NEUTRAL CITATION
2025:GUJHC:54132

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 18068 of 2025

==========

[redacted]

Versus

STATE OF GUJARAT & ANR.

==========

Appearance:
MR AFTABHUSEN ANSARI(5320) for the Applicant(s) No. 1
MR RONAK RAVAL APP for the Respondent(s) No. 1

==========

CORAM:**HONOURABLE MR. JUSTICE NIRZAR S. DESAI**

Date : 08/09/2025

ORAL ORDER

1. The petitioner, an advocate by profession has filed this petition, whereby after behaving absolutely irresponsibly as a professional as well as a human, has approached this Court seeking quashing of an FIR, that too when it was registered against the conduct of the advocate herself in respect of disclosing the name of a victim by giving a media bite.

2. What is more glaring is that the present applicant herself is a lady advocate, and when she could not protect the dignity, reputation, and privacy of a minor victim of an offence under the POCSO Act, she, despite being a woman, prima facie appears to have placed her professional interests and publicity above and ahead the interest of the minor victim.

NEUTRAL CITATION
2025:GUJHC:54132

3. In this background, I may now state the facts of the petition.

3.1. The present applicant is a lady lawyer practicing at [redacted] and [redacted]. According to the learned advocate for the applicant, she has been in practice for only six years and had given shelter to the victim of an offence registered under the POCSO Act. An FIR came to be registered on 30th July, 2025 by one Mr. [redacted], the father of the victim girl. As per the FIR, the daughter of the complainant, who is the victim of an offence under the POCSO Act, had earlier lodged an FIR against the accused person, who subsequently committed suicide, for which another FIR was registered at [redacted] Taluka Police Station. In that case, the daughter of the complainant was shown as an accused and was sent to the [redacted] Observation Home pursuant to an order passed by the Juvenile Justice Board, [redacted]. Thereafter, upon her release on bail, she was taken to the residence of the complainant along with his wife. Subsequently, the wife of the complainant and the victim girl both spoke with the present applicant and then went to [redacted] to stay with her. About twenty days prior to the registration of the present offence, the complainant, while travelling from [redacted] towards [redacted] and upon reaching [redacted] Toll Plaza, came to know that the

NEUTRAL CITATION
2025:GUJHC:54132

present applicant had given a media bite to news channels disclosing the name of the victim, who happens to be his daughter. Not only that, but the present applicant also asked the victim girl to give a media bite and recorded a video of her. Upon knowing that, when the complainant checked up about the veracity of above in his mobile, the complainant found that the present applicant, along with his wife and daughter, were sitting together in a car giving a media bite, wherein the present applicant was heard disclosing the name of the victim girl, and the victim girl herself was also seen giving media bites on social media.

3.2. Therefore, the FIR came to be registered on the allegation that, although the present applicant is an advocate and was aware that the victim girl was a minor under the POCSO Act, and despite that she asked the victim to give a media bite on social media. As the said video went viral, the identity of the complainant's daughter was disclosed, causing great damage to the reputation of the complainant's family. It is further alleged that the present applicant compelled the minor victim girl to give a media bite on social media, and hence, the FIR was registered under Section 23(4) of the POCSO Act and Section 74(3) of the Juvenile Justice Act.

NEUTRAL CITATION
2025:GUJHC:54132

4. It is this FIR which is the subject matter of challenge, and the applicant has filed the present petition seeking its quashing.

5. At the outset, a further affidavit was tendered by the learned advocate for the applicant, and the same has been taken on record.

6. Learned advocate Mr.Ansari has made following submissions;

6.1. That Section 23 (4) of POCSO Act is in respect of procedure for media and Section 23 (4) provides for punishment up to 6 months which may extend up to 1 year but Section 23 itself would be applicable only to the media and not to any other person except media persons including advocates and therefore, that FIR registered under Section 23 (4) of POCSO Act itself is misconceived and the present applicant could not have been booked under the apportioned section. For ready reference, the said provision is reproduced hereinbelow:

'Whoever contravenes the provisions of sub-section (1) or sub-section (2) shall be liable to be punished with imprisonment of either description for a period which shall not be less than six months but which may extend to one year or with fine or with

NEUTRAL CITATION
2025:GUJHC:54132

both."

