



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

923 CRIMINAL WRIT PETITION NO. 1519 OF 2023

RAHUL SHANKARRAO WADHAVE (U.T.NO.181/2023)

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. Yogesh A. Jadhav, Advocate (Appointed) for the Petitioner
Party-in-Person through jail on V.C.

Mr. S. M. Ganachari, APP for the Respondent No.1 – State

Mr. Menezes Joslyn, Advocate for Respondent No.2

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 12.02.2025

ORDER :-

1. Heard Mr. Rahul Shankarrao Wadhawe, Petitioner in person through Video Conferencing from Jail as well as Mr. Yogesh Jadhav, the learned counsel appointed through the Legal Aid on behalf of the Petitioner, the learned APP for the State and Mr. Menezes Joslyn, the learned counsel for Respondent No.2.

2. Rule. Rule made returnable forthwith. With consent of both the sides, heard finally.

3. The Petitioner invoked the jurisdiction of this Court under Article 226 and 227 of the Constitution of India and put forth prayer clause "B", as under:-

“B. To quash and set aside the order passed by the learned Special Judge (POCSO ACT) District and Session Court Aurangabad in Spl. Case 312/2021 on dated 05/07/2023 below Exb.20 and order dated 25/07/2023 below Exb.76.”

4. It is a matter of record that, on 03.08.2021, the informant, natural mother of the victim lodged a report with Chhawani Police Station, Aurangabad, alleging that, on 18.05.2009, her marriage was solemnized with the present accused and out of said wedlock she blessed with a female child/victim, who is now aged about 11 years old. Due to matrimonial disputes between her and her husband/accused, she started residing with her parents from the year 2012 with her minor daughter/victim. In the year 2016, she had filed a Petition for divorce before the competent Court. On 23.07.2021, the learned Civil Court passed judgment and decree and dissolved the marriage between her and the Petitioner/accused. However, prior to passing of decree of divorce, her husband/Accused had filed a proceeding for custody of minor daughter. On 12.08.2019, the custody of minor daughter was granted in favour of the Petitioner/accused. Therefore, her minor daughter was staying with her father/

accused and she was granted visiting permission to her victim daughter on every Saturday and Sunday. It is further alleged that, in the month of February 2021, her daughter victim was studying in regimental primary school and she met her daughter/victim in the school premises, at that time, her daughter handed over a handwritten chit containing nine pages and narrated sexual abuse at the hands of the petitioner/Accused.

5. On the basis of said report, Crime No.0461 of 2021 registered with Chhawani Police Station, Aurangabad, for the offence under Sections 9(m)(n), 10, 12 of the Protection of Children from Sexual Offences (POCSO) Act and Section 354, 323, 506 of the Indian Penal Code. The Petitioner/accused came to be arrested on 03.08.2021 and he was initially remanded in Police custody but later on he remanded in Magisterial custody. After completion of the investigation, charge-sheet came to be filed.

6. The Petitioner filed an application Exh.20 under Section 91 of Cr.P.C. and prayed for issuance of directions against the Investigating Officer to produce call details, tower location, SMS details, Whats-App data, SMS data, of Mobile No. 8446915187 as

well as Memory card, all videos from Whats-App of said mobile, CCTV footage, DVR hard-disk, original bill of the camera etc.

7. On 05.07.2023, the learned Special Judge passed an order below Exh.20 holding that as per contention of the accused, the data which he had received in his own mobile has been deleted. Therefore, it shows that the petitioner/accused knows about the data which he was already received and available with him. The mobile data and CCTV footage cannot be sought at the behest of the accused. After investigation, the Investigating Officer has already filed charge-sheet against the accused.

8. Since the Petitioner accused charge-sheeted for the offence punishable under Sections 9(m)(n), 10, 12 of the Protection of Children from Sexual Offences (POCSO) Act and Section 354, 323, 506 of the Indian Penal Code, therefore, burden lies upon the prosecution to prove guilt of the accused beyond the reasonable doubt by leading substantial oral as well as documentary evidence. As on today, the evidence of the prosecution not completed, so also, statement of the accused under Section 313 of Cr.P.C., not yet recorded.

9. Section 91 of Cr.P.C., provides as under:

“91. Summons to produce document or other thing. -- (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed--

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

10. The provisions of Section 91 of Cr.P.C. does not provide that, the Police Machinery of ptr investigation agency may collect evidence to prove defence of the accused. Therefore, I do not find that, impugned order dated 05.07.2023 passed by the learned Special Court below Exh.20 is illegal, bad in law.

11. Further, the Petitioner accused also filed Exh.76 and prayed for further investigation in the crime. The Petitioner / accused contended that, as per allegations made in the report he has committed the alleged offence in the rented premises owned by Smt. Sangita Kishor Waghmare. The another tenant Smt. Meshram, were residing in said house. However, the Investigating Officer has not recorded statements of landlady Smt. Sangita Kishor Waghmare and tenant Smt. Meshram. As per statement of witness Smt. Vaishali Trimbak Bhosle, when the informant visited to meet the victim at that time she was accompanying with an unknown lady. But, the Investigating Officer has not recorded statement of said unknown lady. Further, the Investigating Officer fail to collect evidence in respect of SMS and Whats-App chat. Therefore, prayed for further investigation under Section 173(8) of Cr.P.C.

12. On 25.07.2023, the learned Special Court, passed the impugned order below Exh.76 and holding that, after completion of investigation, the Investigating Officer has already filed charge-sheet against the present Petitioner/accused. The Court cannot guide the Investigating Officer to conduct the investigation in a particular manner and to interfere with the investigation.

13. Needless to say that, the defense of the Petitioner is that, the Investigating Officer has not recorded statements of landlady Smt.Sangita Kishor Waghmare and tenant Smt. Meshram and unknown lady who had accompanied with the informant while meeting the victim. However, under Section 173(8) of Cr.P.C., the Investigating Officer is required to furnish any documents/evidence oral or documentary evidence, if he received any such information subsequent to filing of the charge-sheet. The Petitioner/accused has no right to claim that, the investigation is required to collect the evidence for his defense. Therefore, I do not find any substantial grounds to interfere with findings recorded by learned trial Court. Therefore, the Writ Petition is dismissed. Rule discharged.

14. The fees of Mr. Yogesh A. Jadhav, the learned Advocate appointed on behalf of the Petitioner, is quantified at Rs.5,000/-.

[Y. G. KHOBRAGADE, J.]

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