



2025:DHC:5611



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 15.07.2025

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CRL.REV.P. 1333/2024

PREMODYA KHAKHA AND ANR.

.....Petitioners

Through: Mr. Shubhashis R. Soren and
Mr. Rahul Kumar, Advocates

versus

THE STATE GOVT OF NCT DELHI AND
ANR.

.....Respondents

Through: Ms. Rupali Bandhopadhya,
ASC for the State with Mr.
Abhijeet Kumar, Advocate, SI
Puja alongwith original IO SI
Bharti Singh

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CRL.REV.P. 1372/2024

HARSH PRATEEK KHAKHA & ANR.

.....Petitioners

Through: Mr. Shubhashis R. Soren and
Mr. Rahul Kumar, Advocates

versus

STATE GOVT OF NCT DELHI & ANR.

.....Respondents

Through: Ms. Rupali Bandhopadhya,
ASC for the State with Mr.
Abhijeet Kumar, Advocate, SI
Puja alongwith original IO SI
Bharti Singh



CORAM:

HON'BLE DR. JUSTICE SWARANA KANTA SHARMA

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DR. SWARANA KANTA SHARMA, J

1. This common judgment shall dispose of the above-captioned revision petitions, since both the petitions arise out of the same set of facts and assail a common order.
2. By way of these petitions, the petitioners Premodya Khakha (the main accused), his wife Seema Rani Khakha, and their children Harsh Prateek Khakha and Prateeksha Khakha, seek setting aside of the orders dated 28.09.2024 and 04.10.2024 [hereafter also referred to as '*impugned orders*'] passed by the learned Additional Sessions Judge (FTSC) (POCSO)-01, Central, Tis Hazari Courts, Delhi [hereafter '*Sessions Court*'] whereby charges have been framed against the petitioners in Sessions Case No. 571/2023, arising out of



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FIR bearing no. 1068.2023, registered on 13.08.2023 at Police Station Burari, Delhi for commission of offence punishable under Sections 376(2)(1)/376(3)/323/354 of the Indian Penal Code, 1860 [hereafter '*IPC*'] read with Sections 6/8 of the Protection of Children from Sexual Offences Act, 2012 [hereafter '*POCSO Act*'].

FACTUAL BACKGROUND

3. The prosecution sets out the following sequence of facts and events: on 12.08.2023, the Security Officer of St. Stephens Hospital had informed SHO, P.S. Burari, Delhi about the admission of a victim alleging sexual assault by her uncle. The police had reached the Hospital and recorded the statement of the victim/prosecutrix, in which she stated that she was a minor, who had completed her Class 9th from 'X' School and had later enrolled in 'Y' Open School for Class 10th in Delhi. Her father had passed away on 01.10.2020 during the COVID-19 pandemic, after which she had become emotionally disturbed and depressed. During this period, she had come into contact with one Premodya Khaka ('*Premodya uncle*'), who was associated with Amazing Craze Church, Burari, and was known to her family. The prosecutrix had thereafter started residing at the house of Premodya Khaka to divert her mind and focus on studies. It is alleged that between November 2020 and January 2021, the accused Premodya Khaka had raped her on 4 to 5 occasions, and that he also used to touch her private parts. It was alleged that when the first incident of rape/assault had taken place, a lot of swelling had



