



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.661 OF 2024

XYZ

... **Applicant**

(Victim/Ori.Complainant)

Versus

1. THE STATE OF MAHARASHTRA
Through, the Police Inspector,
Jamner Police Station, Jamner
Tal.: Jamner, & Dist.: Jalgaon
2. CHANDULAL S/O. SUHALAL KOTHARI,
Age: Major, Occupation: Nil.,
Resident of Bharavnath Nagar, Shrirampur,
Tal.: Shrirampur, Dist.: Ahmednagar.
3. SUNIL KOCHAR,
Age: Major, Occupation: Nil.,
Resident of Silod,
Tal.: Silod, Dist.: Aurangabad.
4. PARAS ZUMBARLAL LALWANI,
Age: Major, Occupation: Nil.,
5. RHUSHAB VIKAS LALWANI
Age: Major, Occupation: Nil.,
6. VIKAS LALWANI,
Age: Major, Occupation: Nil.,
7. BHAVESH S/O. VIKAS LALWANI,
Age: Major, Occupation: Nil.,
8. BHAVANA VIKAS LALWANI,
Age: Major, Occupation: Nil.,

All Resident of, Jamner,

Tal.: Jamner, Dist.: Jalgaon

... **Respondents**

WITH

CRIMINAL WRIT PETITION NO.1362 OF 2023

THE STATE OF MAHARASHTRA
Through Jamner Police Station,
Dist.: Jalgaon.

... **Petitioner**
(Ori. Res. No.1)

Versus

1. CHANDULAL S/O. SUHALAL KOTHARI,
Age: Major, Occupation: Nil.,
Resident of Bhairavnath Nagar, Shrirampur,
Tal.: Shrirampur, Dist.: Ahmednagar.
2. SUNIL S/O BANSILAL KOCHAR - (DEAD)
3. PARAS S/O. ZUMBARLAL LALVANI,
Age: Major, Occupation: Nil.,
R/o Anand Nagar, Jamner.
4. RHUSHAB VIKAS LALVANI,
Age: Major, Occupation: Nil.,
R/o Anand Nagar, Jamner.
5. VIKAS LALVANI,
Age: Major, Occupation: Nil.,
R/o Anand Nagar, Jamner.
6. BHAVESH S/O. VIKAS LALVANI,
Age: Major, Occupation: Nil.,
R/o Anand Nagar, Jamner.
7. BHAVNA VIKAS LALVANI,
Age: Major, Occupation: Nil.,
R/o Anand Nagar, Jamner.
Dist.: Jalgaon

... **Respondents**
(Ori. Applicants)

...

Advocate for Applicant in Cri. Appln. : Mr. Sanjeev B.
Deshpande (Senior Advocate) i/b Mr. Vinod P. Patil.
Government Pleader for Petitioner/State in WP & for Res. No.1

in Cri. Appln. : Mr. A. B. Girase.
Advocate for Respondent Nos.4 to 8 in Cri. Appln. and for
Respondent Nos.3 to 7 in Cri. WP : Mr. Rajendrraa Deshmukkh
(Senior Advocate) i/b Mr. R. G. Dodiya.

...

CORAM : SHAILESH P. BRAHME, J.

RESERVED ON : 19.11.2025

PRONOUNCED ON : 27.11.2025

JUDGMENT :

1. Rule. Rule is made returnable forthwith and heard finally by the consent of the parties.

2. The victim and the State are challenging common judgment and order dated 09.03.2023 accepting 'B' summary report and rejection of permission to re-investigate in the crime. The offence in question is common, hence, I propose to decide it by common judgment by referring to papers of Criminal Application No. 661 of 2024.

3. XYZ is a victim/informant of offence bearing Crime No. 122 of 2021 lodged on 25.02.2021 with Shrirampur (City) police station, which was transferred to Jamner police station on 02.03.2021 and renumbered as Crime No.68 of 2021. It

has been investigated and final report under Section 173 (2) of the Code of Criminal Procedure for 'B' summary was submitted bearing Summary No.24 of 2021. Application (Exh. 11) was submitted on 09.02.2023 seeking permission for re-investigation by police inspector. Criminal Misc. Appln. No. 204 of 2022 was a protest petition submitted by the informant. Judicial Magistrate First Class, Jamner, forwarded matter to learned Special Judge, Jalgaon vide order dated 05.12.2022. Being aggrieved, accused preferred Criminal Revision Application No.6 of 2023. By common judgment and order, which is under challenge, 'B' summary report was accepted and Exh. 11 was rejected.

