

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 2901 OF 2025

Faizal Salim Shaikh	]	
Age : 29 years, Occ.: Business,	]	
R/at. Near Noorani Masjid,	]	
Yerwada, Pune – 411 001.	]	... Petitioner

V/s.

- | | | | |
|----|---|---|----------------|
| 1. | State of Maharashtra |] | |
| | Through The Senior Inspector of Police, |] | |
| | Koregaon Park Police Station, |] | |
| | Koregaon Park, Pune. |] | |
| 2. | ABC |] | |
| | Age : 24 years, Occ: None, |] | |
| | R/at : B/A/3, Siddhivinayak Vihar, |] | |
| | Handewadi Road, Hadapsar, |] | |
| | Pune – 411 028, |] | |
| | Koregaon Park Police Station, |] | |
| | Koregaon Park Pune. |] | ...Respondents |

Mr. Arjun Kadam for Petitioner.

Mr. Ajay Patil, APP for Respondent No.1-State.

Mr. Abhishek Roy for Respondent No.2.

Mr. Yashpal M. Thakur, Appointed Advocate by Legal Aid for Respondent No.2.

Ms. Shilpa Nimkar, API, Koregaon Park Police Station, Pune, present.

**CORAM : A. S. GADKARI AND
RAJESH S. PATIL, JJ.**

RESERVED ON : 30th June 2025

PRONOUNCED ON : 24th September 2025

JUDGMENT (Per : A. S. Gadkari, J.) :-

1) Petitioner, accused in Final Report No. 55 of 2019, dated 19th September 2019, pending on the file of learned Special Judge, District and Sessions Court, Shivajinagar, Pune, arising out of C.R. No. 0105 of 2019, dated 13th February 2019, punishable under sections 376, 323 and 506 of the Indian Penal Code (IPC) and under sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), has filed this Petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), for quashing of the said case, with the consent of Respondent No.2, the victim.

2) Heard Mr. Kadam, learned Advocate for the Petitioner, Mr. Patil, learned APP for Respondent No.1, State, Mr. Roy, learned Advocate for Respondent No.2 and Mr. Thakur, learned Advocate appointed by Legal Aid Committee to represent the Respondent No.2. Perused entire record.

3) The First Information Report is lodged by the Respondent No.2. It is stated that, Respondent No.2 was below the age of 18 years. She got

acquainted with the Petitioner at the time of obsequies ceremony of her grandmother at Yerawada, Pune. The Respondent No.2 was in need of a job. Petitioner informed the Respondent No.2 that, he is doing the work of event decoration, has many contacts and told the Respondent No.2 that, he would give her a job. The Petitioner developed his friendship with the Respondent No.2. He subsequently proposed the Respondent No.2 for marriage. However the Respondent No.2 told him that, she was below the age of 18 years and after completion of 18 years of age, she may consider to marry with him. However the educational qualification of Petitioner, as expected by the family members of the Respondent No.2 was not satisfactory, the Respondent No.2 declined his proposal to marry. In the last week of October 2018, the Petitioner gave a phone call to the Respondent No.2 and called her for an event to celebrate his girlfriend's birthday. In the said party, his 3-4 other friends were also present. After everybody left the premises, the Petitioner offered a cold drink (coca-cola) to the Respondent No.2. After drinking the said cold drink, the Respondent No.2 felt dizzy. Petitioner took the Respondent No.2 in the bedroom and tried to force himself on her. He told the Respondent No.2 that, shortly she would be completing 18 years of her age and at that time, he would perform marriage with her. The Respondent No.2 refused his offer. At that time, the Petitioner assaulted her, threatened her to kill and forcibly established physical relations with her. On the next day morning, when awakened the Respondent No.2 found that, her clothes

were in scattered condition and she felt physically weak. As the Respondent No.2 was frightened, she did not inform the said fact to anybody. 15 days prior to lodgment of the crime, the Respondent No.2 started suffering from vomiting. Upon questioning by her mother, she confided with her about the incident, which occurred in the last week of October 2018. On medical examination, Respondent No.2 found to be pregnant. She thereafter along with her mother and father went to the Police Station and lodged the present crime.

3.1) During the course of investigation, apart from collecting various other pieces of evidence and documents from the hospital, the police have also recorded statement of the father of Respondent No.2. The statement duly corroborates the version of Respondent No.2. After completion of investigation, the police have filed charge-sheet in the Court of learned Special Judge for the aforestated offences.