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happened in her genital area. The prosecutrix also alleged that the wife of accused Premodya, i.e. Seema Rani Khakha (*'Seema aunty'*), was informed of these incidents but instead of helping her, she rather blamed the prosecutrix and behaved harshly with her. As alleged, she would also beat the prosecutrix with sticks when she used to score less marks. It was alleged that the sexual abuse had continued for several weeks across November, December 2020, and January 2021. Subsequently, the prosecutrix had missed her periods and suspected pregnancy, and had thus, informed the accused Seema Khakha. Thereafter, as alleged, Seema had asked her son, Harsh Prateek Khakha (*'Harsh bhaiya'*) to get a pregnancy test kit, subsequent to which, a pregnancy test was conducted, which revealed the pregnancy of the prosecutrix. On coming to know of the said fact, accused Seema Khakha had asked the prosecutrix to consume a pill due to which her pregnancy had got terminated. She also alleged that she had informed about these incidents to the son and daughter of accused Pramodya, i.e. Harsh and Prateeksha, but they had not believed the same. Thereafter, in February 2021, at the request of the prosecutrix, her mother had taken her back to stay together at their home. She further stated that after the alleged incident, the prosecutrix had been traumatised to such an extent that she had bouts of anxiety and panic attacks at various instances. Once such event took place on 11.08.2023, wherein the prosecutrix suffered an anxiety attack and was admitted to the St. Stephen Hospital, Delhi. Thereafter, the prosecutrix had disclosed these events to the doctor



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concerned, and the police had been called to the Hospital and the statement of the victim had been recorded, leading to registration of the present FIR on 13.08.2023. The MLC of the prosecutrix was collected from the Hospital by the police.

4. On 14.08.2023, the statement of the prosecutrix could not be recorded before the Magistrate as the doctor concerned declared the prosecutrix unfit for recording of her statement. The said statement under Section 164 of the Code of Criminal Procedure, 1973 [hereafter '*Cr.P.C.*'] was eventually recorded on 21.08.2023 before the learned Magistrate, in the Hospital itself. The prosecutrix, in her statement under Section 164 of the Cr.P.C., revealed that – on 31.12.2020, when she was at the house of Premodya Khakha, she had told Seema Khakha that she needed to attend a church meeting through Zoom, and Seema Khakha had set up the meeting for her. However, due to network issues, the meeting was not working. Seema had then told her to go to "*Didi*" (i.e. Prateeksha Khakha), who in turn had asked her to check with "*Mamu*" (referring to Premodya Khakha) to help resolve the issue. When she had gone to him, he was sitting in the corner of an L-shaped bed, and she remained at a distance from him. However, he had allegedly told the prosecutrix that she might fall and had asked her to come under the blanket. Although she had refused several times, he had insisted, and she had eventually complied. Feeling uncomfortable, she had told him that she was thirsty and had got up to fetch water. However, he had asked her to stay, saying that he would bring the water himself.



After drinking the water brought by him, she had started feeling dizzy and disoriented and had eventually fainted or fallen asleep. When she had woken up at around 12:15 AM, she had experienced pain and swelling in her vagina and had noticed some bleeding. She had immediately informed her aunt about the condition and had expressed her suspicion that her uncle might have done something inappropriate to her while she had been unconscious. Following this, frequent quarrels had begun between the accused and his wife. Later, on the night of 01.01.2021, the prosecutrix had managed to call her mother secretly, since she did not have her own phone, and had questioned her angrily about leaving her at the house of Premodya, insisting that she no longer wanted to stay there. A few days later, under the pretext of attending a relative's wedding, her mother had finally brought her back home.

5. A supplementary statement of the prosecutrix had also been recorded under Section 161 of Cr.P.C. on 17.08.2023 by the I.O. In light of the above allegations, the petitioners Premodya Khakha and Seema Rani Khakha were arrested on 21.08.2023. After completion of investigation, chargesheet was filed before the concerned Court on 11.10.2023, and the cognizance of offence was taken on 08.11.2023. The petitioners Harsh Prateek Khakha and Prateeksha Khakha were granted anticipatory bail by the Hon'ble Supreme Court *vide* order dated 08.01.2024.

