



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

CRIMINAL APPLICATION (APL) NO. 793 OF 2024

APPLICANTS

- :-** 1) Ronit s/o Dilip Vyas,
Aged 24 years, Occu: Education,
R/o Qtr No. E-40, B.G.P.P.L.
Ballarpur Paper Mill Colony, Ballarpur,
Tah. Ballarpur and District Chandrapur.
- 2) Shaji s/o Mathai Periyannampil
Age 49 years, Occu: Service,
R/o Ballarpur Paper Mill Old Colony,
Ballarpur, District Chandrapur.

..VERSUS..

NON-
APPLICANTS

- :-** 1) State of Maharashtra,
through P.S.O., Chandrapur (City),
Chandrapur, Tah. & Dist. Chandrapur.
- 2) XYZ (Victim) through P.S.O.,
Chandrapur (City), Crime No.
258/2024 dated 22/03/2024, Tah. &
Dist. Chandrapur.

Mr. M.V. Rai, counsel for applicants
Ms. S.V. Kolhe, APP for non-applicant/State.
Ms Shubhada K. Phaltankar, counsel (appointed) for non-applicant No.2.

CORAM : **PRAVIN S. PATIL, J.**

DATE : **10/02/2026**

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of Mr. M.V. Rai, learned counsel for applicants, Ms. S.V. Kolhe, learned APP for non-applicant/State and Ms Shubhada K. Phaltankar, learned counsel (appointed) for non-applicant No.2, the application is taken up for final hearing at the stage of admission.

2. The applicants herein have approached this Court challenging the registration of an offence registered under Sections 376, 376(2)(n), 109 and 506 of the Indian Penal Code, 1860, and under Sections 4 and 17 of the Protection of Children from Sexual Offences Act, 2012, (for short, the Act of 2012”), vide Crime No. 258 of 2023, registered with Police Station Chandrapur City.

3. The applicants come with a submission before this Court that only allegation raised against applicant No.1 is residing in rented room and applicant No.2 is landlord. Applicant made available rented room to the main accused, Sofiyan Iqbal Sheikh. Except this, there is no other allegation, against applicant Nos. 1 and 2. Hence, according to them, no offence is made out against applicants on these allegation and therefore they seek indulgence of this Court in the matter.

4. The case of the prosecution, in brief, is that the victim, who is aged about 17 years 5 months, lodged a police report alleging that in the month of November-2022, she got acquaintance with one Sofiyan Iqbal Sheikh through social media. After that, they used to meet, and their friendship gradually developed into the love affair. On 11/10/2023, the accused namely Sofiyan Iqbal Sheikh took her to the room of present applicant No.1 and established physical relations with her. The applicant No.2 is the landlord of the said room, which was rented to the applicant No.1.

5. It is further alleged that thereafter, on 20/01/2024, the

accused No.1 Sofiyan Iqbal Sheikh, asked the victim to meet him. When she reached the spot where she was called, the said accused took her to the applicants house and again established the physical relations with her. On the basis of these allegations, the offence came to be registered against the present applicants in the matter.

6. Learned APP has strongly opposed the present application and stated that the case of the present applicants falls within the category of abetment of an offence. According to her, the victim visited the house of applicants on two occasions. However, the applicants never obstructed the main accused from committing the illegal act, and therefore, it is a case of abetment or instigation to the main accused to commit the offence. Therefore, considering the Section 16 of the Act of 2012, he is also liable to be punished in the matter.

7. Learned counsel for non-applicant No.2 has reiterated the same contention and prayed for rejection of the application.

8. Learned APP in support of her submission has relied upon the following case laws as under :-

- (a) **Narinder Singh and others Vs State of Punjab and another reported in (2014) 6 SCC 466.**
- (b) **Bharwada Bhoginbhai Hirjibhai Vs State of Gujrat reported in (1983) 3 SCC 217.**
- (c) **State of Punjab Vs Gurmit Singh and others reported in (1996) 2 SCC 384.**
- (d) **State of Uttar Pradesh Vs Anurudh and Another reported in 2026 SCC OnLine SC 40.**
- (e) **State of Haryana and others Vs Ch.Bhajan Lal and others reported in AIR 1992 Supreme Court 604.**

(f) **Om Prakash Vs State of Haryaya reported in (2015) 2 SCC 84.**

(g) **Prashant Gupta and others Vs State of M.P. and others reported in 2025 SCC OnLine MP 2682.**

9. The applicants stated that Section 16 of the Act of 2012 deals with the situation as to what amount to intentionally aiding the offender. There must be prima-facie any act in order to facilitate the commission of act of offence. At least presence of the abettor at the time of commission of offence is necessary. But there are no such allegation against them in the matter. Hence, no offence is made out against them.