4. On 11.02.2021, a report was lodged by one Bhavna Vikas Lalwani against XYZ, Chandulal Kothari, Jyoti Chandulal Kothari, Sunil Kochar and Sunny with Jamner Police Station, District Jalgaon for the offences punishable under Sections 420, 406, 506 read with Section 34 of Indian Penal Code stating that Sunil Kochar had assured the informant to search a bride for son and he was paid money. The proposal of XYZ was accepted and marriage was fixed on condition of payment of

Rs.6,00,000/- to bride's father. Marriage was solemnized on 09.12.2020. On 29.12.2020, XYZ was taken back to her parental home under the pretext of deteriorating health of grandfather. While leaving matrimonial home, XYZ and other accused took away ornaments, clothes offered by informant. Thereafter, she refused to return. It was offence Crime No.41 of 2021 of Jamner police station.

5. On 25.02.2021, XYZ reported at Shrirampur police station that she was minor and despite her protest she was forced to marry Rushab Vikas Lalwani, who was found to be stutter. She was being harassed by her in-laws/accused. Her cousin father-in-law Paras Lalwani outraged her modesty and other accused abetted it and threatened her not to disclose to anybody. She was asked to have physical relations with Paras. Hence, offence was lodged against Chandulal Kothari, Sunil Kochar, Paras Lalwani, Rushabh Lalwani, Bhavesh, and Bhavna Lalwani for offences punishable under Sections 354A of Indian Penal Code, Section 12 of POCSO Act and under Section 11 of Prohibition of Child Marriage Act. It was registered as Crime No.68 of 2021 at Jamner police station.

6. On 28.04.2021 one more offence was lodged by Alkesh Lalwani against Jyoti Chandulal Kothari, Prafulla Lodha and Sunil Kochar under Section 384, 506 read with Section 34 alleging that accused demanded ransom for settling the allegations in Crime No.68 of 2021. Informant reported it to the police. A trap was laid on 28.04.2021. Jyoti Kothari was caught red handed with cash of Rs.50,000/-. It was offence Crime No.403 of 2021 of Lasalgaon police station.

7. XYZ claims to be minor at the time of her marriage and lodging of F.I.R. Her mother had taken divorce from her biological father. Then she contracted second marriage with Chandulal Kothari. Informant was forced to marry Rushabh Lalwani. Thus three different names of the victim appeared in the police papers. Her three different birth dates revealed in the investigation. Two are procured from record of private school and one from birth certificate issued by Shrirampur Municipal Council, which is accepted by the Courts below.

8. The learned Senior Counsel Mr. Deshpande would submit that after lodging of report in Crime No.68 of 2021, the statements of victim and her mother were recorded under

Section 164. The offences are under the provisions of the Protection of Children from Sexual Offences Act (POCSO), as well as Bhartiya Nyaya Sanhita (BNS). No investigation at all is conducted in respect of sexual assault. Undue importance is given to the allegations of Crime No.403 of 2021. Having referred the matter to the ossification test, which was indicating the probable age of the victim between 14 to 17 years, the certificate issued by the local authority should have been discarded. The mandate of Rule 12(3)(b) of the Juvenile Justice (Care and Protection of Children) Rules, 2007 is overlooked.

9. The learned senior counsel further submits that the finding recorded in paragraph No.23 indicating the victim is major, is perverse and unfounded. The learned Judge totally overlooked that Investigating Officer committed dereliction of the duties. It is submitted that closer report was submitted without conducting investigation into the allegations. It is further submitted that impugned judgment is a miscarriage of justice because investigation is not fair and it is discriminatory.

10. Learned Government Pleader Mr. Girase would submit

that the matter was referred to the ossification test of the victim because birth certificate of the local body was not available. The State Government promptly filed application Exh.11 which is maintainable. It is submitted that re-investigation should have been directed by the learned Judge.

