so the Court will have to keep in mind the consequences of such orders and its impact on the society in respect of offence, especially the offence under the POCSO Act. We are informed that chargesheet is already filed. The learned counsel for the Petitioner states that in the light of the subsequent developments it is quite obvious that Respondent No.2 and the survivor girl may not support the prosecution.

6. According to us, interest of justice would be served if the trial pursuant to the chargesheet would be expedited. Accordingly, the Special Court under the POCSO Act, Dindoshi will place the matter on board on 10 January 2022 for framing of charge and after the charges are framed, take up the case on priority basis in view of the peculiar circumstances narrated above.

7. Writ petition is accordingly disposed of in the above terms.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)