

1  
**IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR**

**BEFORE  
HON'BLE SHRI JUSTICE DEEPAK KUMAR AGARWAL**

**ON THE 27<sup>th</sup> OF JUNE, 2023**

**MISC. CRIMINAL CASE No. 24691 of 2023**

**BETWEEN:-**

**RAHUL CHANDEL JATAV S/O SHRI RAJARAM JATAV,  
AGED ABOUT 23 YEARS, OCCUPATION: STUDENT  
VILLAGE DEGUVA, DHEERPURA, THATIPUR GWALIOR  
DISTRICT GWALIOR (MADHYA PRADESH)**

**.....PETITIONER**

**(BY SHRI RAJMANI BANSAL - ADVOCATE )**

**AND**

- 1. THE STATE OF MADHYA PRADESH INCHARGE  
POLICE STATION PS THATIPUR DISTRICT  
GWALIOR (MADHYA PRADESH)**
- 2. PROSECUTRIX THROUGH POLICE STATION  
THATIPUR DISTRICT GWALIOR (MADHYA  
PRADESH)**

**.....RESPONDENTS**

**(BY SHRI NEERAJ DHAMANIA - PANEL LAWYER )**

*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. 378/2020 at Police Station- Thatipur, District, Gwalior under Sections 376(2)(F)(n), 376(3), 315 of IPC as well as under Section 5(L)(O)/6 of POCSO Act and 66 of IT Act as well as the Sessions Trial No.124/2020 pending before learned 13th Additional Sessions Judge, and Special Judge POCSO Act, Gwalior.

In brief, facts of the case are that prosecutrix lodged a complaint against petitioner alleging that she is used to go to take coaching classes from present petitioner at Yadav Bhawan. On 18.01.2020, in the morning 7 AM, when she reached to Yadav Bhawan for classes, there were no one present on the said coaching and thereafter, petitioner gave her Juice to drink, thereafter, she became unconscious. Afterwards, present petitioner committed sexual intercourse with her and made video of her. Thereafter, in the pretext of viralling the video, he used to make physical relationship with her many times. When she came to know in April that she was pregnant, she told Rahul, then he fed her a tablet which caused her miscarriage. Rahul used to come to her house several times through the roof and made physical relationship with her. Beside this, prosecutrix also knows one Mukesh Chokotia for the last four years. Mukesh Chokotia used to study with her in school. Mukesh was her distant relative. In 2016, Mukesh also in the pretext of marriage many times made physical relationship with her. On 16/07/2020 at 12:00 noon, Mukesh came to her locality and snatched her mobile and assaulted her with stick. He had sent her photos on her sister's mobile. Mukesh also used to come to her house and he committed sexual intercourse with her many times. On her report FIR bearing Crime No.378/2020 for the offence punishable under Sections 376(2)(n), 323, 506 of IPC and Section 3/4 of POCSO Act was registered against them.

Learned counsel for the petitioner made submission that after about seven months on 17.07.2020, 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 Panel Lawyer for the State made submission that it is true that FIR is belated, but at the time of incident prosecutrix was 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 was minor at the time of incident. 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 beside this as per complaint of prosecutrix, first she was engaged physically with present petitioner, thereafter, with Mukesh Chokotia as to the actual act of sexual intercourse. 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.378/2020 registered against the present petitioner at Police Station Thatipur, District Gwalior for the offences punishable under Sections 376(2)(F) (n), 376(3), 315 of IPC as well as under Section 5(L)(O)/6 of POCSO Act and 66 of IT Act as well as the Sessions Trial No.124/2020 pending before learned 13th Additional Sessions Judge, and Special Judge POCSO Act are hereby quashed.

Before parting with the case, this Court would like to share its experience as a Judge that before amendments in IPC under Section 375 of IPC regarding age of prosecutrix for the purpose of consent that was 16 years and subsequently enhanced by amendment upto 18 years due to this amendment, fabric of society has been disturbed. Now a days, every male or female near the

age of 14 years due to social media awareness and easily accessible internet connectivity is getting puberty in early age. Owing to this, female and male child are getting attraction and these attractions are resulting into physical relationship with consent. In these cases, male persons are not at all criminal. It is only a matter of age when they come into contact with female and develop physical relationship. Only due to this reason, lawmakers in IPC when it came into force put the age of female as 16 years since they were well aware of the aforesaid facts. Generally, girls and boys of adolescents age develop friendship and thereafter, due to attraction make physical relationship. But, due to this rider boy is treated like a criminal in the society. Today, most of criminal cases in which prosecutrix is under 18 years of age, due to aforesaid anomaly, injustice is going on with adolescent boys. Thus, I request Government of India to think over the matter for reducing the age of prosecutrix from 18 to 16 years as earlier before amendments so that injustice should be redressed.

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

**(DEEPAK KUMAR AGARWAL)**  
**JUDGE**