

ORDER BELOW EXHIBIT-13 IN SPL.C.NO. 67 OF 2019

By this application, the accused Nos.2 to 9 have prayed for discharging them under Sections 307, 354, 452, 1143, 147, 324, 323, 506 & 201 of the Indian Penal Code and under Section 11 punishable under Section 12 of the Protection of Children from Sexual Offences Act.

02- The applicants/accused has described the manner in which the offence has been committed in the FIR and submitted that there is no prima facie case against the accused Nos.2 to 9 for the offences alleged to have been done by them. It is submitted that no any ingredient of any of the Sections is attracted and there is no material on record to frame charge against them. It is contended that a false report is filed only due to family rivalry and as such as there is no sufficient material on record to frame charge, the accused Nos.2 to 9 are entitled for discharge.

03- The prosecution filed say to this application at Exh.15 and contended that there is a prima facie case against the accused. There is a prima facie evidence with respect to the age of the victim. The acts alleged to have been done by the accused has been described in the statements of the witnesses recorded during the course of investigation. The reason for taking place the incident is also there. Apart from this the statements recorded during the course of investigation would certainly make out a case against the accused for

framing of charge and therefore, according to prosecution, the application is liable to be rejected.

04- Heard both the sides. The learned advocate for the accused relied on two cases. First is *Santosh @ Shankar Pratap Binavat Vs. The State of Maharashtra in Criminal Revision Application No.430/2018 decided on 01.04.2019 (Bombay High Court)* and the other is *Madan Mohan Ratawal Vs. State of U.P. in Criminal Appeal No.1004/2005 decided on 03.02.2020 (Allahabad High Court)*.

05- The learned advocate for the accused took me to the statements recorded during the course of investigation and submitted that there is no prima facie evidence against the accused. According to him, there is no prima facie evidence for POCSO Act against the accused Nos.2 to 9. There is no sexual harassment. In fact according to him, there is no prima facie evidence against the accused to frame the charge and therefore, relying on the material collected during the course of investigation, he prayed for discharge.

06- As against this, the learned SPP submitted that the way in which the incident has taken place, it is clear that the members of the assembly which has been gathered at the house of the informant, shared a common intention. It is contended that there is a prima facie evidence against all the accused and the accused are not entitled for discharge as prayed.

07- While deciding the application for discharge, the only thing which needs to be considered is to see as to whether there is material on record to frame the charge against the accused. Whether the accused would not be acquitted etc. need not be considered. The only thing which needs to be taken into consideration is the material collected during the course of investigation and is to see whether the same is sufficient to frame charge against the accused.

08- I have gone through the material collected i.e. the statements recorded during the course of investigation. There is prima facie evidence against the accused No.1 for framing charge under the POCSO Act as the victim alleged to be a child within the meaning of Section 2(d) of the POCSO Act. Further it appears from the charge sheet that earlier the accused No.1 had sent certain messages to the victim. This act of the accused No.1 and the age of the victim would certainly constitute the ingredients of Section 11 punishable under Section 12 of the POCSO Act.

09- Further on perusal of charge sheet, it is clear that the role of each of the accused has been described in detailed. It is not the stage to consider as to whether the evidence collected by the prosecution during the course of investigation would be sufficient to hold the accused guilty for the offences. As said the presence of accused entering of them into the house of the informant and the acts alleged to have been done

by them has been stated by each of the witnesses and in view of this, I do not find that it can be said that there is no material on record to frame charge against the accused Nos.2 to 9 as contended.

10- Madan Mohan's case cited *supra* which has been relied by the learned advocate for the accused is with respect to the criminal appeal which was preferred before the Hon'ble High Court on holding the accused guilty. The entire observations are with respect to the findings of the Trial Court. At present I am considering as to whether there is sufficient material to frame charge against the accused. As such I do not find that the above said case relied by the learned advocate for the accused can be said to be applicable in the present facts and circumstances of the case. I have also gone through Santosh Binavat's case cited *supra*. The acts alleged to have been done by the accused as per the observations of the Hon'ble High Court would fall under Section 506(ii) of the Indian Penal Code.

11- However, at present considering the allegations in the FIR and the statements recorded during the course of investigation, I find that there is sufficient material to frame charge against the accused for the offences alleged to have been committed by them. I do not find that on the basis of submission made by the learned advocate for the accused, all the accused needs to be discharged. As said earlier, the allegations of outraging modesty and under the POCSO Act

are against the accused No.1 only and same can be considered at the time of framing charge. In view of all above, I pass the following order.

ORDER

The application stands rejected.

Date : 04.11.2023

(Ravindra M. Pande)
Extra DJ-1 & A.S.J. Nanded.

Certificate

I affirm that the contents of this P.D.F. file Judgment are same word to word, as per the original Judgment.

Name of Stenographer	:	R.A. Inamdar
Court name	:	Ext. DJ-1 & A.S.J. Nanded.
Date	:	04.11.2023
Judgment signed by		
Presiding Officer on	:	06.11.2023
Judgment uploaded on	:	06.11.2023