4) Mr. Kadam, learned Advocate for the Petitioner submitted that, the Petitioner and Respondent No.2 have now solemnized their marriage on 5th May 2025, in accordance with the Muslim Law at Lonavala. That, the Petitioner and Respondent No.2 have executed Consent Terms dated 12th May 2025, wherein the Respondent No.2 has agreed to give her consent for quashing of the crime in question. That, the Respondent No.2 has also filed her Affidavit dated 12th May 2025, giving her consent for quashing of the said crime. Mr. Kadam, placed his reliance on a decision of the Hon'ble

Supreme Court in the case of *Mahesh Mukund Patel Vs. State of U.P. & Ors., in Criminal Appeal No. 001005 of 2025, dated 28th February 2025* and submitted that, in the said case the facts were similar to the case in hand. The Hon'ble Supreme Court has quashed the crime under the provisions of the POCSO Act in the said case. Mr. Kadam also relied on a decision of the Supreme Court in the case of *Ramji Lal Bairwa And Another Vs. State of Rajasthan And Others, (2025) 5 SCC 117*, in support of his contentions. He therefore prayed to this Court that, crime registered against the Petitioner and the charge-sheet filed thereof be quashed with the consent of Respondent No.2.

5) The statement of father of Respondent No.2 recorded by the police is annexed at page No. 25 to the Petition. The father of Respondent No.2 is personally present in the Court. He through Mr. Thakur expressed deep concern and worry about the future of his daughter. He submitted that, as soon as the crime will be quashed, the future of his daughter will be in jeopardy and at the mercy of Petitioner. He therefore prayed to this Court that, said crime against the Petitioner may not be quashed.

6) Mr. Patil, learned APP for Respondent No.1, State submitted that, the Hon'ble Supreme Court in the case of *In Re : Right To Privacy of Adolescents, in Suo Motu Writ Petition (C) No. 3 of 2023 with Criminal Appeal No. 1451 of 2024, dated 20th August 2024, reported in AIR 2024 SC 4004*, has held that, even if the accused and the victim, who has now

attained majority were to come out with a settlement, the High Court could not have quashed the prosecution. He drew our attention to the fact that, the daughter begotten due to the sexual assault committed by the Petitioner on Respondent No.2, in the year 2018, is now approximately 6 years of age. That, the Petitioner has performed marriage with the Respondent No.2 after about 6 years i.e. on 5th May 2025 and immediately within a period of 7 days, present Petition is filed for quashing of the said crime. He submitted that, the concern expressed by the father of Respondent No.2 be taken into consideration and the said crime may not be quashed.

7) Mr. Roy, learned Advocate appearing for Respondent No.2 submitted that, the Respondent No.2 has already filed her Affidavit of Consent dated 12th May 2025 on record and in view thereof, the crime may be quashed.

8) At this stage, it will not be out of way to place the fact on record that, the Legal Aid Committee has appointed Mr. Thakur to represent the Respondent No.2. Advocate Mr. Roy has taken objection to the said appointment. Mr. Thakur produced on record a photocopy of e-mail received by him from Advocate Mr. Roy. We are at pains to note hear that, language used by Mr. Roy in the said e-mail is intemperate and it does not befit to a practicing Advocate against other Advocate. We however deem it appropriate to put a quietus to the said issue at this stage.

9) The Hon'ble Supreme Court in the case of *In Re : Right to Privacy of Adolescents (supra)*, had an occasion to consider the issue of quashing of case under the POCSO Act, after the victim in the said case attained majority and gives her consent for quashing of the crime. In para No. 23.1, the Hon'ble Supreme Court has held that, "therefore, in view of the settled position of law, in the facts of the case, even if the accused and the victim (who has now attained majority) were to come out with a settlement, the High Court could not have quashed the prosecution." It is thus clear that, there is a clear enunciation on this point by the Hon'ble Supreme Court and the proceedings under the POCSO Act, can not be quashed, even with the consent of the victim, who after attaining majority, giving her consent for quashing of the crime.

10) A minute perusal of the decision in the case of *Mahesh Mukund Patel (supra)* clearly indicates that, the Hon'ble Supreme Court after considering the evidence on record, has recorded a clear finding that, when the offence in the said case was allegedly committed in September 2016, the victim was already a major and therefore proceeded to quash the said case. The reliance placed by the learned Advocate for the Petitioner on the said case, therefore is of no avail to him.

10.1) The other decision relied upon by the learned Advocate for the Petitioner in case of *Ramji Lal Bairwa And Another Vs. State of Rajasthan And Others*, (*supra*), defers on the facts in the case in hand. In the said case also, the provisions of the POCSO Act, were applied to the crime. In para Nos. 44 and 45 of the said case, the Hon'ble Supreme Court has held as under :

- “44. In view of the very object and purpose of enacting the POCSO Act, we find no reason to disagree with the conclusions in SCC OnLine Del para 12 extracted above in the given Sunil Raikwar case 2021 SCC OnLine Del 258. It is more so, when the extracted portion from the complaint that was annexed to the FIR and extracted hereinbefore would reveal that the accused was making pressure on him not to lodge any report. Despite giving such statement in the complaint, within a couple of weeks, the accused managed to compromise the case with the 4th respondent and his wife.*
- 45. In the decision relied on by the High Court to quash the proceedings viz. Gian Singh v. State of Punjab, (2012) 10 SCC 303 : (2012) 4 SCC (Civ) 1188 : (2013) 1 SCC (Cri) 160 : (2012) 2 SCC (L&S) 988 and the decision in State of M.P. v. Laxmi Narayan, (2019) 5 SCC 688 : (2019) 2 SCC (Cri) 706 1 2022 SCC OnLine Raj 3564 in unambiguous terms this Court held that the power under Section 482 CrPC could not be used to quash proceedings based on compromise if it is in respect of heinous offence which are not private in nature and have a serious impact on the*

society. When an incident of the aforesaid nature and gravity allegedly occurred in a higher secondary school, that too from from a teacher, it cannot be simply described as an offence which is purely private in nature and has no serious impact on the society.”

