

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.258 OF 2023

Bidyut Prabir Ranjan Basu .. Applicant
Versus
The State of Maharashtra & Anr. .. Respondents

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Mr.Aditya Sawant i/b Ms.Supriya Kak for the Applicant.
Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.
DATED : 23rd AUGUST, 2023

P.C:-

1. The present Revision Application is filed, challenging the order passed by the Special Judge under the POCSO Act on 11/05/2023, refusing the discharge to the Applicant, who is facing charge under Sections 3, 4, 7, 8, 9, 10 and 12 of the POCSO Act.

2. Heard the proxy counsel appearing for Advocate Supriya Kak and the learned A.P.P. for the State.

Since on hearing the counsel for the Applicant, I find no merit, without issuing notice to the Respondent No.2, I am deciding the present Application.

3. The Applicant faces an accusation at the instance of the Informant, who is his wife and he is accused of sexually abusing their own child, who at the relevant time was aged 4 years. The F.I.R., in detail, gave the instances of the sexual assault on the minor, which resulted in invocation of the POCSO Act.

On completion of investigation, the charge-sheet is filed and the charge faced by the Applicant is of abusing his own son in the bathroom, on pretext of bathing him and that is how, sexually assaulting him.

The application for discharge came to be filed on the premise that there is matrimonial discord between the Informant and the Applicant and the proceedings are pending in that regard, which even involve the proceedings staking custody of the child. Another ground, which was pressed into service is, there was no medical examination of the child and the Informant refused the same to be conducted on the ground that there is no penetrative sexual assault.

4. The application filed for discharge was contested on the parameters of the aforesaid arguments and the learned Judge arrived at the conclusion that the submissions advanced will have to be tested on the anvil of the evidence, which would be led at the time of trial and at present, based on the material supporting the accusations, no case for discharge is made out.

5. The learned counsel for the Applicant would vehemently place reliance upon the Child Interview Report dated

16/04/2019 in presence of the Marriage Counselor, which has recorded that the child was equally attached to the father.

I do not think that this itself is sufficient to disbelieve the case of the prosecution. The Informant has given distinct instances, where according to her, the child was abused by her father and ultimately, these accusations shall be decided during the trial. The child was barely three and half years, when the incident took place and it is quite possible that he does not find any objectionable in the father touching him in inappropriate manner and, particularly, fondling his private part, as the little boy is not even able to introduce his organs and is able to know about its privacy.

6. In the wake of the aforesaid, I do not find any legal infirmity in the impugned order, where a finding is clearly recorded that the material compiled in the charge-sheet, prima facie, show the existence of the ingredients constituting the alleged offences and it's veracity and credibility will have to be considered at the time of trial.

Upholding the same, the Revision Application is dismissed.

(SMT. BHARATI DANGRE, J.)