



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4699 OF 2024

1. Vandana w/o Amardeep Tobare
Age: 42 yrs, Occu: Service,
Conductor with MSRTC Aurangabad.
R/o: N-7 Sector, G2, H.No.54,
Chh. Sambhajinagar.
2. Prasenjeet s/o Amardeep Tobare
Age: Minor/Child in conflict with law,
Occu: Student
R/o: N-7 Sector, G2, H.No.54,
Chh. Sambhajinagar.

.. Applicants

Versus

1. State of Maharashtra through
Police Station Cidco Aurangabad city,
Dist. Aurangabad.
2. Smt. Vandana w/o Kailash Raibole
Age: 42 Yrs. Occu. Housewife
R/O Cidco N-7 G-2 -44
Chh. Sambhajinagar.

.. Respondents

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Mr. D. S. Pagare and Mr. V. D. Pagare, Advocate for the applicants.

Mr. G. A. Kulkarni, APP for respondent No.1/State.

Mr. Wasif Shaikh, Advocate h/f Mr. M. D. Narwadkar, Advocate for respondent No.2

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 01 AUGUST 2025

ORDER (Per Smt. Vibha Kankanwadi, J.) :-

. Present application has been filed initially for quashing the FIR vide Crime No.570 of 2024 dated 02.09.2024 registered with CIDCO Police Station, District Aurangabad and later on, by way of amendment, for quashing the proceedings in Special Case No.683 of 2024 pending before the learned Special Judge, under the POCSO Act, Aurangabad for the offences punishable under Sections 67, 352, 351(2), 351(3), 3(5) of Bharatiya Nyaya Sanhita, 2023, under Sections 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the "POCSO Act") and under Section 9-K of the Mental Health Act, 1987.

2. Heard learned Advocate Mr. D. S. Pagare for the applicant, learned APP Mr. G. A. Kulkarni for respondent No.1/State and learned Advocate Mr. Wasif Shaikh holding for learned Advocate Mr. M. D. Narwadkar for respondent No.2.

3. Learned Advocate for the applicant has taken us through the entire charge-sheet and submits that the FIR is nothing but the counterblast to FIR lodged by mother of respondent No.2 vide Crime

No.560 of 2024 dated 29.08.2024 registered with CIDCO Police Station, District Aurangabad for the offences punishable under Sections 74, 75(1)(iii), 78, 352 and 3(5) of Bharatiya Nyaya Sanhita, 2023. The incident alleged in Crime No.560 of 2024 had taken place around 11.30 a.m. on 28.08.2024, whereas now present respondent No.2 states that the incident in respect of this FIR had taken place on 12.30 p.m. on 28.08.2024. There is statement of sister-in-law of respondent No.2, who states that she heard about the incident from respondent No.2 on phone. The girl, in respect of whom the offence is stated to have been committed, is stated to be mentally challenged and, therefore, her statement has not been recorded and it is not forming part of the charge-sheet. There are statements of the brother of the girl and friend of the husband of respondent No.2, who have stated about the hearsay information. One neighbouring person, namely, Nandu Navate reached the spot after the alleged quarrel between the informant and the mother of the applicant. Therefore with this kind of evidence, it would be unjust to ask the applicant to face the trial.

4. Per contra, learned APP as well as learned Advocate for respondent No.2 strongly opposed the application and submitted that the delay cannot be the only ground on which the FIR and the proceedings can be quashed and set aside. If we consider the facts, the mentally challenged girl of respondent No.2 is aged 17 years 9 months. She is

even not able to speak properly. Her disability certificate is on record which shows that she is suffering from moderate intellectual disability to the extent of 75%. The informant was putting clothes for drying on the terrace of her house and the clip to secure clothes at the place fell down in front of the house of the applicant. Therefore, the girl went to bring that clip and at that time, applicant No.2 by catching hand of the girl has done the acts of outraging her modesty, which will definitely amount to sexual assault as per the POCSO Act. The informant has also stated that the mother of the present applicant No.2 came outside abuse them and gave threat that she would lodge a complaint for outraging her modesty. The daughter of the present informant became unconscious due to the fear and, therefore, she was required to be taken inside the house and medicine was given. Statement of Nandu Navate supports the informant. The incident has happened in fraction of seconds and, therefore, it would be a point of appreciation as to whether there was a possibility of witnessing the incident by other persons. Therefore, this is not a fit case where this Court should exercise its powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

5. Here, it is to be noted that applicant No.1 i.e. mother of present applicant No.2 lodged the FIR vide Crime No.560 of 2024 on 29.08.2024 at 19.56 hours and as aforesaid, it was in respect of the incident that had taken place at 11.30 a.m. on 28.08.2024. Therefore, there is delay in

lodging that FIR also. The applicants cannot take the defence that this FIR against them is belated and, therefore, it is based on a concocted story. The delay can be explained and it cannot be the sole ground on which the proceedings, in which offence against woman especially under the POCSO Act, can be quashed and set aside. The additional factor is that there is *prima facie* evidence to show that the girl against whom the offence is stated to have been made or committed is a mentally challenged person. It also appears that the incident might have taken place within fraction of seconds or minutes, but at this stage there is supporting statement of the neighbour. If there is any rivalry or regular disputes between the neighbours, then it is for them to place it on record, but every time that cannot be the ground for quashment. In fact, rivalry or enmity is a double edged weapon. Sometimes it even cuts the person, who wants to take shelter of that ground and therefore, we do not find this to be a fit case where we should exercise our inherent powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

6. Hence, the application stands rejected.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm