

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 74 OF 2019**

Yash Ketan Doshi	.. Applicant
Versus	
State of Maharashtra	.. Respondent
...	

Mr. Samsheer Garud, i/b Jayakar and Partners for the petitioners
Mr. S.R. Agarkar, APP for the State.
Ms. Gayatri Takalkar, appointed Adv. for respondent no.2.

**CORAM: BHARATI DANGRE, J.
DATED : 22nd AUGUST, 2023**

P.C:-

1 Heard, learned counsel for the petitioner, the learned counsel for the respondent no.2 and learned APP for the State.

The applicant face charge under Section 354, 376, 377, 417, 504 of IPC r/w Section 8 of the POCSO Act.

He came to be so charged upon a complaint lodged on 22/03/2015 by the prosecutrix aged 18 years, by referring to the period of occurrence of the offence between 29/10/2014 to 26/02/2015.

The prosecutrix allege that she got acquainted to the applicant, while she accompanied her parents on a Cruise, where, he offered her a drink and attempted to be close to her, but she objected to his behaviour, but he still continued to establish proximity with her.

After coming back from the Cruise, she visited Singapore and she attained the age of majority on 29/10/2014.

As per the version in the complaint, she came on friendly terms with the applicant but on coming back to Mumbai, physical relationship was established by the applicant with her on the pretext that he is going to marry her.

2 The applicant sought discharge under Section 227 of the Code of Criminal Procedure and this application is rejected by the Sessions Court, Dindoshi on 1/02/2019, and this has constrained him to approach this Court, reiterating the relief of discharge.

3 The counsel for the applicant would invite my attention to Section 188 of the Code of Criminal Procedure along with Section 183 which is a provision in relation to the offences committed outside India and relying upon the proviso appended to Section 188, he would submit that if an offence which is committed outside India, either on high seas or elsewhere or on any Ship, or Aircraft registered in India, it shall be inquired into or tried in India, only if the previous sanction of the Central Government and admittedly, here no such sanction is obtained.

Apart from this according to me accepting the prosecution case as contained in the charge-sheet, the offence under Section 8 of the POCSO Act is not made out.

When I have perused the material compiled in the charge-sheet, specifically the version of the prosecutrix, while she was a minor, and when she was on the cruise, the accusations

levelled against the applicant is that he spiked her drink and attempted to establish proximity with her.

The prosecution however has failed to establish a case of sexual assault as contemplated under Section 7 of the POCSO Act, which would invite punishment under Section 8 of the POCSO Act. Though the version of the prosecutrix is about an attempt to develop proximity, which definitely is not sufficient to make out an offence under Section 8 of the POCSO Act, apart from the fact that there is no compliance of the proviso appended to Section 188.

4 In the wake of the aforesaid, I am inclined to discharge the applicant from the accusation under Section 8 of the POCSO Act, which the learned Additional Sessions Judge has failed to consider. However, as far as the other offences under IPC are concerned, the accusations are best left to be tried, though the learned counsel for the applicant would assertively submit that the physical relationship established between the two was consensual. Whether her consent was free or it was a coerced one, will ultimately be a matter best left to be determined as an outcome of the trial.

For the aforesaid reason by granting discharge to the applicant under Section 8 of the POCSO Act, the impugned order is upheld.

The Application Stands disposed off in above terms.

(SMT. BHARATI DANGRE, J.)