

MHTH010004992024

**SPECIAL(Pocso)CASE NO.36/2024**

State of Maharashtra

V/s.

Nitin Gaurishankar Saxena

ORDER BELOW EXH.14

1] Read application and say (Exh.19). Heard Ld. Advocate for the complainant. This application has been moved u/sec.193(9) of BNSS Act for further investigation of the aspects which have not been thoroughly examined. The complainant has prayed for further investigation on various grounds.

2] Ld. Advocate for complainant submitted that the information of incident was given to Suraj Yadav by the informant and as per S. 19 and 21 of The POCSO Act, he should have reported it to the police, but, he has not reported the offence and therefore, he should be made co-accused in the crime. The investigating officer has also not recorded statements of two students who were the crucial witnesses as per statement of victim. Further Ld.Advocate for the complainant submits that investigating officer has to file separate charge-sheet in respect of the allegations made by the victim No.2 against accused about outraging her modesty, sexually harassing her, proposing her and frantically chasing her through Instagram. She further argued that the copy of Partnership deed submitted by accused is an afterthought and

concoction made in defence. The deed appears to be forged and fabricated one and interrogation is necessary. It is further submitted that investigating officer has not recorded statement of Prashant Lohakare nor the statement of any teaching staff in SK Tutor classes or neighbouring shop owners was recorded. The chats recovered from the mobile phone of applicant are vague. She further submits that CCTV footage of the classes and other footage from the premises were never obtained. She further argued that investigating officer is trying to mislead the case. In fact there are total 48 cameras in the premises but I.O. has mentioned in the spot panchanama that there are no CCTV cameras installed in classes. She further submitted that for all the above mentioned reasons, further investigation is necessary.

3] Vide say Exh.19, investigating officer has resisted the application on the ground that Suraj Yadav has no personal knowledge of the incident and he came to know about it from the informant, therefore, Sec. 19 and 21 could not be levelled against him. He has no connection with the offence. The name of witnesses as stated in the application were not revealed in the investigation. The spot of incident and the accused in the case of both the victims is same and therefore, separate offence is not registered in respect of victim No.2. The name of witnesses mentioned in the application are hearsay and therefore their statements are not recorded. Mobile chats are seized and there is no any overwriting. There are no CCTV cameras installed in the classes. No fruitful information was received on verification of CCTV footage from the cameras installed outside the building of the classes.

4] After going through the application and say, the grounds raised by complainant for further investigation under Sec. 193(9) of BNSS, are that investigating officer has not collected the digital evidence available on the place of incident, secondly, she has not made Suraj Yadav as co-accused, also not recorded the statements of witnesses present on the spot and also not seized the relevant mobile chats. The complainant has also raised the ground that I.O. has to register separate offences for both victims. As far as digital evidence is concerned, incident happened in the tuition class where accused was teacher. Therefore, investigating officer is directed to collect the digital evidence available on the place of incident and in surrounding area. For its collection further investigation is required. Further if the involvement of Suraj Yadav in the offence would be revealed during the course of trial and if any material is found against him, complainant can file application U/sec. 358 of BNSS. Similarly, as per Sec. 348 of BNSS, the complainant has every right to call the material witnesses and for that purpose, further investigation is not warranted. With this, I proceed to pass the following order:

ORDER

- 1] Application Exh.14 is partly allowed.
- 2] Investigating officer is directed to collect the digital evidence available on the place of incident and submit its report.

Thane
Dt. :-08.07.2025

(D.S.Deshmukh)
Spl. Judge under POCSO Act,
Thane