



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 459/2025

1. Mr. Chandrakant S/o Balaram Ghodeswar,
Aged 44 years, Occupation - Private
R/o. Flat No. 401, Hill View Apartment,
Dhaba, Vayusena Nagar, Nagpur - 23

... APPLICANT

...VERSUS...

1. State Of Maharashtra,
Through Police Station Officer,
Police Station, Kapil Nagar, Nagpur.
2. XYZ victim in first information report
No. 202-2025 registered with Kapil Nagar
Police Station Nagpur, Nagpur.

...NON-APPLICANTS

Mr. Rajas Durge, Advocate for the applicant
Mr. Nikhil Joshi, APP for the non-applicant/State

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 15th DECEMBER, 2025.
PRONOUNCED ON : 23rd DECEMBER, 2025.

JUDGMENT (PER : NANDESH S. DESHPANDE, J.)

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

2. The present application which is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 challenges the First Information Report dated 26.03.2025 vide Crime No. 202 of 2025 for offences punishable under Section 74, 75, 352, 115(2) 49 of the Bharatiya Nyaya Sanhita 2023 read with Section 8, 12 and 17 of the Protection of Children From Sexual Offences Act, 2012.

3. As per the averments in the application, the applicant is resident of the address and a peace, loving and law abiding citizen. It is further stated in the application that one Rupali Vivek Patil and the applicant got married on 07.01.2019 at Paradsingha Temple Nagpur but the marital life was not smooth and they could not reside together. At the relevant time the applicant was working as a commission agent in the real estate sector and so was the mother of the informant. The said mother of the informant was aware about the

marriage of the applicant and his subsequent separation from the wife. After marriage, the behavior of the mother of the informant changed and she started demanding a new flat for residing separately and was of the firm opinion that the flat should be purchased in her name. During the interaction, the applicant realized that the mother of the informant was suffering from mental ailment. The application further avers that applicant had knowledge that mother of informant was initially married with one Roopam Marve and out of the said wedlock, they were blessed with a daughter, who is the informant in the present case. It also came to the knowledge of the applicant that the said mother of informant left the said Roopam and performed a second marriage with one Vivek Patil and the marriage with the present applicant was her third marriage.

4. In the month of March 2019, complaint was submitted by the said mother of the informant at Jaripatka police Station and a request was made to register a First Information Report for offence punishable under Section 498 of the Indian Penal Code. Again the request was repeated on 04.04.2019 for taking appropriate action against the applicant addressed a legal notice on 23.03.2019

through his lawyer which was replied by the mother of informant on 04.04.2019. Furthermore, it is stated in the application that the applicant on 04.04.2019 itself preferred a petition bearing Petition No. A-412-2019 against the mother of informant under Section 11 and 12 of the Hindu Marriage Act, thereby praying for annulment of marriage before the Family Court, Nagpur. It is however, noteworthy to mention here that the mother of the informant also filed proceedings under Section 9 of the Hindu Marriage Act for restitution of conjugal rights as also proceedings under the Domestic Violence Act.

5. It is further stated in the application that to continue her pressure tactics, the mother of the informant filed First Information Report against the present applicant bearing Crime No. 491 of 2019 on 18.04.2019 for commission of offence punishable under Section 376(2) K, 328 of the Indian Penal Code. Thereafter, the applicant had to obtain bail and also part with the huge amount of maintenance at the behest of the mother of the informant. The mother of the informant also applied for cancellation of bail granted to the applicant. It is thus submitted that the mother of the informant has

left no stone unturned to pressurize the applicant.

6. The applicant in his application further submits that since the applicant was not succumbing to the pressure of the mother of the informant, she by putting gun on the shoulders of the first informant made her to lodge a First Information report Bearing Crime No. 0202 of 2025 for offences punishable under Section 74, 75, 352, 115(2), 49 of Bharatiya Nyaya Sanhita, read with Section 8, 12, and 17 of the Protection of Children From Sexual Offences Act, 2012.