6.2. According to learned Advocate Mr.Ansari, Section 74(3) of the Juvenile Justice Act is in respect of prohibition on disclosure of identity of children which provides for a punishment which may extend to a term of 6 months or fine which may extend to 2 lakh rupees or both. According to Learned advocate, the offence in question is a non-cognizable offence and therefore, considering the nature of punishment which is maximum may extend up to a period of 1 year. The registration of FIR against a present applicant who is a practicing advocate is absolutely misconceived. For ready reference the said provisions reproduced hereinbelow;

" Section 74(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015, states that any person contravening the provisions of Section 74(1) will be punished with imprisonment for a term that may extend to six months, a fine that may extend to two lakh rupees, or both. Section 74(1) prohibits the disclosure of a child's identity in any manner through print, broadcast, or media in relation to any inquiry, investigation, or judicial procedure concerning a child in conflict with the law or a child in need of care and protection".

6.3. Learned advocate for the applicant further submitted that the act was an inadvertent mistake on the part of the present applicant, and therefore, considering the fact that she has been practicing as an advocate for six years only, she may be

NEUTRAL CITATION
2025:GUJHC:54132

pardoned.

6.4. According to the learned advocate for the applicant, Section 42A of the POCSO Act provides that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force, and in case of any inconsistency, the provisions of the Act shall have an overriding effect to the extent of such inconsistency. However, according to the learned advocate's interpretation, the aforesaid section implies that the provisions of the Cr.P.C or BNSS would apply in addition to the provisions of the POCSO Act. Therefore, it is submitted that the offence in question can be treated as non-cognizable, and consequently, the FIR ought not to have been registered against the present applicant.

6.5. Learned advocate for the applicant further submitted that, as per the ratio laid down by the ***Honourable Supreme Court in State of Haryana v. Bajanlal and others, reported in (1992) Supp. SCC 335***, in the case of a non-cognizable offence, no FIR can be registered. Therefore, the registration of the FIR itself is impermissible. Consequently, the FIR registered against the present applicant is erroneous, cannot stand even for a while and is required to be quashed and set aside.

NEUTRAL CITATION
2025:GUJHC:54132

6.6. According to the learned advocate, the present applicant happens to be the advocate of the victim child. Therefore, as per Section 40 of the POCSO Act, the child enjoys the right to mandatory legal assistance from a legal expert, which was provided by the present applicant. Therefore, if the rights is flowing from the provisions of the Act, the bona fides of the present applicant would not have been questioned and no FIR could have been registered against the present applicant.

6.7. According to learned Advocate, the present applicant is made a scapegoat as the father of the victim girl has chosen to be by the side of accused person who had committed suicide whereas the mother is by the side of victim girl and present applicant and therefore, the present applicant had given shelter to the mother of the victim and victim herself. The father of the victim girl after taking side of the accused persons applied for an application for cancellation of bail after the victim girl was granted bail and therefore, now she is sent to jail again which would show the conduct of the father which according to learned advocate, was suffering from the vice of mala fides and because of that mala fides intention of father, the present applicant is made to suffer on account of the FIR registered by father against the present applicant.

NEUTRAL CITATION
2025:GUJHC:54132

6.8. Then Learned Advocate for the applicant relied upon the affidavit filed by the mother of the victim girl produced at page No.94 which is actually a photo copy purportedly seems to have been filed in some proceedings. However, the photocopy of the affidavit also does not bare the number of the proceedings nor the date of affidavit and the said affidavit according to the learned advocate, indicates that the interview was given upon a free will of the mother and the victim girl keeping in mind the safety and well-being of the victim girl. However, despite the Court asking for a certified copy of the aforesaid affidavit, **the learned advocate for the applicant could not produce the certified copy of the affidavit, which forms part of the record placed on record by way of a further affidavit tendered by Mr. Ansari just before he started making submissions.**

6.9. According to Mr. Ansari, it is the responsibility of media to blur the name of victim and the media has failed in performing their duty but looking to the nature of language of Section 23 of the POCSO Act which relates to responsibility of media only, an advocate cannot be held liable or responsible for an act of disclosing the name of victim of an offence against children.