6. By way of the impugned orders, the learned Sessions Court *inter alia* framed charges against the present petitioners, for the



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following offences:

Name of Accused	Offence Charged For
Premodya Khakha	Sections 376(2)(f), 376(3), 323, and 354 of IPC Sections 6/8 of POCSO Act.
Seema Rani Khakha	Sections 376(2)(f) and 376(3) read with Section 109 of IPC; Sections 313 and 201 of IPC Sections 6 read with 17 and 21 of POCSO Act
Harsh Prateek Khakha	Section 21 of POCSO Act
Prateeksha Khakha	Section 21 of POCSO Act

SUBMISSIONS BEFORE THE COURT

7. The learned counsel appearing for the petitioners has assailed the impugned order on the ground that the material on record does not *prima facie* disclose the commission of the alleged offences. It is submitted that the chargesheet is incomplete and the investigation is inconclusive. It is argued that there is an unexplained delay of nearly three years in the registration of the FIR, as the alleged incident pertains to December 2020 to January 2021, while the FIR was registered only on 13.08.2023. Such delay raises serious doubts regarding the authenticity of the allegations. The learned counsel points out that the entire prosecution case hinges on the allegation that petitioner Premodya Khakha committed penetrative sexual assault and that co-accused Seema Rani Khakha subsequently administered abortion pills, allegedly terminating a pregnancy. However, the investigation itself fails to support this narrative. The



IO's application for semen analysis of petitioner Premodya Khakha, filed before the Court after filing of chargesheet, indicates that even the basic elements of Section 313 of IPC were not established at that stage. It is highlighted that Premodya Khakha's vasectomy certificate dated 14.11.2005 from Lok Nayak Hospital has been verified and found genuine, which contradicts the claim of any pregnancy resulting from sexual assault by him. It is also stated that his inability to provide a semen sample was due to natural reasons, and not due to non-cooperation.

8. It is further submitted that the victim's version is inconsistent. While her FIR and Section 161 of Cr.P.C. statement dated 17.08.2023 narrate a particular sequence, her statement under Section 164 of Cr.P.C. recorded later on 21.08.2023, after being declared medically fit, introduces a different version with no reference to pregnancy or abortion. Such contradictions significantly affect the credibility of the prosecution case. The learned counsel also argues that the statement under Section 161 of Cr.P.C. of the victim was recorded when she was declared medically unfit a day prior, casting serious doubt on its voluntariness and evidentiary value. Moreover, the prosecution has failed to produce any medical record of pregnancy or abortion, nor has any biological or forensic evidence been collected linking the alleged pregnancy to petitioner Premodya Khakha.

9. As for Seema Rani Khakha, it is contended that her implication rests solely on the victim's allegation that she had administered



abortion pills to her. However, there is no medical proof of miscarriage or evidence of procurement or administration of such pills, which is essential for attracting Section 313 of IPC. Regarding petitioners Harsh Prateek Khakha and Prateeksha Khakha, it is submitted that they were not named in the FIR and have only been implicated in a supplementary statement dated 17.08.2023. Even assuming that they were aware of the victim's disclosure, mere inaction or disbelief, without active concealment or participation, does not constitute an offence.

10. It is contended that serious charges such as those invoked in this case require strong suspicion backed by credible material. However, the prosecution's case is fraught with inconsistencies, and it lacks medical or forensic evidence. Thus, the threshold for framing charges is not met in the present case. Accordingly, it is submitted that continuation of proceedings would amount to abuse of the process of law, and thus, it is prayed that the petitioners are entitled to discharge.

11. On the other hand, the learned ASC appearing for the State, argues that the impugned order suffers from no legal infirmity and has been passed after due consideration of the material on record. It is submitted that the learned Sessions Court has dealt with all contentions raised by the petitioners and passed a well-reasoned and detailed order, rightly concluding that a *prima facie* case is made out against each of the petitioners. The prosecution has placed sufficient material before the Court which, at this stage, meets the threshold



required for framing of charges.

12. The learned ASC further contends that the inconsistencies or alleged deficiencies pointed out by the petitioners pertain to matters of trial and cannot be a ground for discharge at this stage. The petition, it is submitted, is an attempt to prematurely dissect the evidence, which is impermissible in law. Thus, it is prayed that the present petitions be dismissed.

13. This Court has **heard** arguments addressed by the learned counsel for the petitioners as well as learned ASC for the State, and has examined the material placed on record.

ANALYSIS & FINDINGS

14. The petitioners have approached this Court seeking to challenge the impugned order framing charges against them, and have prayed for their discharge from the alleged offences. It is contended that the material on record does not disclose any *prima facie* case and that the learned Sessions Court has committed an error in proceeding further against them. This Court is, therefore, called upon to examine whether the impugned order warrants any interference at this stage.

Law on Framing of Charge: Summarised

15. Before examining the merits of the case, it would be apposite to succinctly take note of the settled law on charge and discharge. Since the petitioners have assailed an order on charge by way of these



petitions, it is relevant to take note of the following observations made by the Hon'ble Supreme Court in case of *Manendra Prasad Tiwari v. Amit Kumar Tiwari*: (2022) 20 SCC 757:

“22. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. **In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial.** To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person.

23. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed against him, **the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions.** It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases. [see *State of Delhi v. Gyan Devi*, (2000) 8 SCC 239].

24. The scope of interference and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. **Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well**



settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage the final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of Code of Criminal Procedure.”

(Emphasis added)

16. Similarly, on the aspect of standard of proof at the stage of charge, the Three-judge Bench of the Hon’ble Supreme Court in ***Bhawna Bai v. Ghanshyam***: (2020) 2 SCC 217 has observed as under:

“13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

17. Thus, at the stage of framing of charge, the Court is required to assess whether there exists sufficient material on record which, if unrebutted, would disclose the commission of an offence and justify proceeding to trial. The threshold at this stage is that of a *prima facie* case – and not proof beyond reasonable doubt. The Court is empowered to sift and weigh the evidence only to the limited extent necessary to determine whether the case, taken at its face value, discloses grave suspicion against the accused. However, the Court is



not to evaluate the probative value of the material or embark upon a detailed analysis of the merits of the case as if conducting a trial. At the same time, it is also to be kept in mind that the Court is not to act merely as a mouthpiece of the prosecution, and it must consider the broad probabilities of the case and determine whether the ingredients of the alleged offence are disclosed. Once the facts and ingredients of the offence are disclosed from the material on record, and a prima facie case exists against the accused, the Court would be justified in framing the charge.

Examining the charges against accused Premodya Khakha

18. The petitioner Premodya Khakha has been charged for the commission of offence under Sections 376(2)(f), 376(3), 323, and 354 of IPC, and Sections 6 and 8 of the POCSO Act.

19. The record, i.e. the statements of the prosecutrix recorded before the police as well as the learned Magistrate, reveals that the petitioner Premodya Khakha has been specifically named and accused of repeatedly subjecting the minor prosecutrix to penetrative sexual assault while she was residing in his house and under his care and custody. The prosecutrix has categorically stated that these incidents took place during the period from November 2020 to January 2021, with the last such assault occurring in January 2021. She has also disclosed that following the first incident, she informed co-accused Seema Rani Khakha, who examined the swelling in her private parts. In her supplementary statement, the prosecutrix further



alleged that the petitioner's daughter, Prateeksha Khakha, had also witnessed the swelling and, thereafter, ceased communication with her father. It has also been alleged that the prosecutrix became pregnant due to the repeated sexual assaults, and that a pregnancy test kit was procured by co-accused Harsh Prateek Khakha at the instance of Seema Rani Khakha, which confirmed the pregnancy. Subsequently, the prosecutrix was allegedly forced by Seema Rani Khakha to consume a pill to terminate the pregnancy. These statements, prima facie, disclose clear allegations of commission of sexual assault against the petitioner Premodya Khakha.

20. This Court notes that the learned Sessions Court, in the impugned order, has duly considered and addressed each of the contentions raised by the petitioner. One of the principal arguments advanced on behalf of the petitioner is that, even if the allegations of the prosecutrix are taken at face value, she could not have become pregnant since the petitioner had undergone a vasectomy procedure in the year 2005, rendering him allegedly incapable of reproduction. In this regard, the learned Sessions Court has rightly observed that the mere fact of having undergone vasectomy does not conclusively establish that the accused was incapable of committing penetrative sexual assault or of impregnating the prosecutrix. It has been correctly noted that vasectomy, as a medical procedure, is not infallible, and there are medically documented cases of conception occurring despite a male partner having undergone such a procedure.

21. The petitioner has further argued that he was unable to furnish



his semen sample due to natural causes. However, the medical examination report of the petitioner reflects that although he was taken to the hospital for a urological examination, he declined to give his semen sample. The learned ASC for the State has, in this context, drawn the Court's attention to Section 114 of the Indian Evidence Act, 1872 particularly illustration (g), which provides that – where a person withholds evidence that could have been produced, the Court may presume that such evidence, if produced, would have been adverse to that person. Given this legal presumption, and the admitted failure to obtain the semen sample, the learned Sessions Court, in this Court's opinion, was justified in holding that whether or not the petitioner is actually incapable of reproduction is a matter that requires trial and cannot be conclusively determined at the stage of framing of charge. Therefore, the petitioner cannot claim benefit or exoneration solely on the basis that he had undergone vasectomy.

22. This Court also finds it relevant to note that similar observations were made by a Coordinate Bench of this Court in ***Premodya Khakha v. State (Govt. of NCT of Delhi)***: 2024: DHC: 1684, wherein the petitioner's challenge to the filing of the chargesheet on the ground of the same being incomplete was rejected. The observations in the said decision are as under:

“18. Learned counsel for the Petitioners emphasized that semen analysis would have pointed to the innocence of Premodya Khakha and belied the prosecution story as also that investigation qua the offence under Section 313 Cr.P.C was incomplete in the absence of the report. It needs to be mentioned in this context that efforts were made by the



investigating officer on 31.08.2023 to collect the semen sample, however, the medical documents indicate that the accused was unable to give the sample for reasons mentioned therein. In fact, State has taken a categorical position that initially at the time of MLC, Accused Premodya Khakha had refused to give his semen sample. Be that as it may, as per the settled law, this report is at best a corroborative evidence and defence for the accused and its absence at the time of filing the charge sheet, which is otherwise complete as per requirements of law, cannot be a reason enough to grant statutory bail to the Petitioners. This is besides the scientifically and medically proven fact that procedures such as vasectomy are not 100% foolproof and there are known cases of pregnancy despite a male having undergone vasectomy. Medical data has also shown pregnancy after years of vasectomy and the procedure is known to be reversible. Therefore, it would be a matter of trial whether Accused Premodya Khakha was capable of reproducing and at this stage it is premature to rule on this issue. The scientific opinion can always be brought in later by way of a supplementary Charge Sheet. Insofar as the reliance on the judgment of the Supreme Court in *Ritu Chhabaria (supra)*, is concerned, learned ASC apprises the Court that the issue is under consideration before a three-Judge Bench of the Supreme Court in S.L.P. (Criminal) No.5724/2023 titled *Directorate of Enforcement v. Manpreet Singh Talwar*.”

23. Therefore, this Court finds no merit in the petitioner Premodya’s contention that the charges should be quashed or that he should be discharged on the ground of his alleged inability to impregnate the prosecutrix due to his prior vasectomy.

24. With respect to the petitioner’s argument regarding inconsistencies between the statements of the prosecutrix recorded under Section 161 of Cr.P.C. and those recorded under Section 164 of Cr.P.C. before the Magistrate, it is a well-established principle of law that minor discrepancies or variations in the statements of a rape victim are not sufficient to discharge an accused. As held by the



Hon'ble Supreme Court in *Hazrat Deen v. State of Uttar Pradesh*: 2022 SCC OnLine SC 1781, such inconsistencies are matters for trial and the veracity of the victim's statements can be tested at the stage of charge. Needless to say, the same is to be challenged by the defence counsel through cross-examination of such a victim during the course of trial, but at the stage of framing of charge, the Court is not required to conduct a detailed scrutiny or comparative analysis of such statements.

25. As regards the offence under Section 354 of IPC and Section 8 of the POCSO Act, the learned Sessions Court has also taken into account the statement of the prosecutrix, wherein she has stated that the accused used to touch her inappropriately, both during her stay at his residence and later when she had returned to her mother's house, and that such acts occurred even in public places such as a church. These assertions, at this stage, *prima facie* attract ingredients of the said offences and justify the framing of charges.

26. In view of the above, this Court is of the considered opinion that there is no perversity or legal infirmity in the order passed by the learned Sessions Court framing charges against the petitioner Premodya Khakha for offences under Sections 376(2)(f), 376(3), 323, and 354 of IPC, and Sections 6 and 8 of the POCSO Act.

Charge qua Offence under Section 21 of the POCSO Act

27. Section 19 of the POCSO Act pertains to 'Reporting of offences' under the POCSO Act. Section 21 provides for the



‘Punishment for failure to report or record a case’. The relevant extract of these provisions is set out below:

“19. Reporting of offences.—

(1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974) any person (including the child), who has apprehension that an offence under this Act is likely to be committed or has knowledge that such an offence has been committed, he shall provide such information to,—

- (a) the Special Juvenile Police Unit; or
- (b) the local police.

(2) Every report given under sub-section (1) shall be—

- (a) ascribed an entry number and recorded in writing;
- (b) be read over to the informant; and
- (c) shall be entered in a book to be kept by the police unit...”

“21. Punishment for failure to report or record a case.—

(1) Any person, who fails to report the commission of an offence under sub-section (1) of Section 19 or Section 20 or who fails to record such offence under sub-section (2) of Section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of Section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.”

28. Section 21 of the Protection of Children from Sexual Offences Act, 2012, imposes criminal liability upon any person who fails to report the commission of an offence under the Act, despite having knowledge of the same. Read with Section 19, the statutory mandate



is clear—any person who has either apprehension or actual knowledge of the commission of a sexual offence against a child is under a legal obligation to report the same to the police or the Special Juvenile Police Unit. Failure to do so, as per the scheme of the Act, constitutes an offence in itself, attracting punishment as prescribed under Section 21. The provision is aimed at ensuring that such grave offences are not suppressed or overlooked, particularly by those who are privy to the knowledge thereof.

29. In the present case, charges under Section 21 of the POCSO Act have been framed against accused Seema Rani Khakha, Harsh Prateek Khakha, and Prateeksha Khakha..

(i) Material against Petitioner Seema Rani Khakha

30. As per the version of the prosecutrix, Seema Rani Khakha, the wife of the main accused, was not only aware of the repeated sexual assault being committed upon the minor victim but had also reacted in a manner that reflects suppression rather than reporting. The prosecutrix has categorically stated that Seema had blamed her for the occurrence of such incidents. She had allegedly inspected the swelling on the private parts of the victim post-assault, made her take a pregnancy test, and upon confirming the pregnancy, administered abortion pills to her forcibly. Furthermore, the learned Sessions Court has noted that Seema had also allegedly persuaded the victim's mother not to take her back or raise objections to the actions of her husband. These facts, if proved, point towards clear knowledge of the



offence. Therefore, the non-reporting by Seema Rani Khakha, in the face of such specific allegations, clearly attracts the rigours of Section 21 of the POCSO Act, for the purpose of framing charge.

(ii) Material against Petitioner Harsh Prateek Khakha

31. With respect to the petitioner Harsh Prateek Khakha, the son of the main accused, the prosecution has placed reliance on the statement of the prosecutrix which alleges that Harsh was also aware of the incidents. It has been specifically alleged by the prosecutrix that he had procured a pregnancy test kit for the prosecutrix upon the direction of his mother. The learned Sessions Court rightly observes in the impugned order that it is implausible to suggest that such a kit would have been brought for any reason other than to ascertain the prosecutrix's pregnancy, especially in the absence of any explanation to the contrary. The very act of procuring the kit suggests knowledge, at least of the sexual activity involving a minor, if not the full extent of the offence. Furthermore, the prosecutrix has asserted that both Harsh and Prateeksha were informed by her about the sexual assaults and yet they chose not to report the matter to any authority. These facts sufficiently indicate that a *prima facie* case is made out for offence under Section 21 of POCSO Act.

(iii) Material against Petitioner Prateeksha Khakha

32. Similarly, the role of the petitioner Prateeksha Khakha, as emerging from the record, is that the prosecutrix, in her supplementary statement dated 17.08.2023, has categorically stated



that Prateeksha was made aware of the sexual assault after the very first incident. It is further alleged that Prateeksha too inspected the swelling on the victim's private parts, and that repeated incidents were informed to her. However, she, like her brother and mother, neither took any steps to report the matter nor to secure the safety of the victim. As rightly noted by the Sessions Court, such statements given by the victim, at the stage of framing of charge, are sufficient to constitute a *prima facie* case under Section 21 against the present petitioner.

(iv) No Statutory Exception to Non-reporting under Section 21

33. It is further material to note that Section 21 of the POCSO Act does not carve out any exception based on belief, motive, or relationship with the main accused. Once knowledge is attributed to a person of the commission of a sexual offence against a child, the legal obligation to report becomes mandatory. The argument advanced on behalf of the petitioners that they did not believe the version of the prosecutrix or had no motive to conceal is not sufficient to exculpate them from the statutory mandate of reporting.

34. This Court is mindful that while constitutional courts in exceptional cases may discharge an accused under Section 21 based on compelling social or psychological factors – as seen in *Mother X of Victim A v. State of NCT of Delhi & Anr.*: 2025:DHC: 2746, where this Bench discharged a mother who initially did not report the crime due to being a victim of domestic abuse herself and who later



herself took her daughter to the police and had initially been cited as a witness by the police – it is to be underlined that the facts in the present case do not warrant such leniency. Unlike in that case, the petitioners herein have allegedly been aware for a considerable period of time but have neither acted in the interest of the child nor approached the authorities at any stage.

35. Whether any exception ought to be carved out from the rigours of Section 21 of the POCSO Act is a matter that falls within the exclusive domain of the legislature. It is not for the Courts to dilute the mandatory nature of the reporting obligation by introducing subjective elements such as the personal belief or disbelief, relationship with the accused, or perceived credibility of the victim. The provision, as it stands, reflects a clear legislative intent to impose an absolute duty to report offences against children, recognizing the heightened vulnerability of victims and the need for prompt legal intervention. Courts may, as noted above, in exceptional and compelling circumstances, evaluate the broader social and psychological context while adjudicating individual culpability; however, such judicial discretion is to be exercised with great caution, on the basis of peculiar facts of a case, and cannot override or rewrite the clear mandate of the statute.

36. In fact, the conduct attributed to the petitioners, including facilitating abortion, ignoring disclosures by the child, and persuading others not to intervene, is of a nature that aggravates the concealment rather than reflects any mitigating circumstance. At this



stage, the allegations made by the victim are to be taken at face value, and the test to be applied is only whether a *prima facie* case is made out, not whether the charge will ultimately be proved.

37. In light of the above discussion, this Court finds no infirmity in the conclusion drawn by the Sessions Court that a *prima facie* case under Section 21 of the POCSO Act is made out against accused Seema Rani Khakha, Harsh Prateek Khakha, and Prateeksha Khakha. The material available on record, including the categorical statements of the prosecutrix and the surrounding circumstances, sufficiently indicate that the said accused persons were aware of the commission of the offence and failed to report the same to the concerned authorities. Accordingly, there is no ground made out for interference with the impugned order framing charge under Section 21 of the POCSO Act against them.

38. The material on record, including the statements of the victim and the prosecution's case, disclose a *prima facie* case of non-reporting by all three accused persons.

Examining the charges against accused Seema Rani Khakha

39. The petitioner Seema Rani Khakha has been charged for commission of offence of abetment of rape (*Sections 376(2)(f) and 376(3) – read with Section 109 of IPC*) and abetment of penetrative sexual assault (*Section 6 – read with Section 21 of POCSO Act*). She has further been charged for commission of offence of causing miscarriage without woman's consent (*Section 313 of IPC*) and



causing disappearance of evidence (*Section 201 of IPC*).