7. As per the allegations in the said First Information Report, lodged by the informant / child victim on 01.11.2024 when her mother had gone to the office between on 01.00 p.m. to 02.00 p.m., she was alone at her house. At the same time, Ritesh Lokhande came to her house and caught hold her hands and waist under the grab of taking photograph. It is further alleged in the First Information Report that he used to harass the child victim. It is further stated in the First Information Report that the said Ritesh Lokhande threatened the child victim that he would do the same thing with

the informant, which has been done by the applicant with the informant's mother. It is this First Information Report which is challenged in the present application filed under Section 528 as stated supra.

8. We have heard Mr. Rajas Durge, learned counsel for the applicant as also Mr. Nikhil Joshi, learned APP for the non-applicant/State.

9. Learned counsel for the applicant submits that a meaningful reading of the First Information Report would reveal that no specific role is attributed to the applicant Chandrakant. He submits that the entire allegations are against Ritesh Lokhande and even assuming that offence is committed, it is by Ritesh Lokhande. He therefore submits that the entire story put forth by the first informant is nothing but falsehood and just to somehow implicate the accused persons including the applicant. He therefore prays for quashing the criminal proceedings against the applicant.

10. Per contra, the learned APP submits that there are specific al-

legations against the applicant that it was on his say that said Ritesh Lokhande was making sexual advances against the first informant. He further submits that a prima facie material is present against the applicant and therefore prays for rejection of the application.

11. We have considered the contentions canvassed by the learned counsels for the respective parties. It is a matter of record that there were previous litigations matrimonial and otherwise between the mother of the first informant and the applicant. As can be seen from the bare reading of the First Information Report in question that a specific role is attributed to the applicant that it was on his say that said Ritesh Lokhande was making sexual overtures with the applicant. Furthermore, statement of the informant is recorded as per Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 wherein she has specifically stated that Ritesh Lokhande had specifically asked the mother of the informant to withdraw case filed by her against the applicant. She further states that both Ritesh Lokhande and the present applicant used to sexually abuse her when her mother went to the office.

12. At this stage, it would be relevant to look at the statement of object and reasons for which the Protection Of Child From Sexual Offences Act was brought into being. The said act was brought on the statute to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for the trial of such offences and for matters connected therewith or incidental thereto.

13. Section 2 (i) read with Section 7 defines sexual assault as Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the the same or thus any other Act with sexual intent which involves physical contact without penetration is said to commit sexual assault. Section 8 of the Act provides for punishment for sexual assault which should not be less than three years but may extend to **five** years. Thus definition of sexual assault is an inclusive definition meaning thereby any act with with sexual intent which involves physical contact even without penetration would attract the said offence. Furthermore Section 11 of the Act defines sexual harassment which is reproduced as under:-

11. Sexual harassment.—*A person is said to commit sexual harassment upon a child when such person with sexual intent,—*

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or

(vi) entices a child for pornographic purposes or gives gratification therefor.

Explanation.—*Any question which involves “sexual intent” shall be a question of fact.*

14. Section 12 provides for punishment such sexual harassment which which may extend to up to three years. Section 16 of the Act

provides for abetment of an offence, which is reproduced as under :-

16. Abetment of an offence.—A person abets an offence, who—

First.—Instigates any person to do that offence; or

Secondly.— Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.—Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.—Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a

person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

15. Section 17 of the Act provides for punishment for such abetment.

16. As we have stated above that the Act was brought into being to prevent children from assault, sexual harassment and other related offences. It is noteworthy to mention, that we have already taken a view in Criminal Application (APL) No. 1128 of 2025 by analysing the law in detail, which is reproduced as under:-

*“8. Before entering into the merits of the case we would like to refer the decision of the Hon’ble Apex Court in the case of **Right to Privacy of Adolescents, Suo Motu Writ Petition (C) No.3 of 2023 with Criminal Appeal No.1451 of 2024, decided on 23rd May 2025**, wherein the Hon’ble Supreme Court has shown concern regarding criminalization of consensual adolescent relationships under POCSO Act. Learned Amicus Curiae had prayed for certain directions to be given to the Central Government to consider decriminalizing adolescent relationships under POCSO Act and to frame a national sex education policy and the Hon’ble Supreme Court had given certain directions to the*

