



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

CRIMINAL APPLICATION (APL) NO.1920/2025

Sanket s/o Diliprao Pal
Aged about 26 years, Occu. Labourer,
R/o Bhidi, Taluka Deoli, District Wardha.

... **APPLICANT**

...**VERSUS**...

1. State of Maharashtra
Through PSO PS Deoli, Dist: Wardha.
2. XYZ Victim (Crime No.0221/2022)
Through PSO PS Deoli, Dist Wardha

...**NON-APPLICANTS**

Shri M.N. Ali, Advocate for appellant
Ms S.V. Kolhe, Advocate for the non-applicant/State

CORAM : **URMILA JOSHI-PHALKE, AND**
PRAVIN S. PATIL, JJ..

DATED : **04.12.2025**

ORAL JUDGMENT

. Heard. **Admit.**

2. Heard by consent of learned Counsel for both the parties.

3. Present application is preferred by the applicant for quashing of the First Information Report (for short “the FIR”) in connection with Crime No.221/2022 registered with Police Station Deoli, District Wardha for the offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code, Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 and Section 67(B) of the Information Technology Act, 2000, and the consequent proceedings arising out of the same bearing Special Case No.56/2022.

4. The present applicant seeks exception to challenge at the initial stage, the FIR in connection with the above said crime. The brief facts which are necessary for the disposal of the application are as under:

The FIR is lodged on the basis of a report by mother of the deceased. The victim aged about 16 years and 1 month, whose birth date is 16.01.2006 is her daughter. On 06.03.2011, at about 11.30 p.m., the present applicant approached to them and on obstructing her, he left the place. Thereafter, she has verified the mobile phone of her daughter and she witnessed the photograph of applicant as

well as her daughter. Therefore, she made an inquiry with her daughter. Her daughter was communicating with the present applicant and subsequently was deleting the messages. In the month of January, 2022, the victim was taken by him on the promise of marriage as there was love affair between them and she was subjected for forceful sexual assault by the present applicant as well as her photograph was also obtained. On the basis of said report, police have registered the crime. During investigation, the statement of victim was also recorded wherein she has stated that she got acquaintance with the present applicant and the present applicant has provided her mobile phone thereafter she used to communicate the victim. The present applicant took her various occasions stating that he has feelings for her thereafter on the promise of marriage subjected her for forceful sexual assault and her obscene photographs are also obtained by the present applicant. The victim was referred for the medical examination. After completion of the investigation, the chargesheet is filed.

5. Now, the present application is filed by the applicant on the ground that they have now performed marriage and they are

residing together. Therefore, there is no substance in the allegation now. Out of love affair, they come together and leading their matrimonial life. So also, no purpose would be served by continuing the criminal proceedings against him. In view of that the FIR deserve to be quashed.

6. Per contra, learned APP strongly opposed the same and relied upon the decision of this Court in Criminal Application No.1128/2025 decided on 26.09.2025 and submitted that the issue regarding the adverse relationship is pending before the Hon'ble Apex Court. In view of that the application deserves to be rejected.

7. After hearing both the sides and on perusal of the entire investigation papers which are filed along with application, it reveals that at the time of incident, the victim was minor. As per her statement, she was taken and she was subjected for forceful sexual assault and the obscene photographs are also obtained. During these subsequent events, they both have performed the marriage and, therefore, this application is filed.

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 another application bearing No.1128/2025. 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 from 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 same 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.

13. The Co-ordinate Bench also considered the scientific reason for making the rule for age of marriage and observed that despite of the prohibition the child marriages are extensively taking place in spite of the efforts by the Government to educate the people about the hazards of the child marriages. The teenage pregnancy would be the second social problem. When such child marriages take place there is a risk of complication related to pregnancy and some may result in death. There is also higher risk of premature births of the children to minor mothers with other health problems. When such social menace is there, that is also required to be considered by this Court.

14. In the light of the above observation and the object of the Protection of Children from Sexual Offences Act by turning to

the facts of the present case, if we consider the recitals of the FIR as well as the chargesheet it appears that out of love relationship, there was sexual relationship between the applicant and non-applicant No.2, now they have performed the marriage, but at the time of incident, she was below 18 years of age, which cannot be brushed aside is that the applicant No.1 is 26 years of age, who is aware about the consequences of his act and, therefore, at the initial stage, we have shown our disinclination to entertain the application.

15. The POCSO Act is gender neutral and criminalizes sexual activity by those below of the age of 18. Under the said Act, factual consent in a relationship between minors is immaterial. The provisions contained in POCSO Act does not in actuality prevent adolescents from engaging in consensual sexual activity. Such activity continued to take place and sometimes leads to consequences such as pregnancy.

16. In view of the stand taken by the Central Government before the Hon'ble Apex Court and considering the facts that victim was below 18 years of age at the time of marriage, as well as at the time of physical relationship, we have shown our disinclination to entertain this application at the initial stage and, therefore, the application stands rejected.

(PRAVIN S. PATIL, J.)

(URMILA JOSHI-PHALKE)

R.S. Sahare