



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4692 OF 2025

Rahul Vinod Surushe,
age 19 years, Occ. Labour,
R/o. Limba, Tq. Mehakar,
District Buldhana.

Applicant.
Orig accused.

VERSUS

1. The State Of Maharashtra,
Through MIDC Waluj Police Station,
Aurangabad.

2. XYZ. Respondents.

...

Advocate for Applicant : Mr. R.B. Ade
APP for Respondents: Mrs. R.R. Tandale
Advocate for Respondent-2 : Mr. V. P. Raje

...

CORAM : S. G. CHAPALGAONKAR, J.

Dated : March 12, 2026

JUDGMENT :-

1. The applicant seeks quashment of the First Information Report No.1104 of 2024, registered with MIDC Waluj Police Station, District Aurangabad for the offences punishable under sections 137(2), 64(2)(m) and 87 of the Bhartiya Nyaya Sanhita, 2023 and u/s 4, 6 of the Protection of Children from Sexual Offences Act and Section 9 of Prevention of Child Marriage Act. By way of amendment, applicant made prayer for quashing of charge-sheet bearing No.455 of 2025 and

consequential proceeding pending before the Special Court, at Gangapur.

2. The informant/Father of Victim lodged report dated 4.12.2024 stating that, at 10.30 p.m. he had slept at home alongwith his family members. At about 5.00 am he noticed that his daughter aged about 16 years 9 months was missing from the home. He took search for her at various places, then lodged missing report. Accordingly, an offence under section 137(2) of the BNS was registered. Lateron, informant recorded his supplementary statement that on 11.9.2025, he received telephonic call. He had talk with his daughter. She told that she is married with the applicant and conceived pregnancy. She is admitted at Civil Hospital, Jalgaon. On 12.9.2025 he reached to the Civil Hospital, Jalgaon. He found that his daughter had delivered a child. She informed that she had love affair with applicant, hence, she had left home with intention to marry him.

3. On completion of investigation, charge-sheet no.455 of 2025 came to be filed with Special Court, at Gangapur, District Chhatrapati Sambhajinagar.

4. On 7.1.2026 this Court issued notices to the respondent. Mr. Raje, learned advocate appeared on behalf of respondent no.2 and waived notice. He filed affidavit-in-reply for respondent no.2.

5. On 26.2.2026 learned advocates appearing for applicant and respondent no.2 jointly submitted that parties have arrived at amicable settlement. The respondent no.2 has given no objection for quashment of FIR. Victim has also filed her affidavit stating that on 1.3.2026 she has attained majority. She is married with the applicant. She is blessed with a child who is aged about six months, they are residing together as husband and wife. There is nobody in her family to maintain her and her child except the applicant. Thus, she requested to quash the FIR and further proceeding.

6. Mr. Ade, learned advocate appearing for the applicant would submit that, although, the victim was minor at the time of registration of FIR, she had voluntarily left her home due to love affair with applicant. She married with him and couple is blessed with a child. Presently, she is residing with the applicant and a six months old child. Victim as well as the informant's father have filed their affidavits giving no objection

for quashing of FIR and consequential proceeding. In support of his contentions he relies upon judgment of Supreme Court and this court in cases of **Mahesh Mukund Patel Vs. State of U.P and others reported in 2025 SCC OnLine SC 614, Sajid Laik Shekh Vs. The State of Maharashtra and another in Writ Petition No.1097 of 2023 and Mushtak Attar Vs. State of Goa and others reported in AIR Online BOM 740.**

7. Per contra, learned APP vehemently opposed the application. She would submit that admittedly, victim was minor at the time of incident or even at the time of birth of the child she had not attained the age of majority. Marriage of applicant and victim is invalid in law since both had not attained permissible age of marriage. Only because victim or her father has given consent for quashing of FIR and proceeding, looking to the nature of offence and object behind the POCSO Act, learned APP relied upon observations of this Court in case of **Mirza Aslam Beigh Rashid Beigh and others Vs. State of Maharashtra through Police Station Officer, Telhara Police Station and others reported in 2025 SCC Online Bom 3443** and submits that if victim was minor at the time of marriage or when she was subjected to penetrative sexual

assault, there is no reason to invoke inherent powers to quash the proceeding that would be contrary to object of the Act.

8. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of FIR and evidence collected during investigation, it can be observed that date of birth of the victim is 29.02.2008. In the night of 4.12.2024 on her own volition she left home. At that time, she was aged about 16 years 9 months. On 11.09.2025 she delivered a child at Civil Hospital, Jalgaon. Apparently, she had love affair with applicant. Apprehending opposition of parents for marriage with applicant, she left home and joined applicant. She claims to have married with the applicant on 7.12.2024.

9. In this backdrop, it would be apposite to refer exposition of law dealing with exercise of inherent powers by High Court in case of **Mahesh Mukund Patel Vs. State of U.P and Others** (Supra), in similar circumstances the Hon'ble Supreme Court observed that "when the appellant and third respondent are happily married, no purpose will be served by continuing the prosecution as it will cause undue harassment to the appellant, third respondent and their children. In that case, offence was

registered on 18.9.2016 under sections 354A, 363, 366, 376 of the Penal Code and Section 3 and 4 of the POCSO Act against the accused”.

10. In case of **Sajid Laik Shekh Vs. The State of Maharashtra** (Supra), the Division Bench of this Court in paragraph no.10 observed as under :-

“10. Undoubtedly, the POCSO Act is a special statute enacted to prevent child abuse. But, in the case in hand, the victim has attained the age of majority. At the time of alleged sexual assault, she was in a love relationship with the petitioner and said love relationship culminated in their marriage, and they now wish to cohabit and lead a happy married life. Accordingly. FIR and further proceeding has been quashed.”