11. To repel the submissions of the applicants, my attention is adverted to the affidavit-in-reply. It is submitted by learned senior counsel Mr. Deshmukkh that offence is concocted and politically motivated. The victim was all the while major which is reflected from her conduct in the proceeding of bail, remand. It is further submitted that to settle personal score, record of the private school was manipulated and thereafter application Exh.11 was directed to be filed. The malafides of the applicants and the persons behind them are writ large as the elections of local body are ensuing.

12. XYZ claims to be of 13 years when she was forcibly married. The investigation report was submitted on 29.05.2021. It reveals from the report that statements are recorded and information is collected from the private schools regarding date of birth of the victim. The ossification test was

conducted disclosing probable age ranging from 14 to 17 years vide report dated 09.03.2021. The birth certificate was issued by the Municipal Council under Births and Deaths Registration Act of 1969 on 04.05.2021 disclosing the date of birth as 01.06.2002. It was not available when she was referred for ossification test.

13. The bonafide certificate issued by Dadasaheb Haribhau Ghadge Patil Secondary School reveals the date of birth as 01.06.2007. The record of another private school i.e. A. D. Muley private school discloses the date of birth as 20.05.2004. After considering the statements recorded during the course of investigation, both the dates of birth referred above are found to be suspicious. The reliance is placed on birth certificate dated 04.05.2021 issued by local body. It has more probative value. I am fortified in my view by law laid down in case of *CIDCO Vs Vasudha Gorakhnath Mandevlekar ; 2009 (7) SCC 283*.

14. As per Section 34 of POCSO Act, Special Court is empowered to determine age of the victim. For that purpose recourse can be had to Section 94 of the Juvenile Justice (Care

and Protection of Children) Act of 2015. The relevant portion is as follows :

“94 (2) In case, the Committee or the Board has reasonable grounds for doubt regarding whether the person brought before it is a child or not, the Committee or the Board, as the case may be, shall undertake the process of age determination, by seeking evidence by obtaining-

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in the absence thereof;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board:

Provided such age determination test conducted on the order of the Committee or the Board shall be completed within fifteen days from the date of such order.”

15. The birth certificate issued by the local body shows that date of registration of the birth is 01.06.2002 disclosing names of the parents. The certificate was issued on 04.05.2021. The

victim was referred to ossification test without there being any attempt to secure birth certificates from local body. The report of the test is of 09.03.2021. In the teeth of Section 94 (2), the Investigating Officer should have collected the birth certificate first instead of going for the ossification test. The birth certificate issued by local body cannot be discarded due to subsequent report of ossification test.

16. The harmonious and purposive interpretation of Sub Section (2) is that the sequence provided by Clause Nos.(i) and (ii) shall be followed and in the absence of information, recourse to (iii) shall be taken. The purport is to have authenticated information of date of birth. The birth certificate as contemplated by Clause (ii) has a probative value as it is issued under the statute. The birth certificate issued by local body does not lose its efficacy merely because it is secured after report of ossification test.

17. Learned senior counsel Mr. Deshmukkh has referred to the judgment of *Rajni Vs. State of Uttar Pradesh and another in Criminal Appeal No.603 of 2025*. It is useful to refer to paragraph No.33.11 which is as follows :

“33.11. Ossification test cannot be the sole criterion for age determination and a mechanical view regarding the age of a person cannot be adopted solely on the basis of medical opinion by radiological examination. Such evidence is not conclusive evidence but only a very useful guiding factor to be considered in the absence of documents mentioned in Section 94(2) of the JJ Act, 2015.”

I am unable to accept the submissions of learned senior counsel Mr. Deshpande that report of the ossification test in respect of date of birth needs to be accepted as a gospel truth.

18. The observations in paragraph No.23 of the impugned judgment are unwarranted. My attention is adverted to Rule 12(3) of the Juvenile Justice (Care and Protection of Children) Rules 2007. The Rules of 2007 stood repelled by Rule 94 of the Juvenile Justice (Care and Protection of Children) Model Rules of 2016. I am not inclined to accept the submissions in respect of repealed Rules of 2007. Those can not be made applicable.

19. I find no illegality in the impugned judgment for accepting the date of birth as 01.06.2002 which is corroborated by aadhar card and ration card. The offence

bearing Crime No.68 of 2021 is under the provisions of POCSO Act as well as IPC/BNS. The closer report refers to the offence bearing Crime No.403 of 2021 registered at the instance of Mr. Alkesh Lalwani under Section 384, 506, 34 of IPC as well as Crime No.41 of 2021 under Section 420, 406, 506 of IPC registered at the instance of Bhavna Lalwani.

