

**CWP-5961-2025 (O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****CWP-5961-2025 ((O&M)**

Date of decision: 20.08.2025

BHUWAN RAM AND OTHERS

...Petitioners

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Argued by: Mr. APS Shergill, Advocate and
Ms. Shagun Goyal, Advocate
for the petitioners.

Ms. Aakanksha Gupta, AAG, Punjab.

Mr. Maheshinder Singh Sidhu,
Addl. Standing Counsel, U.T. Chandigarh and
Mr. Deepak Malhotra,
Addl. Standing Counsel for U.T. Chandigarh.

KIRTI SINGH, J. (ORAL)

1. By way of the present civil writ petition under Article 226/227 of Constitution of India prayer is made for quashing of FIR No.64, dated 29.07.2022, registered at Police Station Nayagaon, District SAS Nagar (Mohali) for offence under Section 376(2)(n) of IPC and Section 6 of Prevention of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The facts in brief are that petitioner No.3 was in an incestuous relationship with her uncle (chacha) but petitioner No.3 had not made any complaint regarding the same and it was on a chance discovery that her pregnancy was discovered at GMSH, Sector-16, Chandigarh. Thereafter, the

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hospital authorities informed Chandigarh Child and Women Helpline, who immediately referred the matter to Police Station at Sector-11 on the basis of which the present FIR was registered. Petitioner No.3 was kept in the custody of State at Nari Niketan. The facts of the FIR are enumerated as under:-

“Copy ZERO FIR ZERO FIR Dated 21-07-2022 u/s 376(2) N IPC & 06 POCSO ACT Statement of Divya Arya D/O Bhuwan ram R/O #713 Sec 11 CHD. AGE 18 YEARS stated that I am residing at the above mentioned address along with my parents at BERVANT QUARTER and I have studying in 12TH CLASS. And my uncle Sunil S/O Khush Ram is residing with his wife and children at Village Kansal and I used to go to Kansal at his place along with my mother and father. I used to play with children there and then my mom and dad used to come to their house in Chandigarh and I used to stay at my uncle's house. After sleeping of their children used make physical relations with me, I refused but he didn't agree and then I got pregnant by having sexual relations with my uncle, and I was went to at one Kothi for household work and they asked me to bring medical fitness certificate. I came to Sec-16 CHD G.M.S.H along with my brother, who brought me for medical on Dt 19/07/2022, then doctor told me to get UPT Test done in Gynae Ward, which then when my UPT Test was done at that time I became pregnant and then I told this to my mother who then today my mother came to Hospital GMSH Sec-16 that my uncle had sexual relations with me due to which I became pregnant. Action should be taken against my uncle. Statement written and heard, and found correct. DOB 12.11.04 Mob.62808-22283 Attested by SI Kiranta 1289/CHD”

Submissions made by learned counsel for the petitioners

3. Learned counsel for the petitioners has argued that no doubt there was an incestuous relation of petitioner No.3 with her uncle (chacha), however, the alleged victim was above 18 years of age and had not made any complaint. As per Section 2(d) of the POCSO Act, “a child is any



person who is below eighteen years of age”. Even otherwise, the statement of petitioner No.3 recorded under Section 164 Cr.P.C. (Annexure P-9) speaks volume about the manner in which the present FIR was got registered, violating the rights of the complainant by forcing her to make a complaint and as an end result it violated all the rights guaranteed to the complainant under the rules of the POCSO Act and other relevant provisions of the IPC relating to rape.

3.1. The FIR was registered on the basis of the alleged statement of petitioner No.3 which was recorded after obtaining signatures on blank piece of paper and was under the provocation of members of Child and Women Helpline Chandigarh, despite the fact that petitioner No.3 including petitioner Nos.1 and 2 did not want to register the FIR as it was an incestuous relationship between petitioner No.3 and her real uncle (chacha), and so petitioners did not want to make the matter to be public. Lastly, it has been argued that initiation of criminal proceedings against wishes of petitioner No.3 who was above 18 years of age at the time of the alleged incident, violates the principles of justice and right of personal liberty under Article 21 of the Constitution of India.

Submissions of learned State counsel

4. Per contra, learned State counsel has vehemently opposed the prayer by relying upon the reply filed by way of affidavit of Mr. Gurpreet Singh Bains, PPS, Deputy Superintendent of Police, Sub Division City-1, District SAS Nagar and submits that one letter bearing No. 5858/UT/HAC dated 25.07.2022 along with other relevant documents including one Zero FIR dated 21.07.2022 under Section 376(2)(n) IPC and Section 6 POCSO Act, registered at Police Station Sector 11, Chandigarh, along with the



statement of prosecutrix was received in the office of SSP, SAS Nagar from the office of SSP, Chandigarh for taking appropriate action in the said case alleging the offences of the said FIR to have been committed within the jurisdiction of District SAS Nagar and it was also informed that at the time when the alleged offences were committed, the prosecutrix was a minor.