11. In case of **Mushtak Attar Vs. State of Goa and others** (Supra) this Court was pleased to quash FIR and further proceeding where victim was minor aged about 17 years and four months at the time of offence. The complaint was lodged by her father. Yet, she continued relationship with accused and gave birth to male child and even performed marriage with him on attaining majority and accorded to quash the proceeding against the petitioner.

12. Careful consideration of facts of present case would show that victim aged about 16 years 9 months was a college going girl. She had a love affair with the applicant who was aged about 18 years. Apprehending that her love affair would not be recognized by parents, she voluntarily left home alongwith the applicant. Thereafter, she resided with him and said to have been performed marriage on 7.12.2024. Out of matrimonial relationship, she begotten a girl child. Affidavit of the victim, who is now major and affidavit of the informant i.e. father of victim affirms that at present, she is residing with the applicant alongwith her child and they are leading/living happy matrimonial life. Now, the victim is firm on her decision to continue matrimonial relationship with the applicant.

13. In the peculiar facts of this case, where two adolescents pursuant love affair took decision to marry at the tender age without intervention of family members and continued sexual relationship resulting in birth of a child, it would be undue harassment to happily living couple if prosecution against applicant is continued and face trial.

14. In case of **K.Kirubakaran Vs. State of Tamilnadu reported in 2025 SCC Online SC 2307**, it has been observed by the Apex court that, “appellant and victim are not only legally married, they are also in their family way. While considering the offence committed by appellant punishable under the [POCSO Act](#), we have discerned that crime was not the result of lust but love. The victim of crime herself has expressed her desire to live a peaceful and stable family life with the appellant, upon whom she is dependent, without the appellant carrying the indelible mark on his forehead of being an offender. Continuation of the criminal proceedings and the appellant’s incarceration would only disrupt this familial unit and cause irreparable harm to the victim, the infant child, and the fabric of society itself”.

15. The aforesaid observations of the Supreme Court are mutatis-mutandis applies to present case. This Court finds that, although, applicant may be technically offender under the POCSO Act, but, physical relationship between applicant and victim was not a result of lust but love, which they continued till this date. The victim, applicant and their six months old child residing together have formed a family. Applicant is only person, who takes care for family. Although, learned APP

relied upon observations of Division Bench of this Court in case of **Mirza Aslam Beigh** (Supra) to contend that once victim was minor and subjected to penetrative sexual assault, it would not be permissible to exercise inherent powers, this Court finds that observations in that case are made in peculiar facts and circumstances of that case. It was a case where marriage of victim was performed by family members as per Muslim rites and rituals and registered after victim attained the age of majority. In between she was subjected to physical relationship by accused/applicant. She conceived pregnancy and gave birth to child. Pertinently, applicant/accused was 27 years of age at the time of marriage, whereas victim was below 18 years of age.

16. In present case, date of birth of applicant is 19.10.2006. As such, on the date of registration of the offence, he was hardly aged about 18 years and one month, whereas victim was aged about 16 years and 9 months only. They were in deep love relationship. Apprehending opposition for marriage, they left home without informing parents and lived like husband and wife. The informant/father came to know whereabouts of victim only when she made contact with him and informed

about pregnancy. At this stage reference can be given to observations of Madras High Court in case of **Vijayalakshmi and Anr Vs. State rep.by Inspector of Police reported in 2021 SCC OnLine Mad 317** observed that:-

“18. In the present case, the 2nd Petitioner who was in a relationship with the 2nd Respondent who is also in his early twenties, has clearly stated that she was the one who insisted that the 2nd Respondent take her away from her home and marry her, due to the pressure exerted by her parents. The 2nd Respondent, who was placed in a very precarious situation decided to concede to the demand of the 2nd Petitioner. Thereafter, they eloped from their respective homes, got married and consummated the marriage. Incidents of this nature keep occurring regularly even now in villages and towns and occasionally in cities. After the parents or family lodge a complaint, the police register FIRs for offences of kidnapping and various offences under the POCSO Act. Several criminal cases booked under the POCSO Act fall under this category. As a consequence of such a FIR being registered, invariably the boy gets arrested and thereafter, his youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely have no defense if the criminal case is taken to its logical end. Punishing adolescent boy who enters into a relationship with a minor girl by treating him an offender, was never the objective of the POCSO Act. As adolescent boy and girl who are in the grips of their hormones and biological changes and whose decision-making ability is yet to fully develop, should essentially receive the support and guidance of their parents and the society at large. These incidents should never be perceived from an adult’s point of view and such an understanding will in fact lead to lack of empathy. An adolescent boy who is sent to prison in a case of this nature will per persecuted

throughout his life. It is high time that the legislature takes into consideration cases of this nature involving adolescents involved in relationship and swiftly bring in necessary amendments under the Act. The legislature has to keep pace with the changing societal needs and bring about necessary changes in law and more particularly in a stringent law such as the POCSO Act”.

17. The aforesaid observations also apply to peculiar facts of the present case, hence, continuation of criminal prosecution against applicant would have disastrous repercussion not only against applicant/accused but also victim and her infant. In this background and considering peculiar circumstances leading to registration of offence and further development, this Court finds that interest of justice warrants exercise of inherent powers to quash the criminal proceeding against applicant.

18. In result, Criminal Application is allowed in terms of prayer clause “B” and “BB” and **disposed of.**

(S. G. CHAPALGAONKAR)
Judge.

...