Central Government and asked to consider the implementation of the suggestions of the learned Amicus Curiae based on the report. It appears that the final directions are already given by the Apex Court in the following manner:

It is directed by the Apex Court that:

We direct the State to take following measures:

- “i) To act as a true guardian of the victim and her child;*
- ii) To provide a better shelter to the victim and her family within a period of few months from today;*
- iii) To bear the entire expenditure of the education of the victim till Xth standard examination and if she desires to take up education for a degree course, till the completion of degree course. After she passes her Xth standard examination, the State can offer her vocational training, obviously, at the cost of the State;*
- iv) To bear the entire expenditure of the education of the child up to Xth standard and ensuring that she is educated in a very good school in the vicinity of the place of residence of the victim; and*

v) To endeavour to take the assistance of NGOs or public-spirited citizens for the purpose of securing the debts incurred by the victim as a one-time measure.”

9. The Hon’ble Apex Court further issued notice to the Union of India through the Secretary of the Ministry of Women and Child Development and directed to serve the notice to the said Secretary. It is further directed that the Secretary of the Ministry of Women and Child Development shall appoint a Committee of experts to deal with the suggestions of the learned amicus curiae. Senior officers of the State shall be a part of the Committee. If necessary, the Committee can also consult the learned senior counsel appointed as amicus curiae. Immediately on service of notice, the Secretary shall constitute a Committee. The members of the Committee constituted by this Court shall be permanent invitees to the said Committee; and the Committee shall submit a detailed report before the returnable date to this Court. To consider the implementation of the suggestions of the learned amicus curiae based on the said report, this Court will pass further directions from time to time.

10. It appears that the final directions are still awaited.

The Central Government has filed its response before the Apex Court. The copy of the response is also placed on record by the learned Counsel for the applicants. The stand taken by the Union of India in the reply is that reducing the age of consent would reintroduce the very mischief the law was enacted to prevent. The amendment in the said enactment serves the legitimate state interest of protecting minors from sexual exploitation and ensuring that welfare of child is paramount and therefore, submitted that the existing age of consent ought to be retained in order to give full effect to the legislative intent, protect the bodily integrity of children, and uphold the constitutional and statutory safeguards accorded to them.

11. The Union of India further submitted that the State possesses a legitimate constitutional and legal interest in prescribing and maintaining minimum age of consent, in furtherance of its obligation to protect children for exploitation, and such a legislative framework, is a reasonable and proportionate exercise of its power under Articles 14, 15, 21, 39(f) of the Constitution of India. It is further stand of the State that the State has a legitimate interest in regulating social practices through legislation. Law is not tailor made for individuals but for society at large and hence, till the time the mischief remains, the relevance

of the law remains. It is further stand of the Union of India that reducing the age of consent undermines the principle of fresh start and disproportionately burdens the child victims contrary to constitutional and statutory mandates.

*12. In the background of the above proceeding which is pending before the Hon'ble Apex Court, it would be relevant to consider the object with which the Protection of Children from Sexual Offences Act was introduced. The primary object of Protection of Children from Sexual Offences (POCSO) Act are to protect all children under 18 from sexual assault, sexual harassment and child pornography and to provide a supportive environment for child victims. The act ends to achieve this part strengthening legal provisions against child sexual abuse, mandating the reporting of offences to prevent under reporting, establishing special Courts for speedy trials and creating the child friendly legal process that protects the victim's identity and mental health. The Act was introduced to protect children. Now the question is what should be the age group to consider that it is adolescent love or love between two adolescents and now the said issue is pending before the Hon'ble Apex Court. This aspect is already dealt by the co-ordinate Bench in the case of **Aakash s/o Nanasaheb Waghmare Vs. The State of Maharashtra and another in Criminal Application No.2514/2024**, decided on 25th June*

