

S.S.Kilaje

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 15 OF 2026**

Vivek Jainarayan Rai

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

Mr. Ashok Mishra a/w. Mr. Ravindranath Singh, Ms. Kinjal Mehta, Mr. Jilesh Sanghavi, Dhara Chauhan, Mr. Shreyas Mhapankar, Ms. Prapti Patil and Ms. Vaishnavi Murkhute i/b. M/s. Solicis Lex, Advocates for the Applicant.

Smt. Ranjana D. Humane, APP for the Respondent-State.

Ms. Usha Khose, PSI – MHB Colony Police Station, Mumbai, present.

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th MARCH, 2026.

P.C. :

1. The challenge in this Revision Application is the impugned order dated 10.12.2025 passed by learned Sessions Judge, Dindoshi, Mumbai. Learned Additional Sessions Judge has rejected the discharge application filed by the applicant.

2. It is contention of learned counsel for the applicant that allegations against the applicant are of stalking and assaulting the first informant, but the prosecution has registered the offence under Sections 8 and 12 of Protection of children from Sexual Offences Act, 2012 (for short “POCSO Act”) along with Section 354, 354-D, 323, 504 and 506 of Indian

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Penal Code, 1860 (for short “IPC”), which are not applicable. Learned counsel further submitted that in the FIR, there are no allegations against the applicant under the provisions of POCSO Act, but this fact is not considered by the learned Additional Sessions Judge and has passed an erroneous order, and requested to allow the application.

3. It is contention of learned APP that applicant was aware about the age of the victim. He threatened, assaulted and stalked her. The case is made out against the applicant under POCSO Act. Learned Additional Sessions Judge has passed well-reasoned order and requested to reject the application.

4. I have heard both the learned counsel. Perused chargesheet and impugned order.

5. The applicant is objecting only for invoking Sections 8 and 12 of POCSO ACT. Sections 7, 8, 11 and 12 of POCSO Act reads as under:

7. Sexual assault.—Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
8. Punishment for sexual assault.—Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.
11. Sexual harassment.—A person is said to commit sexual harassment upon a child when such person with sexual intent,—

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(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.

12. Punishment for sexual harassment.—Whoever, commits sexual harassment upon a child shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.”

These Sections specifically state about any act committed with sexual intent upon a child. However, after perusal of FIR, there is not even a single whisper of any act committed by the applicant with sexual intent with the victim. But this fact is not considered by the learned Sessions Court, in view of above, I pass following order.

ORDER

- (i) Impugned order dated 10.12.2025 passed by learned Additional Sessions Judge, Dindoshi, Mumbai, is

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quashed and set aside.

- (ii) The applicant is discharged under the offences of Sections 8 and 12 of POCSO Act and he be tried for remaining offences.

6. The Revision Application is disposed of.

(SHIVKUMAR DIGE, J.)