NEUTRAL CITATION
2025:GUJHC:54132

6.10. The sum and substance of argument of Mr. Ansari was that all other agencies and persons have failed in performing their duty and the present applicant cannot be held responsible or liable for any lapse or any offence committed by her, knowingly or unknowingly, being an advocate. At this juncture, this Court, while recording this submission, once again asked Mr. Ansari that whether the submission of Mr. Ansari has rightly been recorded or not and Mr. Ansari has responded in affirmative and that is why this submission is recorded.

7. Except the above submissions, no other submissions were made by learned advocate Mr. Ansari.

8. Learned APP, Mr. Ronak Raval, appearing for the State, vehemently opposed the petition and submitted that the present applicant is a practicing advocate and, more particularly, a lady advocate and therefore, it was expected of her to maintain the dignity, decorum, and privacy of the victim girl. The present applicant, merely to extract publicity and media coverage, has disclosed the name of the victim girl and thereby acted in sheer irresponsible manner. Therefore, when the FIR has been recently registered against the present

NEUTRAL CITATION
2025:GUJHC:54132

applicant and the offence is under investigation, merely citing certain sections which, according to the applicant, would be applicable only to media persons, cannot be relied upon at this juncture. Once the investigation is concluded, there is every possibility that either the present applicant may be absolved of the allegations leveled against her or that some additional sections may also be invoked. In either case, an appropriate report in favour of the present applicant may be filed, or, if upon investigation it is found that she is involved in the offence in question, a charge sheet would be filed against her under appropriate sections of the relevant Acts. However, at this stage, when the investigation is still in progress, merely because the present applicant is an advocate, no relief may be granted to her.

8.1. Learned APP further submitted that when the petition is filed by a practicing advocate, merely because the present applicant is an advocate cannot be a ground to stay the proceedings or to grant any relief to her. Being an advocate, it was the duty of the present applicant to act more responsibly, and it is expected from a practicing advocate, more particularly a lady advocate, to protect the modesty, reputation, and privacy of a victim of an offence under the POCSO Act. But in the instant case, as the matter is still under

NEUTRAL CITATION
2025:GUJHC:54132

investigation, if the FIR itself is considered, it discloses the prima facie commission of an offence.

8.2. According to the learned APP, the FIR categorically states that the present applicant not only disclosed the identity of the victim girl but also instigated and forced her to give a media bite, which revealed her identity on social media. It is further alleged in the FIR that such an act has caused great damage to the reputation of the complainant's family, and therefore, a prima facie offence is made out.

8.3. As far as the submission regarding whether, in respect of a non-cognizable offence, an FIR can be registered under the POCSO Act and whether such FIR can be investigated or not is concerned, the learned APP drew the attention of this Court to the order passed by the learned 3rd Additional Sessions Judge and Special POCSO Court, [redacted], on 29th July, 2025. The learned APP pointed out that the concerned Police Sub-Inspector, after receiving the complaint on 17th July, 2025, submitted a report on 18th July, 2025 seeking permission of the Court to investigate a non-cognizable offence. The concerned Court, vide order dated 29th July, 2025, observed that, having regard to the provisions of Section 19 and 20 of the POCSO Act, which provides for mandatory reporting of

NEUTRAL CITATION
2025:GUJHC:54132

offence and the obligation of media, studio and photographic facilities to report cases, coupled with the fact that the non-reporting of commission of offence is punishable under Section 21 of the POCSO Act". The special Court prima facie formed an opinion that the offences under the POCSO Act would be cognizable offence and hence there is no requirement for seeking permission of the Court as envisaged under Section 174 of BNSS and therefore the Court disposed of the report by making suitable observations. According to the learned APP, pursuant to the aforesaid order passed by the concerned Court on 29th July, 2025, the offence was registered on 30th July, 2025, and therefore, the submission of learned advocate Mr. Ansari that the offence being a non-cognizable offence no FIR could have been registered or investigated is baseless, as the aforesaid order has not been challenged by the present applicant. Therefore, according to the learned APP, a prima facie offence is made out, the investigation is in progress, and hence the petition is required to be dismissed.

9. I have heard Learned Advocate Mr.Ansari for the applicant and Learned APP Mr. Ronak Raval for state.

10. It is really unfortunate that an incident, in terms of a POCSO victim who later on became an accused after the

NEUTRAL CITATION
2025:GUJHC:54132

accused person in the POCSO case committed suicide, has now become the subject matter of a tussle of ego between her parents, as can be seen from the submissions made by the learned advocate for the applicant and from the FIR registered against the present applicant.

11. The present applicant happens to be a lady advocate practicing in the courts at [redacted] and [redacted] and therefore, it is expected of her to know the law inside out. In the instant case, it prima facie appears, as even the learned advocate for the applicant admitted during submissions, that there is no denial of the fact that the present applicant mentioned the name of the victim girl while giving a media bite on social media, and that even the victim girl, accompanied by the advocate, had also given a media bite on social media. It is alleged that the same was done under the influence of the present applicant, and the presence of the present applicant at the time when the media bite was given was admitted by learned advocate Mr. Ansari, who stated that this was an inadvertent mistake and therefore the same may be pardoned.

12. The question is not about pardoning the mistake of the present applicant. The question is, when a professional, merely to extract publicity, crosses the line drawn by law, whether

NEUTRAL CITATION
2025:GUJHC:54132

such an act can be considered as an inadvertent mistake or not. The present applicant, as it prima facie appears, has not only disclosed the name of the victim girl while giving a media bite on social media but also, when the victim girl was accompanying her, influenced the victim girl to give a media bite on social media. Therefore, a thorough investigation into the offence in question is required, as the provisions of the Act are intended to protect the privacy and modesty of a victim of an offence under the POCSO Act or the Juvenile Justice Act, as the case may be, and there is thus an inbuilt mechanism in the Act itself to protect the identity of the victim. Being an advocate, it was expected of the present applicant to be well-versed with the legal provisions and the sections of the relevant Acts, and not to act absolutely irrationally or run after publicity by giving media bites on social media, that too by disclosing the name of the victim girl. Whether the aforesaid act was done with a bona fide intention, with a malafide intention, with a view to commit an offence, or it was an inadvertent mistake on the part of the present applicant, is a subject matter of investigation or trial as the stage may be, but a prima facie reading of the FIR constitutes an offence, as can be seen from the language of the FIR itself.

13. As far as the submission of the learned advocate for the

NEUTRAL CITATION
2025:GUJHC:54132

applicant regarding whether, in respect of a non-cognizable offence, an FIR can be registered or not, or whether the same can be investigated upon registration of the FIR or not, is concerned, the matter was already the subject of a report submitted by the Police Sub-Inspector upon receipt of a complaint for registration of FIR by the complainant on 17-07-2025. On the very next day, the Investigating Officer submitted a report before the Special Court seeking permission to investigate the offence in question, and the learned 3rd Additional Sessions Judge and Special POCSO Court, [redacted], vide order dated 29-07-2025, made the following observations in paragraphs 4 to 8;

> "4. Having regard to these submission and taking into account the nature of accusation, more particularly having regard to the fact that the offence punishable under Section 23 of the POCSO act is also included in complaint it would be necessary to consider whether the said offence punishable under Sec.23 of PoCSO Act is cognizable or not.
>
> 5. In the case titled **Gangadhar Narayan Nayak @ Gangadhar Hiregutti v. State of Karnataka**, the Hon'ble Apex Court gave split verdict on the question as to

NEUTRAL CITATION
2025:GUJHC:54132

whether the offence punishable under Sec.23 of POCSO Act relating to disclosure of identity of sexual offence under PoCSO Act is cognizable. It is evident that the Hon'ble Apex Court delivered split verdict and the issue has been referred to Larger Bench which is yet to be decided. However, it would be also relevant to refer the decision of Hon'ble Kerala High Court, wherein after the split verdict given by the Hon'ble Apex Court, in the case of Gangadhar Narayan Nayak Gandhar Hiregutti Vs. State of Kerala, the said issue was considered by the Hon'ble Kerala High Court in the case titled **Sunil Methew Vs. State of Kerala** (decided on 30th January 2025). the observations of Hon'ble Kerala High Court in para 15 reads as this:-

