

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL

ON THE 12th OF JULY, 2023

MISC. CRIMINAL CASE No. 25264 of 2023

BETWEEN:-

KAILASH SHARMA

.....PETITIONER

(BY SHRI RAJMANI BANSAL, LEARNED COUNSEL FOR PETITIONER)

AND

1. THE STATE OF MADHYA PRADESH INCHARGE
POLICE STATION THROUGH POLICE STATION
PADAV (MADHYA PRADESH)
2. PROSECUTRIX THROUGH POLICE STATION
PADAV DISTT. GWALIOR M.P. (MADHYA
PRADESH)

.....RESPONDENTS

*(BY SHRI PRAMOD PACHORI, LEARNED PUBLIC PROSECUTOR FOR
STATE)*

.....
*This application coming on for hearing this day, the court passed the
following:*

ORDER

This petition has been filed under Section 482 of the Cr.P.C. for quashing of the FIR registered at Crime No.586/2022 at Police Station- Padav, District, Gwalior under Sections 376, 506 of IPC as well as under Section 3/4 of POCSO Act as well as the chargesheet and all other criminal proceedings instituted at this crime number.

In brief, facts of the case are that on 28.12.2022 prosecutrix aged about

17 years 10 months lodged a computerized complaint at Police Station Padav District Gwalior alleging that she is studying in 12th standard. Present petitioner and prosecutrix developed friendship through facebook and thereafter petitioner started talking with the prosecutrix on mobile phone and chatting on whatsapp. On 10.12.2020 petitioner called prosecutrix to meet her and took her to a hotel situated near Rock On Hotel and started doing obscene acts with her and started pressurizing her to make physical relation with him. When prosecutrix refused, he led the prosecutrix to believe that he is unmarried and promised to marry her and took obscene photographs of her. On 18.10.2022 petitioner again called the prosecutrix at Rock On Hotel. When the prosecutrix refused to come, petitioner threatened her to viral the photographs. Petitioner again committed sexual intercourse with the prosecutrix by extending threatening. On 23.12.2022 petitioner by leading the prosecutrix to believe that he will solemnize marry with her, took her at Rock On Hotel Padav Gwalior. The petitioner by extending threatening to the prosecutrix that he would viral the photographs and kill her, committed sexual intercourse with her. On 24.12.2022 petitioner called the prosecutrix at Mela Ground Gwalior and told her that he is already a married person and will not marry with her. On her report, FIR bearing Crime No.586/2020 at Police Station- Padav, District, Gwalior under Sections 376, 506 of IPC and under Section 3/4 of POCSO Act was registered against the petitioner.

Learned counsel for the petitioner made submission that after about one year on 28.12.2022, a false FIR has been lodged. Beside this, if any intercourse has been done, the same was with her consent, there was no force involved in it. There was no evidence of any penetration of sexual assault. In this regard, he

has placed reliance on the judgment of *High Court of Meghalaya At Shillong passed in Crl. Petn. No.3 of 2003 (Shri. John Franklin Shylla Vs. State of Meghalaya & Anr)*. Learned counsel for the petitioner has also placed reliance on the judgment of Hon'ble Supreme Court in the case of *State of Rajasthan Vs. Tarun Vaishnav & Anr. passed in SLP (Crl) No. 1890/2023*. With aforesaid submissions, he prayed for quashment of impugned FIR as well as all the consequential proceedings arising out of the said crime.

Learned Public Prosecutor for the State made submission that it is true that FIR is belated, but the prosecutrix is minor. Hence, prayed for dismissal of this petition.

The Hon'ble Madras High in the case of *Vijayalakshmi & Anr. v. State Rep. By. Inspector of Police, All women Police Station, Erode: Crl. O.P No. 232 of 2021, para 12 & 18* has observed as under:

12. As rightly recognized by the Learned Single Judge of this Court in Sabari's Case (cited supra), incidences where teenagers and young adults fall victim to offences under the POCSO Act being slapped against them without understanding the implication of the severity of the enactment is an issue that brings much concern to the conscience of this Court. A reading of the Statement of Objects and Reasons of the POCSO Act would show that the Act was brought into force to protect children from offences of sexual assault, sexual harassment and pornography, pursuant to [Article 15](#) of the Constitution of India, 1950 and the Convention on the Rights of the Child. However, a large array of cases filed under the POCSO Act seems to be those arising on the basis of complaints registered by the families of adolescents and teenagers who are involved in romantic relationships with each other. The scheme of the Act clearly shows that it did not intend to bring within its scope or ambit, cases of the nature where adolescents or teenagers

involved in romantic relationships are concerned.

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 make the acts of the boy an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defense if the criminal case is taken to its logical end. Punishing an adolescent boy who enters into a relationship with a minor girl by treating <https://www.mhc.tn.gov.in/judis/> him as an offender, was never the objective of the POCSO Act. An 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 be persecuted throughout his life. It is high time that the legislature takes into consideration cases

of this nature involving adolescents involved in relationships 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.

As per prosecution story, she is minor. This Court looking into the physical and mental development of an adolescent of that age group, would consider it logical that such a person is capable of making conscious decision as regard his or her well-being. Prima facie, it appears that there is no *mens rea* involved.

Be that as it may, at this juncture, this Court is of the opinion that the proceeding of the case before the trial Court would serve no purpose in the peculiar facts and circumstances. On due consideration being given to the submission of the parties, the prayer of the petitioner is hereby allowed.

The impugned FIR as well as all consequential proceedings arising out of Crime No.586/2022 registered against the present petitioner at Police Station Padav District Gwalior for the offences punishable under Sections 376, 506 of IPC and 3/4 of POCSO Act are hereby quashed.

With the aforesaid observations and directions, the present M.Cr.C. stands allowed and disposed of.

(DEEPAK KUMAR AGARWAL)
JUDGE