20. Undisputedly, Crime No.41 of 2021 was registered on 11.02.2021. Thereafter, the offence in question bearing Crime No.122 of 2021 (68 of 2021) was registered on 25.02.2021. The school record showed inconsistent date of birth. It was the duty of the victim or her mother to disclose the Investigating Officer authenticated record of date of birth. The date of birth was traced out during the course of investigation from the Municipal Council. There is a reason to infer that prosecutrix and her mother misled the police and the Investigating Officer.

21. The closer report was submitted on 29.05.2021 by Deputy Police Inspector Mr. Ambadas Patharwat. Application Exh.11 was filed on 09.02.2023 by Police Inspector Mr. Kiran Shinde seeking permission for re-investigation. The letter dated 08.02.2023 addressed by Superintendent of Police, Jalgaon

refers the directions issued by Deputy Chief Minister to submit report within 15 days. In pursuance of that, instructions were given to file application for re-investigation in the matter. Application Exh.11 was not filed promptly but it was outcome of instructions from the Deputy Chief Minister. This Court has reservations for the genuineness to have re-investigation in the matter.

22. The role played by victim and her mother is dubious. In all probabilities the offence in question might have been registered to counter blast first offence bearing Crime No.41 of 2021. The subsequent events which are pointed out by learned senior counsel Mr. Deshmukkh are worth considering. On 28.04.2021 offence bearing Crime No.403 of 2021 was registered against mother of the victim for accepting cash of Rs.50,000/-. It has been also pointed out that Crime No.564 of 2025 was registered against one of the accused respondent Paras Lalwani for having committed assault. The pre arrest bail was rejected by the Trial Court and Anticipatory Bail Application No.1384 of 2025 was allowed by learned Single Judge by order dated 25.09.2025. The order of the High Court

also refers that there are cases filed against each other.

23. The victim did not claim herself to be minor when she filed her Vakalatnama in her own name and the affidavits before the Judicial Magistrate First Class, Jamner. In the remand proceedings of Crime No.41 of 2021, it was not disclosed that she was minor. The victim and her mother are conveniently using the status of minority. Their conduct does not inspire any confidence for the allegations levelled against the accused persons. The re-investigation for such dishonest persons would be abuse of process of law which cannot be the purport of Section 173(2) of Cr.P.C.

24. My attention is adverted by learned senior counsel Mr. Deshmukkh to the alleged political motive to implicate the accused in the offence in question. The proceedings of Change Report No.590 of 2008 are referred. It is difficult to offer any comment on that aspect of the matter as the material is scanty and appreciation of facts are not possible at this stage.

25. Reliance is placed by learned senior counsel Mr. Deshpande on the judgment of ***Amar Nath Chaubey Vs. Union***

of India and others ; MANU/SC/0938/2020. I have gone through paragraph Nos.8 and 9 which inter alia refers to earlier judgment of Supreme Court. The law laid down cannot be made applicable to the present case. The case at hand is distinguishable on facts. I have already recorded that the conduct of the victim and her mother is dishonest. Further reliance is placed on the judgment of *Maghavendra Pratap Singh Vs. State of Chhattisgarh ; MANU/SC/0443/2023*. The ratio laid down will not help the applicant.

26. Learned Government Pleader Mr. Girase has relied on the judgment of Supreme Court in the matter of *Gangadhar Janardan Mhatre Vs. State of Maharashtra and others ; 2004 AIR (SC) 4753* and *State through Central Bureau of Investigation Vs. Hemendhra Reddy and another ; (2023) 16 SCC 779*. It is rightly contended that the closer report was not the impediment to entertain application Exhibit 11 but the facts of the case at hand do not warrant further investigation.

27. The sequitur of above discussion is that there is no perversity or illegality in the common judgment and order. I find no miscarriage of justice or any need for re-investigation.

28. Criminal Application No.661 of 2024 as well as Criminal Writ Petition No.1362 of 2023 are rejected.

29. Rule stands discharged.

(SHAILESH P. BRAHME, J.)

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vmk/-