

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

CRIMINAL APPLICATION NO. 992 OF 2023

Sanjay Daji Bhandare

.... Applicant

v/s.

The State of Maharashtra and anr.

.... Respondents

Ms. Vrushali Maindad a/w. Ms. Shrushti Tupe for the Applicant.

Ms. M.M. Deshmukh, APP for the State.

Mr. Chetan Alai a/w. Rama Somani and Mr. Ashutosh Karangotkar
for the Respondent No.2.

Ms. Shweta Shinde, API, Bhoiwada Police Station, Mumbai, present.

**CORAM: SMT. ANUJA PRABHUDESSAI AND
N.R. BORKAR, JJ.**

DATED : 29th JANUARY, 2024.

P. C. :-

. At the outset, learned counsel for the Applicant seeks leave to amend prayer clause (a) as to give the correct number of criminal case. Leave granted. Amendment to be carried out forthwith.

2. By this Application filed under section 482 of Cr.PC, the Applicant seeks to quash FIR No.245/2023 registered at Bhoiwada Police Station, Mumbai and POCSO Special Case No.1842/2023 [Charge sheet No. 1882/2023] pending before 35th Sessions Court, Mumbai for offences punishable under sections 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No.2. The facts narrated in the FIR reveal that the Respondent No.2 and the Applicant herein are related to each other. They indulged in sexual relationship on multiple occasions when the Respondent No.2 was below 18 years of age, leading to pregnancy, which was later terminated. The Respondent No.2 therefore lodged the FIR alleging rape.

4. Learned counsel for the Applicant and the Respondent No.2 state that the Applicant and the Respondent No.2 are married and that their marriage was solemnized on 31/10/2023. The Respondent No.2 has filed her affidavit. Marriage certificate is also placed on record. On 10/01/2024, we had directed the Investigating Officer to confirm the veracity of the statement and the authenticity of the marriage certificate. Learned APP has placed on record the report submitted by the Investigating Officer stating that the Respondent No.2 and the Applicant are now married and are living together.

5. Respondent No.2 is present before the Court. She has been identified by her Advocate. Respondent No.2 has confirmed the contents of affidavit. She states that she does not wish to proceed

against the Applicant.

6. We are conscious of the fact that the offence of rape concerning a minor girl is serious and consent in such cases, either for engaging in sexual relationship or for quashing the proceedings, has no legal sanctity. However, the peculiar facts of the case indicate that the victim, a minor girl was in love with the Applicant. The two youngsters who were driven by immature, impulse and biological inquisitiveness and cravings, indulged in a sexual relationship unmindful of drastic consequences. As a natural fallout, the minor girl - the respondent No.2 got pregnant and later pregnancy was terminated.

7. The Respondent No.2 has now attained the age of majority. She has married the Applicant with consent of their respective families. The parents of the Applicant has accepted their relationship. The Applicant and Respondent No.2 also claim that they are happily married and have no grievance against each other.

8. It is also pertinent to note that the Applicant is facing trial for offence under section 376 of the Indian Penal Code and for the offences under POCSO Act. The minimum sentence for the offence under

Section 4 is imprisonment for a term of 10 years and for the offence under Section 6 of the POCSO Act is 20 years, which may extend to imprisonment for life, with no powers to the Special Judge to consider the mitigating circumstances and impose sentence less than the minimum sentence prescribed under the Act. In such circumstances, considering the nature of the charge levelled against the Applicant and the material in support thereof, continuation of proceedings is likely to result in conviction and long term incarceration. Such long term imprisonment is likely to cause a rift between the Petitioner and Respondent No.2-victim, disturb their family life and consequently affect her financial and psychological stability.

9. In view of the above peculiar facts and circumstances of the case and considering the fact that the Applicant and Respondent No.2 are now married and living happily, continuance of the criminal proceedings will be an exercise in futility. Hence, keeping in mind the interest of the Respondent No.2, her financial, emotional and psychological well being and future prospects, this is a fit case to exercise discretion under section 482 of Cr.P.C. to secure the ends of justice. Under the circumstances, we allow the Application. FIR No.245/2023 registered at Bhoiwada Police Station, Mumbai and

POCSO Special Case No.1842/2023 [Charge- sheet No. 1882/2023]

pending before 35th Sessions Court, Mumbai, are hereby quashed.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

**PREETI
HEERO
JAYANI**

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by PREETI
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