



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

CRIMINAL APPLICATION [APL] NO. 99 of 2023

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Mahesh S/o Ramesh Gujarkar,
Age about 35 years, Occu: Govt. Service,
R/o Matte Lay-out, Padoli,
Tq & Dist : Chandrapur.

... APPLICANT

- - V E R S U S - -

1] State of Maharashtra,
Through P.S.O. Padoli Police Station,
Tq. & Dist. Chandrapur.

2] X.Y.Z.
Crime No.165/2022,
P.S. Padoli, Dist. Chandrapur.

... NON-APPLICANTS

Mr. A.G. Hunge, Advocate for the Applicant.
Mr. N.H. Joshi, A.P.P. for the Non-Applicant No.1/State.
Mr. A.A. Dhawas, Advocate for the Non-Applicant No.2.

CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ

DATE : AUGUST 25, 2025.

2**ORAL JUDGMENT (Per M.M. NERLIKAR, J.) :**

Rule. Rule made returnable forthwith. Shri Nikhil Joshi, learned A.P.P. waives service for non-applicant no.1-State and Mr. A.A. Dhawas, learned counsel waives service for non-applicant no.2. With consent of learned Counsel for the parties, the application is taken up for final hearing.

2. The application is being filed for quashing and setting aside the charge-sheet in First Information Report No.0165/2022, registered for the offences punishable under Sections 323, 363, 376(2)(n), 376(3), 417 and 506 of the Indian Penal Code, 1860, and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (herein after referred to as the “POCSO Act”), registered with Police Station Padoli, Taluka & District Chandrapur and the Special case No.11/2024, pending before the Extra Joint District Judge and Additional Sessions Judge, Chandrapur. Initially, the applicant had only prayed for quashing and setting aside of the First Information Report. However, amendment was carried out as per the orders dated 04/01/2024 and 05/02/2024 and accordingly the challenge is also raised to the charge-sheet and the Special Case.

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3. The First Information Report No.165/2022 was registered by the non-applicant No.2 alleging that the informant and non-applicant no.2 are acquainted with each other since 2016. When the non-applicant no.2 used to go to school, the applicant used to talk to her, and they both fell in love. It is further alleged that after some days, the applicant insisted for physical relations with her in the premises of Zopla Maroti Temple situated at Mhada Colony, Chinchpalli Forest. However, Non-applicant No. 2 refused, but the applicant stated that they were going to get married and on that pretext he subjected her to forceful sexual intercourse. It is further alleged that the non-applicant No.2 has been insisting for marriage since 2018. However, in the year 2019, the applicant got engaged to another girl. When this fact came to the knowledge of the non-applicant No.2, she again insisted the applicant to marry her. The applicant, however, stated that he was marrying the other girl at the insistence of his parents. However, applicant promised Non-Applicant No. 2 that he would continue the relationship with her even after his marriage.

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4. In the year 2019, the applicant married the other girl namely, Vaishnavi, and they got blessed with one daughter. Thereafter, the non-applicant No.2 denied to keep relations with the applicant saying that he is now married and having one daughter, however, at that time, the applicant threatened to disclose everything to her brother and therefore continued with the physical relations till 2022. On 13/10/2022, applicant went to the room of non-applicant No.2 and in the night they had sexual intercourse, however, on the next day i.e. on 14/10/2022, the applicant quarreled with the non-applicant no.2 and assaulted her. The brother of the non-applicant no.2 noticed that the non-applicant no.2 was in depression, and therefore, checked her mobile phone, wherein, he found that the non-applicant no.2 is having love affair with the applicant. Pursuant to the same, non-applicant no.2 disclosed about the relationship and thereafter on 02/11/2022 non-applicant no.2 along with her brother went to the house of the applicant in order to question him, however, applicant was not found at the house. Again, the family members of the non-applicant no.2 went at 2:30 p.m. on the same day and questioned the

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applicant about the relationship, however, the applicant quarreled with them and went away. Thereafter, they went to the Police Station and lodged the complaint. Accordingly, the police has registered First Information Report for the offences as stated above. Investigation was conducted, charge-sheet came to be filed. It was numbered as Special POCSO Case No.11/2024 which is pending with the Extra Joint District Judge and Additional Sessions Judge, Chandrapur.

5. We have heard Mr. Hunge, the learned counsel for the applicant, Mr. Joshi, the learned Additional Public Prosecutor for the State and Mr. Dhawas, the learned counsel for the non-applicant No.2.

6. Mr. Hunge, the learned counsel for the applicant submits that First Information Report was filed by way of an afterthought. He further submits that in order to bring the case under the provisions of POCSO, the non-applicant no.2 narrated the incident of 2016 and in the entire charge-sheet, there is no evidence in order to attract the provisions of the POCSO, nor the ingredients of Section 376 are

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attracted in the present facts of the case. The First Information Report was registered by the informant when she turned major, alleging that the incident occurred when she was minor. There is nothing in the charge-sheet to attract the provisions as lodged in the charge-sheet and the First Information Report, and therefore, he has prayed to quash the Special POCSO case No.11/2024. The learned counsel relied on the Judgment of the Hon'ble Supreme Court in the case of *Kunal Chatterjee Vs The State of West Bengal & Ors. (Special Leave Petition (CRL.) No. 7004/2025)* and submitted that while dealing with identical facts the Hon'ble Supreme Court quashed the criminal proceedings.

