

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 404 OF 2026



XYZ.

.....Petitioner

Vs.

1. The State of Maharashtra,
Through its Secretary,
Home Department.
2. The Investigating Officer,
Khed Police Station,
District : Ratnagiri.

.....Respondents

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Mr. Viraj V. Nalavade with Ms. Sharvari Tipugade, Mr. Girish Mujumdar & Ms. Tanvi Lad, Advocates for Petitioner.
Mrs. M. H. Mhatre, APP with Mr. Pankaj P. Deokar, APP, for the Respondents-State.
Mr. Nitin D. Bhagate, Superintendent of Police with Mrs. Kanoja, PSI & Mr. Gaikwad, API, Ratnagiri are present.

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**CORAM: MRS. VRUSHALI V. JOSHI,
SANDESH D. PATIL, JJ.**

DATED: 13th JULY 2026

ORAL JUDGMENT :- (Per Sandesh D. Patil, J.)

1. The present petition is filed in May 2026 for directing re-investigation or *de novo* investigation in respect of FIR No.317 of

2025 and charge-sheet filed in Special Case No.42 of 2025 before the Special Court, Khed for the offence punishable under Sections 64(2) (i), 65(1), 74, 351(3) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023 ('**BNS**') and Sections 4, 8 and 17 of the Protection of Children from Sexual Offences Act, 2012 ('**POCSO Act**').

2. The contention of the Petitioner is that her daughter was studying in Gurukul, where the alleged incident had taken place. It is the contention of the Petitioner that the investigation is carried in an utmost undesirable manner, the police officer apparently did not possess the basic knowledge of carrying out the investigation. It is the contention of the Petitioner that the most confidential and sensitive information, i.e., the name of the victims is mentioned alongwith the address and the mobile number of the victims, which is totally contrary to the spirit of the POCSO Act. It is also contended that the relevant provisions of the POCSO Act were not incorporated while filing the charge-sheet. What is more shocking, which the Petitioner has contended is that the statement of the victim was recorded in the police station.

3. When these serious allegations were made, we had called upon

the Investigating Officer to remain present in the Court to show the case diary. We were surprised to note that the case diary, which is prepared under the provisions of Section 172 of the Code of Criminal Procedure, corresponding to Section 192 of the Bharatiya Nagrik Suraksha Sanhita, 2023 is not at all maintained. Some loose sheets were given to us stating that this is the case diary. When we had asked the concerned Investigating Officer, who was present in the Court, she had handed over loose documents and stated that this is how she maintains the case diary. We were shocked by the lackadaisical approach and total ignorance of the Investigating Officer about the provisions of law, especially the special Act such as POCSO Act.

4. We, therefore, had directed the Superintendent of Police, Ratnagiri to remain present. What is more disheartening is that, today when the Superintendent of Ratanagiri is present in the Court, he tendered few papers of documents, which were now bounded by a tape. We have gone through the same. We are surprised to note that the entire papers are stitched together by virtue of black tape and the handwriting is one and the same and written on the same day. This alleged case diary also contains the same documents,

which were tendered to us on 7th July 2026. The only difference is that now these documents are pasted in a volume, which is bounded by a plastic tape of black colour. This is not what is meant by the case diary.

5. Section 172 of the Code of Criminal Procedure, i.e., Section 192 of the BNS reads as under:

“192. Diary of proceedings in investigation:

(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) The statements of witnesses recorded during the course of investigation under section 180 shall be inserted in the case diary.

(3) The diary referred to in sub-section (1) shall be a volume and duly paginated.

(4) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.

(5) Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such

police officer, the provisions of section 148 or section 164, as the case may be, of the Bharatiya Sakshya Adhiniyam, 2023, shall apply.”

6. The apex court in the Judgment of ***Manoj vs state of Madhya Pradesh***¹ had occasion to deal with the importance of maintenance of case diaries. The observation of the apex court in paragraph number 204 is quoted as under:

“204. In Manu Sharma v. State (NCT of Delhi),² in the context of police diaries, this Court noted that “[t]he purpose and the object seems to be quite clear that there should be fairness in investigation, transparency and a record should be maintained to ensure a proper investigation”. This object is rendered entirely meaningless if the police fail to maintain the police diary accurately. Failure to meticulously note down the steps taken during investigation, and the resulting lack of transparency, undermines the accused's right to fair investigation; it is up to the trial court that must take an active role in scrutinising the record extensively, rather than accept the prosecution side willingly, so as to bare such hidden or concealed actions taken during the course of investigation. [Role of the courts in a criminal trial has been discussed in Zahira Habibulla H. Sheikh v. State of Gujarat.³]

Since the investigation is at a very nascent stage, it would be advisable to see to it that such improper investigation does not derail dispensation of justice.