2025 and by referring the decision of **K. Dhandapani vs. State by the Inspector of Police, 2022 SCC Online SC 1056**, observed that when the offence was committed, the prosecutrix was aged 14 years. She gave birth to the first child when she was 15 years and the second child was born when she was 17 years of age. The Hon'ble Apex Court in clear terms observed that, "In the peculiar facts and circumstances of this case, we are of the considered view that the conviction and sentence of the appellant who is maternal uncle of the prosecutrix deserves to be set aside in view of the subsequent events that have been brought to the notice of this Court." It is observed by the co-ordinate Bench that there was a full-fledged trial wherein accused was convicted by the Special Judge, confirmed by the High Court and then the matter reached the Hon'ble Supreme Court. The entire evidence was before the Hon'ble Supreme Court when the matter was heard. Even with directions by the Hon'ble Supreme Court on 8th March 2022, it was directed that the District Judge should record the statement of the prosecutrix about her present status and that subsequent events were then considered. The powers those were exercised in that matter by the Hon'ble Supreme Court, were under Article 142 of the Constitution of India and therefore, the said cannot be considered while considering the present compromise or prayer based upon the so-called compromise. The other decisions which the applicant wants

to rely on are of Co-equal Bench and taking into consideration the facts, the powers then exercised.”

17. In the light of the above observations and the intent of the Act as stated supra, the allegation against the applicant is that it was on his say that other co-accused namely Ritesh Lokhande was making sexual advances towards the first informant. The allegations assuming it to be true that it was on the instigation of the mother of the first informant, that would be a matter of trial where the parties would be subjected to cross-examination.

18. It is a settled principle of law that powers under Section 482 of the Cr.P.C. are to be used sparingly and with great circumspection and cannot be a tool to stifle a legitimate prosecution. A beneficial reference in this regard can be made to the judgment of Hon'ble Apex Court in ***State of Madhya Pradesh Vs. Laxmi Narayan*** reported in (2019) 5 SCC 688.

19. However, as far as offences punishable under Section 8 of the Protection of Children From Sexual Offences Act, 2012 is concerned,

it is not attracted in the present case as there are no averments either in First Information Report or the charge sheet in that regard. Same is in the case with offence punishable under Section 12 of Protection of Children From Sexual Offences Act, 2012.

20. Likewise as far as offences punishable under Bharatiya Nyaya Sanhita, 2023 are concerned, as can be seen from the First Information Report and statements there are averments regarding assault or use of criminal force and causing hurt. Therefore, offence punishable under Section 74, 75 and 115(2) of Bharatiya Nyaya Sanhita, 2023, are *prima facie* made out. Furthermore, there is an averment of spreading message on social media, therefore, *prima facie* offence under Section 352 Bharatiya Nyaya Sanhita, 2023 is also made out.

21. It is thus clear that the triable case as against the applicant *prima facie* is made out even if the previous litigation between the applicant and the mother of the first informant are taken into consideration. Only because there is fierce and bitter litigation between the parties, that cannot be a reason to doubt the veracity

of the allegations made in the First Information Report at least at this stage. We are therefore of the considered opinion that this would not be a fit case to exercise our powers under Section 482 of the Criminal Procedure Code in its entirety. We therefore, pass the following order:-

ORDER

- i) Application is partly allowed.
- ii) The First Information Report bearing Crime No. 202/2025, dated 26.03.2025, is quashed and set aside to the extent of Section 8 and 12 of Protection of Children From Sexual Offences Act, 2012.
- iii) Prosecution would continue as far as Section 17 of Protection of Children From Sexual Offences Act, 2012 as also Section 74, 75, 352, 115(2) 49 of the Bharatiya Nyaya Sanhita 2023 are concerned.
- iv) The above mentioned order is applicable only to the extent of present applicant namely Chandrakant S/o Balaram Ghodeswar.

v) Application is disposed of in above said terms.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Shubham