

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

CRIMINAL WRIT PETITION NO. 2462 OF 2022

Mrs. Shobha Dagadu Pagare	Petitioner
Versus	
The State of Maharashtra and Ors.	Respondents

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Mr. Amey Deshpande, Advocate for the Applicant.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 16th SEPTEMBER, 2022

PC :

1. The petitioner is aggrieved by order dated 28th January 2022 passed by Sessions Judge, Nashik, rejecting application for discharge.

2. The grievance of the petitioner is that there is no material before the trial Court to prosecute the petitioner under the provisions of POCSO Act. The Sessions Judge has erred in rejecting the application for discharge. The charge framed by the trial Court vide order dated 07.09.2021 is defective. It is vague. It does not specify essential particulars such as date, time, place and person against whom the offence was committed. The accused should get

clear idea of the charge. Learned Advocate relied upon the decisions of the Supreme Court in the case of **Main Pal Vs. The State of Haryana**¹.

3. Learned APP submitted that the victim was minor. She is mentally retarded girl. There is no vagueness in the charge. The application for discharge is already rejected. The trial has commenced. Two witnesses are examined. Reference of Section 13 of the IPC appears to be inadvertent typographical error. It could be Section 13 of the POSCO Act which is apparent from factual matrix of this case. Trial has commenced. Two witnesses are examined.

4. I have perused the impugned order rejecting application for discharge as well as order framing charge. Application for discharge was rejected vide order dated 28.01.2022. While rejecting the application, the learned Sessions Judge has observed that victim is mentally retarded minor girl. The accused is charged for penetrative sexual assault. The accused is care taker of victim. In the charge dated 07.09.2021, it is stated that 15 days prior to 13.10.2020 the accused was working as caretaker in

1 (2010) 10 SCC 130

Balgruha, Untwadi, Nashik at Government Girls Anurakshakgruha. The alleged committed by accused is also mentioned. Charge is framed under Section 6 of the POCSO Act. The application for discharge was filed after framing of charge. Application for discharge has rightly rejected by the Sessions Court as *prima facie* case is made out against the petitioner. It appears that Section 13 of IPC has been mentioned inadvertently. The trial Court shall take appropriate steps qua charge under Section 13 of the IPC. The prosecution has examined two witnesses. They were cross-examined by defence. The decision relied upon by learned advocate for petitioner is not applicable in the factual aspects of the present matter, no case is made out for discharge.

ORDER

(i) Criminal Writ Petition No.2462 of 2022 is rejected and disposed of.

(PRAKASH D. NAIK, J.)