In support of their submission, learned counsel for the applicants has relied upon the judgment of this Court in the case of *Asha Patil @ Asha Sagar Rathi Vs The State of Maharashtra in (Criminal Appeal No. 118 of 2016 decided on 11/09/2019)*.

10. In the light of the submissions advanced by both the parties, I have perused the contents of the complaint lodged by victim as well as the provisions of Act of 2012. A perusal of the complaint shows only allegation against present applicants is that twice the applicant No.1 made his room available to the main accused and same was shared by him with victim and established the sexual relations with her. Except this allegation, there are no other allegations against the present applicants.

11. It is pertinent to note that in the entire complaint, it is not the case that the applicants had called either the main accused or victim that they can share his room or any time attempt has been made by the present applicant No.1 to establish relations with the victim. As such, his role is restricted only to the extent that as and when main accused and the victim visited to his room, he has made them available the room and went out of the room.

12. As regards to applicant No.2 who is the owner of the room,

there is no material to show that he was any time aware that main accused visited the room with victim. In respect of applicant No.2, it is the submission of the learned counsel for the applicants that, nowadays, there is a regular friendship between the boys and girls and therefore, usually they visit the houses of each other. Hence, there was no reason for the applicant No.2 to obstruct the visits of victim alongwith main accused to applicant No.1. So also only because he is a landlord, he cannot be implicated in the present matter.

13. It will be relevant to refer the judgment of Hon'ble Supreme Court of India in the case of ***State of Uttar Pradesh Vs Anurudh and another*** (supra), wherein the Hon'ble Supreme Court of India, particularly in the case of POSCO has held in paragraph-19 which reproduced as under :-

19. As the conclusions drawn above indicate the impugned judgment and order of the High Court has to be set aside on grounds of transgression of the jurisdiction present and thereby lacking the appropriate directions. It is to be set aside also because it goes against the statutory prescription under the JJ Act. Be that as it may, this Court has not lost sight of the well-intentioned purport of this order. The POCSO Act is one of the most solemn articulations of justice aimed at protecting the children of today and the leaders of tomorrow. Yet, when an instrument of such noble and one may even say basic good intent is misused, misapplied and used as a tool for exacting revenge, the notion of justice itself teeters on the edge of inversion. Courts have in many cases sounded alarm regarding this situation. Misuse of the POCSO Act highlights a grim societal chasm - on the one end children are silenced by fear and their families are constrained by poverty or stigma, meaning thereby that justice remains distant and uncertain, and on the other hand, those equipped with privilege, literacy, social and monetary capital are able to manipulate the law to their advantage. The impugned judgment is one amongst many where Courts have spoken out. Not only are instances rife where the age of the victim is misrepresented to make the incident fall under the stringent provisions of this law but also there are numerous instances where this law is used by families in opposition to relationships between young people. In

Satish alias Chand v. State of U.P. 32, the High Court, noted that on few occasions concern had been expressed by the Court with respect to application of the Act on consenting adolescence when it comes to consensual relationships between teenagers, four factors have been highlighted which, is crucial for the Courts to consider:

- “A. Assess the Context: Each case should be evaluated on its individual facts and circumstances. The nature of the relationship and the intentions of both parties should be carefully examined.
- B. Consider Victim's Statement: The statement of the alleged victim should be given due consideration. If the relationship is consensual and based on mutual affection, this should be factored into decisions regarding bail and prosecution.
- C. Avoid Perversity of Justice: Ignoring the consensual nature of a relationship can lead to unjust outcomes, such as wrongful imprisonment. The judicial system should aim to balance the protection of minors with the recognition of their autonomy in certain contexts. Here the age comes out to be an important factor.
- D. Judicial Discretion: Courts should use their discretion wisely, ensuring that the application of POCSO does not inadvertently harm the very individuals it is meant to protect.”

[See also: Mrigraj Gautam @ Rippu v. State of U.P.]³³

The Delhi High Court in Sahil v. the State NCT of Delhi³⁴ the Court noted in para 11 of the order that POCSO cases filed at the behest of a girl's family objecting to romantic involvement with a young boy have become common place and consequent thereto these young boys languish in jails. Therein, reference is also made to an order of the Gujarat High Court³⁵, where the Court noted that considering the closeness in age of the prosecutrix and the accused as also the fact that she had left home of her own accord observed that the application deserved consideration.

