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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.4 OF 2020

Rajeev s/o Umashankar Dubey,
Aged 39 Years,
Occupation : Private Services,
R/o Plot No.87, Shramik Society,
Uttam Nagar, Gorewada Ring Road,
Nagpur – 440 013.

.... APPLICANT

// VERSUS //

1. The State of Maharashtra,
The Police Station Officer,
Government Railway Police Station,
Nagpur.
2. Sandeep Annaji Gondane,
Aged : Major,
Occupation : Service – API,
Present and Pmt. Address: Near
Prabodhan Gitamandal Scho,
Civil Lines, Daryapur,
District Amravati.

.... NON-APPLICANTS

Mr. Dhruv Sirpurkar, Advocate h/f Mr. S. V. Sirpurkar,
Advocate for the applicant.
Mr. N. H. Joshi, APP for non-applicant No.1/State.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 19.11.2025
PRONOUNCED ON : 01.12.2025

JUDGMENT : (PER : URMILA JOSHI-PHALKE, J.)

1. **Admit.**
2. Heard finally with the consent of the learned Counsel
of the parties.

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3. The present application is preferred by the applicant for quashing of the First Information Report in connection with Crime No.234/2019 registered with Railway Police Station, Nagpur for the offence punishable under Section 224 of the Indian Penal Code and charge sheet No.4953/2019 dated 24.04.2019 in consequent proceeding arising out of the same bearing SCC No.12052/2019 pending before the learned Chief Judicial Magistrate, Nagpur.

4. On 09.02.2019 at about 7.00 a.m., the applicant was brought to the Railway Police Station, Nagpur by Police Constable Dinesh Bhave, who was on patrolling duty in Sewagram express, at the relevant time along with Shakil Abdul Sattar Siddhiqi to lodge a report. It is alleged that the present applicant has outraged the modesty of minor girl when she was travelling in the train, and therefore, the offence under Section 354 of Indian Penal Code (for short 'IPC') and under Section 8 and 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') vide Crime No.223/2019 at Railway Police Station, Nagpur was registered against the present applicant. Therefore, he was taken into custody. He was sent for medical examination along with the Head Constable Parmanand Wasnik B.No.59 and Police Constable Hemand Nimbarte B.No.1160 at 7.29 a.m. After medical examination, he was brought back to the Railway

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Police Station, Nagpur at about 8.37 a.m. The relevant entry was taken into the station diary. When the applicant was present at the Police Station, Police Constable Nitin Mankar and Bhojraj Pradhan were deputed to keep watch on him. However, at about 1.45 to 2.15 p.m., the applicant escaped from the custody of the Railway Police, and therefore, the present crime was registered against him under Section 224 of IPC. On the basis of the registration of the crime, the investigation was set into motion. During the investigation, the statements of various witnesses were recorded and after completion of the investigation, the charge sheet was filed against the present applicant.

5. The present application is filed by the applicant on the ground that he was never arrested, and therefore, he was never in the custody of the police. His arrest was never effected and neither any family member was informed, nor any arrest panchnama was drawn. In fact, there was no arrest effected by the police authority, and therefore, the entire allegation levelled against the present applicant is baseless, and no *prima facie* case is made out.

6. Heard learned counsel Mr. Dhruv Sirpurkar for the applicant, who submitted that the applicant was travelling in Sewagram express from Mumbai to Nagpur. During the intervening night of 08.02.2019, the alleged incident occurred at

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12.30 a.m. The train reached at Nagpur in the morning of 09.02.2019. The applicant was brought to the Police Station along with the complainant. At 7.29 a.m., he was taken for medical examination and again the applicant was brought to the Police Station. The First Information Report (for short 'FIR') was registered at Railway Police Station, Nagpur at about 1.29 p.m. on the basis of information received under Section 354 of IPC and under Section 8 and 12 of POCSO Act. Despite the complainant and the applicant being brought to the Railway Police Station, Nagpur in the morning on 7.29 a.m. The FIR reflects that the information was received on 1.21 p.m., raising doubt on the conduct of the concerned Police Officer. The applicant, as per the allegation, left the Police Station at about 1.45 p.m. to 2.15 p.m. On 09.02.2019, Railway Police Station, Nagpur, forwarded a letter to Lohmarg Police Station, Aurangabad, informing about the registration of '0' FIR pertaining to an incident which allegedly occurred in the jurisdiction of the latter Police Station i.e. the Lohmarg Police Station, Aurangabad. After an inordinate delay of two days on 11.02.2019, the present FIR No.234/2019 was registered for the offence punishable under Section 224 of IPC, alleging that the applicant fled away from Railway Police Station on 09.02.2019 between 1.45 to 2.15 p.m. He submitted that in fact, the applicant was never in the custody of the police and there was no

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lawful detention therefore, the offence under Section 224 of IPC is not made out. In support of his contention, he placed reliance on **Sundeep Kumar Bafna Vs. State of Maharashtra and another** reported in **(2015) 3 SCC (Cri) 558**.

