



(1)

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

CRIMINAL APPLICATION (APL) NO.1128 OF 2025

1. Mirza Aslam Beigh Rashid Beigh,
Aged 29 Years, Occupation : Labourer,
R/o. Ward No.1, Near Jama Masjid,
Taluka Malegaon, District Washim.
2. Shaikh Shafique Shaikh Barkat,
Aged 45 Years, Occupation: Labourer,
3. Shaheda Bi Shaikh Shafique,
Aged 43 Years, Occupation: Household,
A2 & A3 both R/o Ghodegaon,
Taluka Telhara, District Akola.

..... APPLICANTS

// VERSUS //

1. State of Maharashtra,
Through Police Station Officer,
Telhara Police Station,
Taluka Telhara, District Akola.
2. Rahul Popatrao Tayade (Complainant)
Aged 42 Years, Occupation : Police Constable,
Telhara Police Station,
Taluka Telhara, District Akola.
3. XYZ (Prosecutrix in Cr. No.196/2025)
Police Station Telhara,
Taluka Telhara, District Akola.

....NON-APPLICANTS

Mr. S. V. Sirpurkar, Counsel for the applicants.
Ms. Sneha Dhote, APP for the non-applicant No.1/State.
Mr. Yash Venkatraman, Counsel for non-applicant no.3.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 11.09.2025
PRONOUNCED ON : 26.09.2025

JUDGMENT : (PER: URMILA JOSHI-PHALKE, J.)

(2)

1. Present applicants seek exception to challenge, at the initial stage, the First Information Report (for short "the FIR") in connection with Crime No.196/2025 registered with Telhara Police Station, District Akola, on 02.07.2025, for the offence punishable under Section 64(1) of the Bharatiya Nyaya Sanhita, 2023, under Sections 4(1) and 8 of the Protection of Children from Sexual Offences Act (for short 'the POCSO Act') and under Sections 9, 10, 11 of Prohibition of Child Marriage Act, 2006.

2. Brief fact which are necessary for the disposal of the application are as under:

Police Head Constable Rahul Tayade attached to Telhara Police Station lodged report at Police Station, Telhara on 01.07.2025 informing that on 24.06.2025, he received an information that, the victim had delivered a baby boy at Fatima Nursing Home, Akola on 10.05.2025. The age of the victim at the time of marriage was 17 years. Her marriage was solemnized with accused Mirza Aslam Beigh. As per his allegations, she was subjected for the forceful sexual assault when she was minor. On the basis of the said report, Police have registered the crime against the present applicants.

3. The present application is filed by the applicants, who is husband and other family members, on the ground that there was a love affair between the applicant No.1 and the victim. After the

(3)

families became aware about the said love affair, they performed the marriage of the applicant No.1 with the victim according to the Muslim rites and rituals on 02.06.2024. On the said date, the victim was yet to complete the age of 18 years, hence the marriage came to be legally registered after she completed the age of 18 years. As per the ground raised in the application that out of a love affair, the applicant No.1 and the non-applicant No.3 have performed the marriage. There was a physical relationship between them which resulted into the delivery of a child by the victim girl and now the marriage has already been performed between them. If the applicant is prosecuted and punished, then she herself and her child would suffer as there is no one to look after them. There is remote possibilities that she will be accepted by him if she stays in the society. The non-applicant No.3 has no objection for the same. She appeared through her Counsel and raised no objection on the ground that the applicant No.1 has not subjected her for the forceful sexual assault at any point of time. As far as the applicant Nos.2 and 3 are concerned, they have no connection with the alleged offence and therefore, the non-applicant No.3 has no objection to quash the FIR.

4. Heard learned Counsel Mr. Sirpurkar for the applicants and learned APP Ms. Dhote for the State and learned Counsel Mr. Yash Vakatraman for the non-applicant No.3.

(4)

5. Learned Counsel for the applicants submitted that even it is considered that the non-applicant No.3 was minor at the time of the incident, but it is a relationship between two adolescents. Out of love affair, the physical relationship was developed between them. Now, the marriage is already performed with all understanding about the consequences. If the proceeding is not quashed, then there is a possibility of rift between the relationship and ultimately the victim would be the sufferer. The statements of the parents also show that there was love affair between the victim and the present applicant No.1 and as soon as they came to know about the same, they have performed the marriage. Though the girl appears to be minor, this is a case of adolescents love affair. The girl and the applicant No.1 are living peacefully and therefore, this case should be taken as an exceptional case. He placed reliance on:

(1)Nauman Suleman Khan Vs State of Maharashtra and another reported in **2022 SCC OnLine Bom 1148,**

(2)Ankush s/o Vilasrao Pakhale Vs. State of Maharashtra and another in **Criminal Application (APL) No.706/2024 decided on 11.11.2024, and**