This chasm between access and abuse is also mirrored in the misuse of Section 498-A IPC and the Dowry Prohibition Act, 1961. Amongst numerous examples, we may only refer to Rajesh Chaddha v. State of U.P.³⁶, where this Court lamented the use of these Sections without specific instances or relevant details,

among other cases. It is also to be stated though that no amount of judicial vigilance against misuse can alone bridge this ever-widening gap. The first line of defence lies with the Bar i.e., the body that translates grievance into action and is the gatekeeper of justice at the point of entry. When it comes to matters such as these, the responsibility of the advocate is profound – to examine the allegations with detachment and necessary discretion and to counsel restraint when grievance masks vengeance and to refuse participation in litigation when it can be seen that an ulterior motive is sought to be agitated under the guise of seeking protection of the law. It is only when the Bar takes a principled, proactive role, that the legislation intended as a shield can be stopped from being twisted into a weapon. A lawyer who tempers aggression with calm, reason and rationality, protects not only the opposing party from unwarranted harm but also the client from the long-term consequences of frivolous or malicious litigation, including adverse orders, and judicial censure. By taking a principled stand, the Bar acts as a crucial filter, preventing the legal system from being overwhelmed by abuse masquerading as enforcement. Such self-regulation strengthens public faith in the profession, ensures that judicial time is reserved for genuine disputes, and reinforces the foundational idea that law is a means of justice, not a weapon of convenience. In this sense, the ethical vigilance of lawyers is not ancillary to justice, it is indispensable to it. When they do not do so, the chasm alluded to above widens. Society also must match institutional reform with moral awakening. The intent and object of these legislations must be at the forefront when a person wishes to lodge a complaint thereunder. The misuse of these laws is a mirror to the opportunistic and self-centered view that pervades the application of law. It is only through discipline, integrity and courage that these problems can be remedied and rooted out. Any legislative amendment or judicial direction will remain lack-luster without this deeper change.

We have referred to certain instances of the High Courts noting the misuse/misapplication of the POCSO Act, somewhat in line with the indices appended to the impugned judgment as also its progenitors.

Considering the fact that repeated judicial notice has been taken of the misuse of these laws, let a copy of this judgment be circulated to the Secretary, Law, Government of India, to consider initiation of steps as may be possible to curb this menace inter

alia, the introduction of a Romeo – Juliet clause exempting genuine adolescent relationships from the stronghold of this law; enacting a mechanism enabling the prosecution of those persons who, by the use of these laws seeks to settle scores etc.”

14. In the light of these submissions, Section 16 of the Act of 2012 is perused in the matter. A perusal of the provision clearly means there should be someone instigated any person to do the offence or there is any conspiracy on the part of person and he has intentionally aiding by any act or illegal omission of being that offence. As such, the intentional aiding by any act or illegal omission is the material ingredient which has to be established on record. In the absence of these material ingredients, Section 16 of the Act of 2012 cannot be said to be attracted in the matter.

15. It further states to attract the offence of abetment, the necessary ingredients would be that abetment by intentional aiding to an act or illegal omission, which is required to be established by the prosecution that either prior to or at the time of commission of act of the offence, such Abettor does anything in order to facilitate the commission of the act of offence and facilitate the commission of offence. Thus, presence of the Abettor either before commission of the offence for facilitating commission of the offence or at the time of commission of and act constituting the offence is necessary; for making out the offence of abetment.

However, in the present case, no such act is attributed to the applicants in the matter. Nor any specific allegations are made in the entire complaint, which can demonstrate that any act has been done by the applicant to facilitate the commission of the act of offence either before the commission or after commission of the offence. Hence, in my opinion, the Section 16 is not attracted in the matter.

16. The judgment relied upon by the learned APP, particularly in the cases Narindra Singh and others, Bharwada Bhoginbhai Hirjibhai, are not applicable to the facts of the present case. These cases in respect of explaining seriousness of the offences and the general principals are laid down as to how the courts should deal with such serious offences. In the present case, we are dealing with a case where Applicants did not commit any offences, but being friend of co-accused charged for same offence.

17. In the light of this observations of the Hon'ble Supreme Court of India, I have perused the entire complaint and find that continuation of proceedings against the present applicants, only on the ground that applicant no.1, being a friend of main accused, provided his rented room, and applicant No.2 is the landlord of the said room, cannot be implicated for the offence registered against them in the matter.

18. In my considered opinion, continuation of criminal proceedings against the present applicants would nothing but abused of process of law. Hence, considering the facts and circumstances of the case, I am convinced that no offence is made out against the present applicants, and therefore, indulgence of this Court is necessary. Hence, I proceed to pass the following order :-

ORDER

- a] The criminal application is **allowed**.
- b] The proceedings bearing Crime No. 258 of 2023 registered with Police Station Chandrapur City, District Chandrapur for the offence punishable under Sections 376, 376(2)(n), 109 and 506 of the Indian Penal Code, 1860 and under Sections 4 and 17 of the Act of 2012 is quashed and set aside.

- c] All the pending applications stands disposed of.
- d] The fees of the appointed counsel be quantified as per rule.

19. Rule is made absolute in the above terms. No orders as to costs.

(PRAVIN S. PATIL, J)