7. Per contra, learned APP strongly opposed the said contention and submitted that initially, the crime was registered against the present applicant under Section 354 of IPC and under Sections 8 and 12 of the POCSO Act. As the alleged crime was committed by the present applicant when he was travelling by train therefore, the Police Constables, who were deputed in the said train taken him into custody and after reaching at Nagpur, complainant as well as the applicant was brought to the Police Station, thereafter, he was referred for the medical examination and the further proceedings were carried out, but the applicant fled away from the Police Station, and therefore, the present crime is registered against him. Thus, though formal arrest was not there, he was in the custody of the Railway Police and he fled away from their custody and therefore, the offence is made out against the present applicant. In view of that, the application deserves to be rejected.

8. On hearing both sides and on perusal of the entire investigation papers, it reveals that the present applicant was taken into custody by the Railway Police as the complaint was

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made by one Shakil Abdul Sattar Siddhiqi R/o Murmadi, District Bhandara that he along with his daughter was proceeding from the train Sewagram express towards Nagpur. At about 00.30 hours, the present applicant has outraged the modesty of a minor girl. On the basis of the complaint of the complainant, a crime was registered against the present applicant. As the crime was registered against him, therefore, on 09.02.2019 at about 7.29 a.m. by taking entry in the general diary along with Head Constable B. No. 59 and Police Constable B. No.1160, the present applicant was referred for pre-arrest medical examination. At about 8.37 p.m., he was brought back after his medical examination and he was asked to be there, but his formal arrest was not there, his formal arrest was on 23.03.2019 at about 9.00 p.m., as per the arrest panchanama. Much reliance was placed by the learned counsel for the applicant that the applicant was not formally arrested and therefore, the offence under Section 224 is not made out as the detention of the accused is not within the expression of the custody.

9. The vital question before the Court is whether the applicant was in a custody and fled away from the Police Station. There is no dispute as to the fact that in respect of another crime bearing No.223/2019 was registered against the present applicant under Section 354 of IPC and under Sections 8 and 12

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of the POCSO Act. On 09.02.2019 in the morning, the applicant and the complainant approached to the Police Station. Thereafter, on 09.02.2019 vide General Diary (G. D.) entry No.9, the applicant along with two Police Constables was forwarded for the pre-arrest medical examination. After pre-arrest medical examination, he was brought to the Police Station on 09.02.2019. Thereafter, the applicant was asked to wait for some time. Admittedly, the applicant was not found in the Police Station after 1.45 p.m. Though the formal arrest was not effected of the applicant, but the control of the applicant was with Nagpur Railway Police. Whether the accused was in custody or not is to be considered in view of the various decisions. "It is well settled that 'police custody' does not necessarily mean custody after formal arrest. It also includes 'some form of police surveillance and restriction on the movements of the person concerned by the police'. The word 'custody' does not necessarily meant detention or confinement. A person is in custody as soon as he comes into the hands of a police officer." Division Bench of the **Orissa High Court in Paramhansa Jadab vs. State of Orissa MANU/OR/0057/1964** had discussed the meaning of "police custody" in the light of Sections 26 and 27 of Evidence Act and observed that it is now well settled that "police custody" for the purpose of Section 26 of the Evidence Act does not commence only when the accused is formally arrested but would

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commence from the moment when his movements are restricted and he is kept in some sort of direct or indirect police surveillance. In **Lay Maung v. Emperor AIR 1924 Rang 173 : 1924 Cri LJ 381** the learned Judge pointed out the danger of construing the expression "police custody" in Section 26 of the Evidence Act in a more narrow technical sense as commencing from the time when the accused is formally arrested. The learned Judge observed that if such a view be taken it will be very easy for the police to evade that section and that the correct interpretation would be that.

As soon as an accused or suspected person comes into the hands of a police officer he is, in the absence of any clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in "custody" within the meaning of Sections 26 and 27 of Evidence Act." In **Haroon v. Emperor AIR 1932 Sind 1490 : 1933 Cri LJ 129** and **Pharho Shahli v. Emperor AIR 1932 Sind 201 : 1933 Cri LJ 147** it was pointed out that even indirect control over the movements of suspects by the police would amount to "police custody" within the meaning of that section. In **Gurdial Singh v. Emperor MANU/LA/0176/1932 : AIR 1932 Lah 609 : 1932 Cri LJ 756** and in **Re Edukondalu MANU/AP/0070/1957** also the same principles were emphasised and it was observed that there may be police custody without formal arrest. In this connection some of the observations of the Supreme Court in **State of Uttar Pradesh V. Deoman Upadhyaya MANU/SC/0060/1960**

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: **1960 Cr LJ 1504**, para 12 may also be noticed: The majority of Judges observed:

Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody : submission to the custody by word of mouth or action by a person is sufficient. A person directly giving a police officer by word of mouth information which may be used as evidence against him may be deemed to have submitted himself to the custody of the police officer within the meaning of Section 27 of the Indian Evidence Act.