(3) Mahesh Mukund Patel Vs. State of U.P. and others reported in **2025 SCC OnLine SC 614.**

6. Per contra, learned APP strongly opposed the said application, on the ground that the Police Officer who has lodged

(5)

the report on behalf of the State on the ground that the applicant No.1 is 29 years old, whereas the victim is below 17 years of age. He had knowledge about the age of the girl and despite of that there was no consent to the said marriage and even if the consent is there which is not relevant, the marriage was performed by the present applicants and therefore, as *prima facie* case reveals against the present applicants, the application deserves to be rejected. She further submitted that the applicant No.1 has kept physical relationship with the girl, who was admittedly minor. Her consent cannot be considered as a consent within the provisions of the law. The victim girl became pregnant and gave birth to the child. This fact is not denied in the affidavit by the applicants as well as the victim. In view of that, the application deserves to be rejected.

7. Learned Counsel for the non-applicant No.3 - victim supported the contention of the applicants and submitted that considering the fact that now victim is settled in her life as marriage is performed and therefore, the application deserves to be allowed. In support of this contention, he placed reliance on the decision of the Kerala High Court in **X Vs. State of Kerala and another** reported in **2025 SCC OnLine Ker 2295**.

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**

(6)

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

(7)

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 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

(9)

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

(11)

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, it can be seen that she fell in love with the applicant No.1 and as there was acceptance on their relationship from both the families, the marriage was performed. Though she states that the said marriage was as per the Muslim rites and religion, but at the time of marriage, she was below 18 years of age. When she delivered the child at the relevant time also, she was below 18 years of age. The

(12)

fact which cannot be brushed aside is that the applicant No.1 is 29 years of age and at the time of incident, or alleged marriage, he was approximately 27 years of age. At least, he ought to have understood that he should wait till the girl attains 18 years of age. Then in spite of having knowledge that the girl is minor, when he takes her away from the legal custody of her parents, from that point itself he commits the offence. Merely because now the girl has given birth to the child, we are of the opinion that the acts of the applicants cannot be brushed aside.

15. Learned Counsel for the applicants though submitted that now the issue is raised before the Apex Court as to the adolescent relationship cases still the final directions are not issued by the Hon'ble Apex Court. The copy of the reply filed by Union of India is placed on record. On perusal of the said reply, the stand of the Union of India 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. Accordingly, it is 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. The further stand of the Union of India shows

(13)

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 further stated that the 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 stated before the Hon'ble Apex Court that the State has a legitimate interest in regulating social practices through legislation. Thus, the stand taken by the Union of India before the Apex Court is also that the reducing the age of consent undermines the principle of fresh start and disproportionately burdens the child victims contrary to constitutional and statutory mandates. It is further contention of the Central Government that the determination of 18 years as a threshold age for majority is not arbitrary or isolated to only child protection laws. It is consistent and well-established statutory standards across the legal framework in India. Thus, the stand taken by the Union of India if taken into consideration, which shows that as per the contention of the State, the purpose of POCSO Act is to treat the minors as a class by itself and treat them separately so that no offence is committed against them as regards sexual assault, sexual harassment and sexual abuse. The said purpose is to safeguards the interest and well being of the children at every

(14)

stage of judicial proceeding. The POCSO Act is gender neutral and criminalizes sexual activity by those below of the age of eighteen. 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 when she was subjected for the physical relationship. Unless the things are clarified by the Central Government upon directions of the Hon'ble Supreme Court, we are unable to consider such cases. The decision of the Hon'ble Apex Court in **Anversinh @ Kiransinh Fatesinh Zala Vs. State of Gujarat** reported in **2021 (3) SCC 12**, wherein it has been held that:-

"where a minor girl under Section 361 of IPC (under 18 years of age) is taken or enticed from the keeping of her lawful guardian without her consent, her own consent is not valid defence to the charge of kidnapping. Minors are deemed incapable of giving lawful consent and Section 361 of IPC prioritizes the guardian's right to protect the minor's physical safety. An infatuation and consensual relationship with the accused does not automatically negate the offence of kidnapping a minor."

17. In view of the above observation, as the consent of the minor is irrelevant and the stand taken by the Central Government before the Hon'ble Apex Court also shows that it would be against the mandate of the Constitution of India, as law is not for the individuals but for society at large.

18. If a relief provided under statute could be obtained only by following a certain procedure made therein for that purpose, that procedure must be followed, if he is to obtain that relief. Justice has got to be done according to law.

19. In the light of the above object behind the enactment of Protection of Children from Sexual Offences Act, and considering the victim was minor at the time of marriage, as well as when she was subjected for the physical relationship, we, therefore, do not find this is to be a fit case, where we should exercise our powers under Section 482 of the Code of Criminal Procedure by making the case as of exceptional circumstance.

The application stands rejected.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J.)