

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1953 OF 2022

Arun Ekanath Dalavi ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

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Mr.Ujwal R. Agandsurve for the Petitioner.

Ms. M.H.Mhatre, APP for the State.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATED : 29 AUGUST 2022

P.C. :-

Heard the learned Counsel for the parties.

2. By this petition, the Petitioner has sought the following relief :-

“(a) Call for records from the Karad Taluka Police Station, District : Satara in the matter of C.R. No. 64 of 2020 registered with the Karad Taluka Police Station for the offence punishable u/sec. 354 -A (1) (i) of Indian Penal Code and section 7,8,9,10 of the POCSO Act, 2012 and Final Report/ Charge-Sheet No. 92 of 2020 and Special Case No. 49 of 2020 arising out of the said

Charge-Sheet and after scrutiny and perusal as to the propriety, legality, validity and correctness, this Hon'ble Court be pleased to quash the Special Case No. 49 of 2020 against the Petitioner registered vide aforesaid C.R. No. 64 of 2020".

3. Since the chargesheet has been filed, it was put to the learned Counsel for the Petitioner that the Petitioner also has remedy of applying for discharge. The learned Counsel, upon taking instructions, states that the Petitioner will pursue this writ petition filed for quashing of the FIR.

4. The FIR was lodged by the Police Constable attached to Nirbhaya Pathak, Karad City Police Station on 13 February 2020. Information was received that on 5 February 2020, in an Ashram Shala in a village in Taluka Karad, an incident of molestation of a minor girl had taken place. The Complainant visited the school in plain clothes and contacted the office bearers, took the minor, who was studying in 6th standard, into confidence and recorded her statement. She described that she was inappropriate touched on the private parts by the Petitioner, who was working as a Peon in the said school, on several occasions. The statement of the minor under Section 164 of Code of Criminal Procedure, 1973 was recorded. The statements of two other students, her friend and sister, were recorded so also the statements of the mother and the staff members.

5. The learned Counsel for the Petitioner firstly submitted that in the statement recorded on 13 February 2020 and in the statement recorded

before the learned Magistrate under Section 164 of the Code, the minor girl has referred to different body parts allegedly touched by the Petitioner. Secondly, there are erasers in the medical report. Thirdly, there is delay in filing the FIR as it was lodged on 13 February 2020 and the incident had taken place on 5 February 2020.

6. We have perused the statement of the minor of 18 February 2020 recorded before the learned Magistrate under Section 164 of the Code. The minor girl is clear about the sexual assault by the Petitioner and this assertion remains consistent. The difference in description of the body parts is not that of substantial to hold that these statements are not trustworthy. This at the most is a matter of defence of the Petitioner, which the Petitioner will have to demonstrate at the time of trial. The theory of sexual assault put forth by the minor girl remains consistent. She has also stated that it was not once but it was on other occasions as well. This statement is supported by other students as well. As regards the erasers in the medical report is concerned, case as narrated by the minor girl, the medical report is not much of relevance. Apart from this position, for the purpose of this petition, the statement made by the minor girl under Section 164 of the Code cannot be disbelieved. As regards the delay in filing the FIR is concerned, it was upon receipt of information by the Nirbhaya Pathak of the incident that had taken place, the FIR was lodged. Considering the social status of the minor girl, her age and the aspect of the delay, according to us, is not much material for the purpose of exercise the

inherent and extraordinary jurisdiction.

7. No case is made out to quash the FIR and the resultant proceedings.
8. The writ petition is accordingly rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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