11) Section 29 of the POCSO Act prescribes presumption as to certain offences under the Act. It states that, where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or attempted to commit the offence, as the case may be unless the contrary is proved. Section 30 of the said Act speaks about presumption of culpable mental state. Sub Section (1) of Section 30 states that, in any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Special Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. Sub Section (2) of Section 30 states that, for the purposes of this section, a fact is said to be proved only when the Special Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability. The explanation to Section 30 says that,

in this section, “culpable mental state” includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

12) Perusal of record reveals that, the Petitioner in para No. 3.8 (C) of the Petition, has himself admitted the fact that, in the month of October 2018, the Respondent No.2 was 17 years, 7 months and 29 days of age. The Respondent No. 2 attained majority on 8th February 2019 and thereafter has lodged crime on 13th February 2019. It is thus an admitted fact that, the Respondent No.2 was a minor on the date of commission of sexual assault on the Respondent No.2 by the Petitioner. Therefore presumption as to commission of offence as contemplated under Section 29 and the presumption of culpable mental state as contemplated under Section 30 of the POCSO Act are attracted to the case and applicable to the Petitioner.

12.1) Record further indicates that, the sexual assault on the Respondent No.2, was committed by the Petitioner in the month of last week of October 2018. Due to it, the Respondent No.2 gave birth to a daughter. In para No. 1 of Consent Terms dated 12th May 2025, the Respondent No.2 has stated that, a daughter was born out of their relationship on 15th May 2019 and is about 6 years of age, as of today. The Petitioner performed marriage with the Respondent No.2, belatedly on 5th May 2025, in accordance with the Muslim Law and thereafter present Petition along with Consent Affidavit and other necessary

documents is filed on 12th May 2025 i.e. within a period of 7 days from the date of performing of the said marriage. The wisdom of performing marriage with the Respondent No.2 prevailed upon the Petitioner only when the said criminal case is ripe for hearing and not prior to it.

12.2) We therefore find substance in the apprehension expressed by the father of the Respondent No.2 that, if the crime in question is quashed, the future of the Respondent No.2 will be in jeopardy. It appears to us that, intention of the Petitioner in filing Petition is not *bonafide*. According to us, para No. 23.1, in the case of *In Re : Right to Privacy of Adolescents (supra)*, squarely applies to the case in hand.

13) After taking into consideration the aforementioned facts and over all view of the case, we are of the considered opinion that, the present crime alleged against the Petitioner cannot be quashed.

14) Petition is accordingly dismissed.

15) At this stage, Advocate Mr.Thakur on instructions from the father of Respondent No.2, who is personally present in the Court submitted that, the apprehension expressed by the father of Respondent No.2 has resulted into reality. Mr. Thakur on instructions submitted that, in the intervening period from the date of closing the Petition for passing of the Judgment till today, the Respondent No.2 has abdicated from performing his lawful duties and has committed breach of his statements and undertakings mentioned in Consent Terms dated 12th May, 2025.

16) Mr.Roy learned Advocate appearing for Respondent No.2 tendered across the bar Affidavit dated 19th September 2025 of Respondent No.2. It is stated therein that, the Petitioner has breached all the assurances and promises made by him and mentioned in the Consent Terms dated 12th May, 2025. That, the Petitioner has chosen to remain unemployed and is presently without any source of income. Thus forcing, the Respondent No.2 to be the sole breadwinner in the family. Other instances of breach of Consent Terms dated 12th May 2025 are also mentioned in the said Affidavit. Respondent No.2 has stated that, it may not be out of context to state that, the Respondent No.2 was put under a misconception and undue influence by the promises and assurances made in the Consent Terms dated 12th May, 2025, would stands fulfilled and only on which basis the Respondent No.2 had accorded her consent to the prayers made in the Petition. The Respondent No.2 has lastly stated that, in view of the various facts narrated in her Affidavit dated 19th September, 2025, she may be permitted to withdraw her Affidavit dated 12th May, 2025, and Consent Terms dated 12th May 2025, by which she had accorded her consent for quashing of the said crime. The said Affidavit is taken on record and marked 'X' for identification.

17) In view of the facts mentioned on Affidavit by the Respondent No.2, we allow and permit her to unconditionally withdraw her consent given to quash the crime in question.

18) Apart from the facts and reasoning mentioned in paragraph

Nos.3 to 13 herein above, the facts stated in the afore-noted paragraphs are additional circumstance for not quashing the crime lodged against the Petitioner.

(RAJESH S. PATIL, J.)

(A.S. GADKARI, J.)