

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 428 OF 2021**

Vinod Vijaykumar Pawar

.. Petitioner

Versus

The State of Maharashtra and another

.. Respondents

Mr. Nitin L. Dhobale, Advocate for the Petitioner.

Mr. P. M. Kulkarni, APP for Respondent No. 1.

Mr. Rahul Gaikwad, Advocate for Respondent No. 2.

**CORAM : KISHORE C. SANT, J.**

**DATED : 20<sup>th</sup> APRIL, 2023.**

**P C. :-**

. This petition is filed by the accused facing trial for the offence punishable under the Protection of Children from Sexual Offences Act (hereinafter referred to as “POCSO”) Act and challenging the order of further investigation passed by the learned 2<sup>nd</sup> J.M.F.C., Ambajogai dated 18.11.2016 in view of the evidence that was recorded in R.C.C. No. 336/2015. The facts in short are that, the FIR came to be lodged with the Police Station, Ambajogai bearing FIR No. 69/2015 on 17.06.2015. It is alleged in the said FIR by the informant that, in the night dated 16.06.2015 this accused came to his house at around 11.00-11.30 p.m. He slept near his daughter. On that, daughter of the informant got up and started shouting. The informant and his wife

who were sleeping in another room rushed to the room where his daughter and mother were sleeping. They found that this accused on shouting ran away. On this information, the offence was registered for the offence punishable under Sections 452, 323, 504 and 506 of the Indian Penal Code. After investigation charge-sheet came to be filed and R.C.C. No. 336/2015 was lodged. While recording the evidence of informant, the learned Trial Court found that since the prosecutrix was minor at the time of incident, the Court suo motu passed the order directing further investigation. It is this order which is challenged in this Court by way of this petition.

2. Learned advocate for the petitioner vehemently submits that, the order passed by the learned Magistrate is illegal. No order could have been passed by the learned Magistrate suo motu. Not a single witness has stated anything before the police attracting Sections of the POCSO Act. The learned Trial Court could not have directed investigation under such circumstances. He invited attention to the statements recorded pursuant to the order passed by the learned Trial Court. He submits that, in the statements, now the witnesses have improved their story and contradictory facts are shown in the statements. Even the time of incident is now shown to be 1.30 a.m. He submits that, only because of the order of investigation now the prosecution has improved

story. He therefore prays for setting aside the impugned order dated 24.06.2019.

3. Heard learned A.P.P. He submits that, pursuant to the order passed by the learned J.M.F.C. the investigation was carried by the police and even case is now committed to the learned Special Court and is registered as Special Case No. 35/2020 and is presently pending trial in the Court of learned Special Judge and learned Additional Sessions Judge-2, Ambajogai. He submits that, thus, now the order is already acted upon. The investigation is also done and case is now already committed to the learned Special Court and under such circumstances now order cannot be set aside. If the order is set aside, it would be setting the clock back.

4. Considering the submissions and considering the facts that, the impugned order is already acted upon and also on merits this Court does not find any merit in the challenge to the said order. The learned Magistrate within his power has rightly exercised the power vested with him and passed the order. Therefore, no interference is called for.

5. The criminal writ petition stands dismissed.

**( KISHORE C. SANT, J. )**

PS.B.