7. On the other hand, the learned Additional Public Prosecutor and the learned counsel for the non-applicant no.2 vehemently opposed these submission by submitting that the consent obtained by the applicant is no consent in the eye of law as the alleged incident narrated by the non-applicant no.2 is of the year 2016 and at that time victim was 16 years of age. *Prima facie*, the applicant has taken undue advantage of the non-applicant no.2, as

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she was not having any understanding being minor of what she was doing. The consent was obtained under the false promise of marriage. It was since inception that the applicant was not intending to marry the non-applicant No.2. It is further submitted that the relationship was continued under the threats of the applicant, and therefore, there is sufficient material against the applicant.

8. We have gone through the material and given our thoughtful consideration to the arguments advanced by the parties. We find the First Information Report admittedly was lodged on 03/11/2022 when the non-applicant No.2 was of 22 years of age. We find that there is no material to indicate that there was relationship between the applicant and the non-applicant no.2 in the year 2016 except as mentioned in the F.I.R. It is further to be noted that the relationship between the applicant and the non-applicant no.2 continued even thereafter till 2022. In the intervening period, the Applicant got married to a girl namely, Vaishnavi, in the year 2019, and they are blessed with one daughter from that marriage. However, even thereafter the non-applicant No.2 continued her relationship with the applicant. Though, it is stated that under

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threat, the applicant has forcefully subjected her to sexual intercourse.

9. In identical set of facts, the Hon'ble Supreme Court in the case of *Kunal Chatterjee (supra)* had an occasion to consider the allegations which are similar to the present case. The Hon'ble Supreme Court while quashing the proceedings has observed that *"In our considered opinion, as regarding the rape being committed by the appellant when the prosecutrix was a minor, there is absolutely no evidence, and definitely no forensic evidence with the prosecution. It is only an allegation in the FIR after more than 03 years, in order to make out a case under the POCSO Act, that such an act of rape was committed three years back when she was a minor. She also categorically states that she consented to the act as there was a promise of marriage by the appellant"*.

10. The Supreme Court also held that in the *Kunal Chatterjee (supra)* by relying on the Judgments in **Prithivirajan VS. State. 2025 SCC OnLine SC 696, Pramod Suryabhan Pawar VS. State of Maharashtra, (2019) 9 SCC 608, Maheshwar Tigga VS. State of**

Jharkhand, (2020) 10 SCC 108 that promise to marriage and the subsequent physical relationship between the two with the consent would not amount to rape.

11. Therefore, similarly in the present case also the First Information Report indicates that it was lodged only after attaining majority by the non-applicant no.2 and the incident alleged is when she was a minor and was of the age 16. The First Information Report was lodged in the year 2022 and the incident was shown of 2016 i.e. 6 years back. The applicant and the non-applicant no.2 had a consensual relationship even after attaining majority, and therefore, it is very difficult to accept the version of the prosecutrix when there is absolutely no evidence, more so, forensic evidence or the medical evidence in order to connect the applicant with the offence of rape. It would be noteworthy to mention at this juncture that in the case of ***Kunal Chatterjee (supra)***, the Hon'ble Supreme Court further observed that "*Under the present facts and circumstances of the case and the nature of the evidence with the prosecution, particularly the long delay in lodging the FIR itself suggest that the present criminal proceedings lodged against the*

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appellant are nothing but an abuse of the process of law and the High Court ought to have invoked its inherent jurisdiction in the case of the appellant as well as it did while quashing the proceedings for the remaining accused". Therefore, considering the observations of the Hon'ble Supreme Court, we are of the considered view that there is no evidence or material to attract Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, so also, Sections 376(2)(n) and 376(3) of the Indian Penal Code, 1860.

12. We are surprised that the charge-sheet was filed for the offences punishable under Sections 363 and 366 of the Indian Penal Code as absolutely there are no allegations of kidnapping, abducting or inducing women to compel her marriage, etc. There are no allegations even to connect the applicant, so far as Section 417, is concerned. In this view of the matter and considering the law laid down by the Hon'ble Supreme Court in the case of *Kunal Chatterjee (supra)*, we are of the opinion that this is a fit case to invoke the inherent jurisdiction under Section 482 of Cr.P.C. in order to prevent the abuse of process of law and to secure the ends of justice. Hence, the following order:-

ORDER

- (i) The Criminal Application is allowed.
- (ii) We quash and set aside the charge-sheet in Crime No.165/2022 registered for the offences punishable under Sections 323, 363, 376(2)(n), 376(3), 417 and 506 of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 registered with Police Station Padoli, Taluka & District Chandrapur and the Special case No.11/2024.
- (iii) Rule is made absolute in above terms.

[M. M. NERLIKAR, J]

[ANIL L. PANSARE, J]