Coming back to the first question, whether offence under Section 23 of the POCSO Act is cognizable or non cognizable and also whether investigation of the offence under Section 23 of the POCSO Act would require the procedure contemplated under Section 155(2) of Cr.P.C. in the decision reported in [2022 KHC 6230: 2022 (2) KLT OnLine 1004: 2022 (12) SCC 72: 2022 SCC OnLine SC 337). Gangadhar Narayan Nayak Gangadhar Hiregutti v. State of Karnataka, 2 Judges of the Apex Court delivered split verdict and accordingly the matter was referred to a larger Bench. Thus the decision of the larger Bench in this regard would become final as regards to this question. If the view expressed by the Hon'ble Mrs.Justice J.K.Maheswari is accepted, the entire

NEUTRAL CITATION
2025:GUJHC:54132

proceedings herein is liable to be quashed. However, if the view taken by the Honourable Mrs. Justice Indira Banerjee is taken into consideration, the proceedings herein could not be quashed. Anyhow, a logical conclusion of this lis is necessary. Therefore, it is necessary to decide the case based on available materials after addressing the provisions of law. As pointed out by the learned ADGP, as per Section 33, the Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts. That apart, Section 42A of the Act provides as under:-

"The Act not in derogation of any other law: The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."

Thus in case of inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency. It is true that as provided under Section 155(2) of Cr.P.C, no police officer shall investigate a non-cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial. But the said provision would apply to specifically mentioned non-cognizable offences. In the POCSO Act, there is no classification as to cognizable or non- cognizable offences and reading Section 33, there is no specific bar for the police officer to investigate a crime Suo motu, where Section 155(2) of Cr.P.C. has no application. In such view of the matter, I

NEUTRAL CITATION
2025:GUJHC:54132

am of the view that the offence punishable under Section 23 of the POCSO Act to be held as cognizable read along with Sections 33 and 42A of the POCSO Act. Therefore, on the said ground also, the quashment prayer would not succeed.

6. It is thus evident from the above referred observations of Hon'ble Kerala High Court that as per Sec.33 of POCSO Act, Special Court is empowered to take cognizance of any offence without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence, or upon a police report of such facts, the Court may take cognizance. Further, Sec.42-A of POCSO Act provides that Act not in derogation of any other law and that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force, and in case of any inconsistency, the provisions of PoCSO Act shall have overriding effect on the provisions of any such law to the extent of such inconsistency.

7. Thus, having regard to the above referred decision of Hon'ble Kerala High Court and taking into account the fact that the question of permitting investigation in terms of Sec. 174(2) of BNSS would arise only in cases where

NEUTRAL CITATION
2025:GUJHC:54132

the accusation pertains to non-cognizable offence and having regard to Sec. 23 of PoCSO Act, this Court is of the view that there is no requirement of seeking any permission under Sec. 1174(2) of BNSS.

8. Further, having regard to the provisions of Sec. 19 and 20 which provides for mandatory reporting of offence and the obligation of media, studio and photographic facilities to report cases, coupled with the fact that the non-reporting of commission of offence is punishable under Sec.21 of the POCSO Act; this Court is of the view that all the offences under POCSO Act would be cognizable offences and hence, there is no requirement for seeking permission of this Court as envisaged in Sec. 174 of BNSS Act and therefore in light of the above discussion, present report stands disposed of accordingly".

14. The aforesaid observations made by the Special Court specifically provide that, at this stage, considering the observations made in the order, and as the order was passed after taking into consideration the orders of the Hon'ble Supreme Court, the pendency of the issue before the larger bench of the Hon'ble Supreme Court, and the view subsequently taken by the Kerala High Court, and more

NEUTRAL CITATION
2025:GUJHC:54132

particularly when the aforesaid report has never been the subject matter of any challenge, I do not see any reason to show disagreement in respect of the said order, which is not even under challenge before this Court, and when the investigation has taken place pursuant to the aforesaid order, the submission of the learned advocate for the applicant that the registration of an FIR in respect of a non-cognizable offence cannot be considered at this stage, when the investigation is ongoing and the order dated 29-07-2025 has never been challenged till date.

15. Considering the above observations, as well as the fact that the registration of the FIR and a bare reading of the same prima facie disclose an offence, merely because the present applicant is an advocate, the investigation in respect of the offence in question cannot be stayed. Accordingly, the present petition is required to be dismissed, and the same is dismissed.

(NIRZAR S. DESAI,J)

BHAVIN MEHTA