10. The Full Bench of the Madras High Court in **Roshan Beevi Vs. Joint Secretary to the Government of Tamil Nadu MANU/TN/0192/1984** held that the terms "custody" and "arrest" are not synonymous terms. It is true that in every arrest there is a custody, but not vice versa. A custody may amount to an arrest in certain cases but not in all cases.

11. In the case of **Sundeep Kumar Bafna** referred by the learned counsel for the applicant wherein also it is observed by the Hon'ble Apex Court that "unfortunately, the terms 'custody', 'detention' or 'arrest' have not been defined in the Code of Criminal Procedure, and we must resort to few dictionaries to appreciate their contours in ordinary and legal parlance. The Oxford Dictionary (online) defines custody as imprisonment, detention, confinement, incarceration, internment, captivity;

remand, duress, and durance. **The Cambridge Dictionary (online)** explains 'custody' as the state of being kept in prison, especially while waiting to go to court for trial. **Longman Dictionary (online)** defines 'custody' as 'when someone is kept in prison until they go to court, because the police think they have committed a crime'. **Chambers Dictionary (online)** clarifies that custody is 'the condition of being held by the police; arrest or imprisonment; to take someone into custody to arrest them'. **Chambers' Thesaurus** supplies several synonyms, such as detention, confinement, imprisonment, captivity, arrest, formal incarceration. The Collins Cobuild English Dictionary for Advance Learners states in terms of that someone who is in custody or has been taken into custody or has been arrested and is being kept in prison until they get tried in a court or if someone is being held in a particular type of custody, they are being kept in a place that is similar to a prison. **The Shorter Oxford English Dictionary** postulates the presence of confinement, imprisonment, durance and this feature is totally absent in the factual matrix before us.

12. **The 'Custody' is defined in Black's Law Dictionary**, (9th ed. 2009) - The care and control of a thing or person. The keeping, guarding, care, watch, inspection, preservation or security of a thing, carrying with it the idea of

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the thing being within the immediate personal care and control of the person to whose custody it is subjected. Immediate charge and control, and not the final, absolute control of ownership, implying responsibility for the protection and preservation of the thing in custody. Also the detainer of a man's person by virtue of lawful process or authority.

13. Thus, a perusal of the dictionaries meaning discloses that the concept that is created is the controlling of a person's liberty in the course of a criminal investigation, or curtailing a substantial or significant manner a person's freedom of action. The Full Bench of the High Court of Madras in **Roshan Beevi Vs. Joint Secretary MANU/TN/0028/1983** and also the Apex Court in the decision of **Directorate of Enforcement V. Deepak Mahajan MANU/SC/0422/1994** considered the meaning of arrest, detention and custody. Thus, taking of the person into judicial custody is followed after the arrest of the person concerned by the Magistrate on appearance or surrender.

14. As to what amounts to the expression "custody" is also time and again settled in the various judgments including **State of Andhra Pradesh V. Gangula Satya Murthy; MANU/SC/0371/1997** and **A. N. Venkatesh and another V. State of Karnataka; MANU/SC/0468/2005** wherein it has been clarified that the word "custody" does not mean formal

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custody, which includes any kind of surveillance, restriction or restraint by the police. Even if the accused was not “formally” arrested at the time when the accused gave the information, the accused was, for all practical purposes, in the custody of the police.

15. Relying upon the said ratio laid down by the Hon’ble Apex Court herein the present case also, though the accused was not formally arrested, but his surveillance, his control was with the Nagpur Railway Police and the restrictions were on the present applicant regarding his movement. Therefore, the contention of the applicant that he was not in custody is not sufficient. The documents that the General Diary entry specifically shows that he was under the control of the police and therefore, he was referred for the medical examination. Merely because he was not formally arrested, it cannot be said that he was not in custody. On the contrary, in view of the observation in the catena of decisions, the control of the present applicant was with the police. There was surveillance over him of the police and in view of the Black’s Law Dictionary, he was in the custody of the police. The investigation papers shows that when he was under the control of the police and there was surveillance of the police over him, he has fled away from the Police Station and therefore, the offence under Section 224 of IPC was made out.

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16. In the light of the above observation and various statements recorded during the investigation, it is sufficiently shows that the applicant fled away from the Police Station. His custody was with the police is established by the investigation papers, in view of the General Diary entry bearing No.9/2019 taken on 09.02.2019 at 7.29 p.m.

17. In the light of the above facts and circumstances of the case, a *prima facie* case is made out against the present applicant and it is established that the applicant intentionally offered his resistance to the lawful apprehension of himself for any offence with which he was charged or which he has been escaped from the custody of police, in which he is lawfully detained for the offence committed by him under Section 354 of IPC and under Sections 4 and 8 of the POCSO Act. Thereby he has committed an offence punishable under Section 224 of the IPC. Thus, *prima facie* case is made out against the present applicant. In view of that, the application deserves to be rejected. Accordingly, we proceed to pass following order:

ORDER

The application is hereby **rejected**.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)