7. This Court as well as the Apex Court have on number of

1 (2023) 2 SCC 353.

2 (2010) 6 SCC 1.

3 (2004) 4 SCC 158.

occasions dealt with as to how the case diary should be maintained. The importance of the case diary cannot be undermined. As it is, the conduct of the police officers is highly depreciable.

8. Today, the Superintendent of Police has informed us that he has already issued show-cause notices against the Investigating Officer and that the investigation will now be entrusted with a senior woman Police Inspector. He states that there are no police officers of woman IPS rank available to carry on the investigation and that they will carry out the investigation through the Senior PI. This again is quite alarming.

9. We are not satisfied with the explanations furnished by the officers, particularly by an officer of the rank of Superintendent of Police. This answer of the Superintendent of Police has left us flabbergasted. It cannot be lost sight of the fact that two FIRs are lodged against the same accused person. The present FIR was lodged on 16th October 2025 and that it was investigated by the officer, whose conduct we have already noted above. Thus, from 16th October 2025 till today, i.e., nearly more than eight months have wasted as the investigation was carried it in such a shoddy manner. We doubt as to what will happen to the investigation. We also

express an apprehension about the nature and quality of the investigation which would be carried on in future at the hands of the present Investigating Officer.

10. The Apex Court in the matter of ***Dharam Pal v. State of Haryana & Ors.***⁴ has observed in paragraph Nos.17, 18 and 19 as under:

"17. In the context, we may profitably refer to a two-Judge Bench decision in Narmada Bai v. State of Gujarat.⁵ The Court, in the factual matrix of the case, has emphasised that: (SCC p. 99, para 59)

"59.... If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI."

18. A three-Judge Bench in K.V. Rajendran v. Supt. of Police⁶ reiterating the said principle stated that: (SCC p. 485, para 13)

"13.the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having 'a fair, honest and complete investigation', and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies."

19. The Court, after referring to earlier decisions, has

4 (2016) 4 SCC 160.

5 (2011) 5 SCC 79.

6 (2013) 12 SCC 480.

laid down as follows: (K.V. Rajendran case, SCC p. 487, para 17)

"17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."

11. Further the Apex Court in the said Judgment has observed that the superior Courts have jurisdiction under Section 482 of the Code or even under Article 226 of the Constitution of India to direct further investigation and even *do novo* investigation. The relevant observations in paragraph Nos.23 and 24 are reproduced as under:

"23. In the said case, the question had arisen whether a Magistrate can direct for reinvestigation. While dealing with the said issue, the Court has observed: (Vinay Tyagi V. Irshad Ali,⁷ SCC p. 791, para 43)

"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even reinvestigation'. 'Fresh', 'de novo' and 'reinvestigation' are synonymous expressions and their result in law would be the

⁷ (2013) 5 SCC 762.

same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

(emphasis supplied)

And again: (SCC p. 794, para 51)

"51.Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation', as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor."

12. The Petitioner has knocked the door of this Court seeking

justice. We have noted the conduct of the Investigating Agency in foregoing paragraphs. We are satisfied that this is a fit case where the powers under Article 226 of the Constitution of India should be exercised for doing complete justice between the parties.

13. In these circumstances, we have got no other alternative than to transfer this case. We are aware that the power of transfer should not be exercised in a casual manner and the Court should approach this matter of transfer in a very cautious manner. However, taking into consideration that the offence is of such a heinous nature, we are left with no other option but to grant the prayers in the petition i.e. transfer of the investigation to an independent agency.

14. We, therefore, pass the following Order:

ORDER

- i) The investigation of the FIR No.317 of 2025 for the offences punishable under Sections 64(2)(i), 65(1), 74, 351(3) read with 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Sections 4, 8 and 17 of the POCSO Act registered with Khed Police Station, District Ratnagiri is transferred to the State Criminal Investigation Department (CID), Maharashtra State.

- ii) The said investigation shall be carried out by the said State CID *de novo*.
- iii) The officer of the Additional Director General of Police of the State CID will look into the matter personally.
- iv) Taking into consideration the serious lapses which have taken place on the part of the earlier Investigating Officer as noted by us in order of 7th July 2026 and in today's order, we place this matter for further consideration on 21st July 2026.
- v) We direct Mr. Nitin D. Bhagate, Superintendent of Police, Ratnagiri to forthwith forward all the papers to the office of the State CID. He shall ensure that all the papers are available to the new Agency, which will be conducting the investigation.
- vi) With these observations, we keep this matter for further consideration on **21st July 2026**.

(SANDESH D. PATIL, J.)

(MRS. VRUSHALI V. JOSHI, J.)

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