

ORDER BELOW EXH.23

1] This is an application under Section 277 of the Code of Criminal Procedure for seeking discharge of the accused.

2] The Investigating Officer has filed say vide Exh.24 and opposed this application. Ld. Spl. P.P. has also strongly opposed this application by filing say vide Exh.25.

3] It is argued by Ld. Advocate for the accused that the accused is innocent and he has not committed the crime. One Sonusingh Rajput has uploaded the photos and in this case, he has made the witness and not the accused. There is delay of two years for registration of the F.I.R. The allegations levelled against the accused are not corroborated in any manner and no direct role has been attributed to the present accused. Objectionable content uploaded from the account of the witness. Thus, all allegations are baseless against the accused. The accused is not involved in the crime and prayed for discharge of the accused from the case.

4] Ld. Spl.P.P. has strongly opposed this application. Cyber cell Mumbai received the information and thereafter, I.P. address has also located of the present accused. Tower location has also been traced. Prima facie there is sufficient ground for proceeding against the accused, in view of record of the case. Further, she has placed her reliance in ***State of M.P. Vs. S.B. Johari and others reported in AIR 2000 Supreme Court 665.***

5] She has submitted that it is settled law that at the stage of framing the Charge, Trial Court is not required to marshal materials on record but only has to prima facie consider whether there is sufficient material against the accused. Further, she has urged

that at the stage of framing the Charge, inquiry must necessarily be limited to decide, if the facts emerging from such materials constitute the offence with which the accused could be charged.

6] Further, she has drawn my attention towards the case of *Noorul Huda Maqbool Ahmed Vs. State of Maharashtra reported in 2009 ALL MR (Cri) 3256* and at para no.10 I reproduce here para no.10

“At the stage of entertaining the application for discharge u/s. 227 of the Criminal Procedure Code, the Court cannot analyze or dissect the evidence of the prosecution and defence or the points of possible cross-examination of the defence. The case of the prosecution presented before the Court is to be accepted as it is”.

7] Further, Ld. Spl. P.P. has placed her reliance in *Captain Manjit Singh Viridi (retd.) Vs. Hussain Mohammed Shattaf and others reported in 2023 LiveLaw(SC) 462 (Supreme Court of India)*, wherein, their Lordships held that at the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons, interference of the Court at that stage is required, only if there is strong reasons to hold that in case the trial is allowed to proceed, the same would amount to abuse of process of the Court.

8] Perused the record and proceedings. PSI Nitin Shinde has lodged the complaint to Kondhawa Police Station on 10.02.2021. After receiving the opinion report from Cyber Cell on 15.01.2021 in view of the complaint received through NEMEC in respect of NCRBNAH, New Delhi Child Pornography/Rape/Gang Rape/Obscene content to Nodal Officer, NCCRP Portal, Maharashtra Cyber, Mumbai in respect of the present accused with specific allegations against the accused that by using mobile phone number

9325819237, from the Facebook account of witness Sonusingh Rajput on 01.05.2019, obscene videos of children were uploaded. Login time and I.P. address was also revealed. The said mobile phone seems to be of the present accused. Cyber Tip line report and its executive summary is filed on record. Mobile company in respect of the said mobile phone prima facie is Jio company. It further reveals that there are DVDs produced in respect of obscene content along with the hash value. There is statement of the witness Sonusingh Rajput that he was residing along with the present accused at Pisoli in rented room. At that time, the accused by using his mobile phone, without informing to him, created his Facebook account and uploaded obscene videos of the children and he came to know about the same on 19.04.2021.

9] Thus, prima facie it appears that there is sufficient ground for proceeding against the accused, in view of material before the Court. This is not the stage of marshaling or analyze the material on record. Therefore, in view of prima facie material on record, it is the case to proceed against the accused. Hence, this application is to be rejected. With this, I proceed to pass the following order:

ORDER

- 1] The application is rejected.
- 2] The application stands disposed of accordingly.

Pune.
Date – 13.09.2023.

(S.P. Ponkshe)
Addl. Sessions Judge, Pune.

“ I affirm that the contents of the P.D.F. File Judgment are same word for word as per original judgment.

Name of Steno	- Sau.S.V.Thakar (Steno G-1)
Court Name	- Smt. S. P. Ponkshe, Addl. Sessions Judge, Pune.
Date of Order	- 13.09.2023
Order dictated on	- 13.09.2023
Order transcribed on	- 13.09.2023
Order signed by P.O.	- 14.09.2023
Uploaded on	- 14.09.2023