40. Insofar as the offence punishable under Section 313 and 201 of IPC is concerned, the learned Sessions Court has observed as under:

“...the material available on record suggests that the alleged act of testing of the pregnancy of the victim and thereafter, its forcible termination by making the victim consume abortion pills was only an individual act of accused Seema Rani Khakha. However, in view of categorical allegations leveled against accused Seema Rani Khakha to that effect, a prima facie case for commission of offence u/s 313 IPC as well as Sec.201 IPC is also sufficiently made out against accused Seema Rani Khakha.”

41. The victim in the present case has specifically alleged that the petitioner Seema had instructed her son, Harsh, to bring a pregnancy test kit and she had thereafter administered abortion pills to her. Thus, at this stage, there exists no reason to discharge the petitioner Seema in respect of the said offences. The veracity of these allegations and whether the prosecution is able to prove its case beyond reasonable doubt are matters to be considered at the stage of trial.

42. However, insofar as the charges relating to the commission of the offences of abetment of rape and abetment of penetrative sexual assault are concerned, this Court is unable to concur with the conclusion arrived at by the learned Sessions Court.

43. A perusal of the FIR reveals that the victim had alleged she was last sexually assaulted in January 2021, following which she missed her menstrual cycle and discovered that she was pregnant. It



was only thereafter that she informed the petitioner Seema Rani Khakha about the incident. From the material on record, it is evident that this was the first occasion when the victim disclosed any instance of sexual assault to the petitioner. There is no allegation in any of the statements to suggest that any act of sexual assault occurred after this particular incident.

44. The ‘abetment of a thing’ has been defined in IPC as under:

“107. Abetment of a thing.—A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing

to be done, is said to instigate the doing of that thing.”

45. In light of the above statutory definition under Section 107 of the IPC, this Court is of the considered view that the material on record does not disclose any circumstances which could prima facie satisfy any of the three limbs of abetment as defined therein. There is no material to suggest that the petitioner Seema had instigated the co-accused Premodya to commit the alleged offence of rape or penetrative sexual assault; nor is there any evidence of her engaging in any conspiracy with him for the commission of the said offence. Furthermore, even the third limb, i.e., intentionally aiding by an act



or illegal omission, is not attracted in the present case.

46. The FIR and the victim's statement show that the first disclosure made by the victim to the petitioner Seema was only after the alleged final act of sexual assault, when the victim missed her menstrual cycle and suspected she was pregnant. There is no allegation or indication in the statements that the petitioner was aware of, or had facilitated, any act of sexual assault prior to this disclosure. Thus, in the absence of any wilful act, instigation, conspiracy, or active aid on part of the petitioner before or during the commission of the alleged offence, the essential ingredients of abetment under Section 107 of IPC, and similarly under Section 17 of POCSO Act are clearly not made out. Accordingly, this Court finds no ground to frame charges against the petitioner Seema Rani Khakha for abetment of rape or penetrative sexual assault.

The Decision

47. In view of the foregoing discussion, the impugned orders dated 28.09.2024 and 04.10.2024 are upheld – to the extent they frame charges against (i) the petitioner Premodya Khakha for offence under Sections 376(2)(f), 376(3), 323, and 354 of IPC and Sections 6/8 of POCSO Act; (ii) the petitioners Harsh Prateek Khakha and Prateeksha Khakha for offence under Section 21 of the POCSO Act; and (iii) the petitioner Seema Rani Khakha for offence under Sections 313/201 of IPC and Section 21 of POCSO Act.

48. However, the impugned orders, to the extent – they frame



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charges against the petitioner Seema Rani Khakha for offence under Sections 376(2)(f) and 376(3) read with Section 109 of IPC and Section 6 read with 17 of POCSO Act – are set aside.

49. In above terms, the present petitions are disposed of.

50. It is clarified that nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

51. The judgment be uploaded on the website forthwith.

DR. SWARANA KANTA SHARMA, J

JULY 15, 2025/zp

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