4.1. It is further submitted that it has been alleged by the prosecutrix that her uncle resides with his wife and children in village Kansal, and she used to visit his residence along with her mother and father. During these visits, when her parents would return to their house in Chandigarh, and once the children and the wife of her uncle used to fall asleep, her uncle used to forcibly develop physical relations with her against her wishes. It has been further alleged that as a result of these acts, the prosecutrix became pregnant. Subsequently, she was sent to work at a house (Kothi) for household tasks, where she was asked to obtain a medical fitness certificate. Thereafter, on 19.07.2022, she visited GMSH, Sector 16, Chandigarh along with her brother, who had accompanied her for the medical examination. Upon consultation, the doctor advised her to undergo a UPT test in the Gynecology Ward and when the test was conducted, she was found to be pregnant. It has been further alleged that upon learning about her pregnancy, she informed her mother, who subsequently took her to GMSH, Sector-16, Chandigarh for further medical assistance.

4.2. Consequently, case/FIR No. 64 dated 29.07.2022 under Section 376(2)(n) of IPC and Section 6 POCSO Act was registered at PS Nayagaon, District SAS Nagar against the accused-uncle of the prosecutrix.

4.3. Pursuant to the registration of the FIR, the investigation



commenced, in the course of which the spot was inspected, site plan was prepared and the statements of witnesses were recorded under Section 161 Cr.P.C. The accused was arrested on 29.07.2022, medico-legally examined at Civil Hospital, Kharar and his DNA and blood samples were collected by the doctor. The samples were subsequently taken into police possession and sent to CFSL, Sector 36-A, Chandigarh.

4.4. Thereafter, the accused was produced before the Ld. Court on 30.07.2022, and was sent to the judicial custody by the Ld. Court. The statement of the prosecutrix under Section 164 Cr.P.C was recorded before the Ld. Court of SDJM, Kharar, on 04.08.2022, wherein she did not support the case of the prosecution.

4.5. On 24.09.2022, the prosecutrix gave birth to a child at G.M.C.H. Sector-16, Chandigarh. Subsequently, both the prosecutrix and her minor child were medico-legally examined, and their DNA and blood samples were collected by the doctor. The samples were then taken into police possession and sent to CFSL, Sector 36-A, Chandigarh, the report of which revealed that the accused Sunil is the biological father of the prosecutrix's baby. The copy of the CFSL report is attached herewith as Annexure R-1 for the kind consideration of this Hon'ble Court.

5. As regards the averment made by the petitioners in the present petition that prosecutrix was 18 years old and not a minor at the time when the FIR was registered, learned State counsel submitted that prosecutrix's ultrasound report conducted at GMCH, Sector-16, Chandigarh, on 25.07.2022 reveals that she was approximately 18 years and 2-3 months old at that time. The report also confirms that she was approximately 6.5 to 7



months pregnant (29 weeks and 2 days \pm 1 week) on that date. This unequivocally establishes that at the time the accused Sunil forcibly engaged in sexual relations with her, she was a minor and under the law, any sexual act committed with a minor even with consent constitutes offence of rape.

6. It is further submitted that from the investigation conducted, the offence against the accused stood duly proved and accordingly, the report under Section 173 Cr.P.C was prepared and presented before the Ld. Court of competent jurisdiction on 16.12.2022. Taking cognizance of the offences, the Ld. Court framed charges against the accused vide order dated 31.08.2024. Out of the total 20 prosecution witnesses, 4 stand examined, and 2 have been partially examined.

7. It is further submitted that during trial, accused filed an application under Section 227 of Cr.P.C. for discharge as an accused in the present FIR but the same application was dismissed by the learned trial Court vide order dated 13.08.2024.

8. I have heard the rival submissions made by both the parties and perused the relevant records with their able assistance.

9. The legislature in its wisdom enacted the POCSO Act with the primary objective of safeguarding the rights of children and providing a robust legal framework for their protection against sexual offences, with paramount attention on prevention, detection, and prosecution of sexual offences, while ensuring that the best interests of the child remain paramount throughout the legal process. The intent behind the Act, the protective ambit of which is extended to all children under the age of 18 years, irrespective of gender, is firmly rooted in the recognition that children, by virtue of their

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tender age and developmental vulnerability, require special protection from sexual exploitation and abuse.

10. Reverting to the case in hand, a perusal of the case file reveals a very disturbing sequence of events in which petitioner No.3 who was a minor at the time of occurrence had been raped continuously by her real uncle (chacha). This fact accidentally came to the knowledge of the authorities when she visited GMSH, Sector-16, Chandigarh for procuring a medical fitness certificate upon which her UPT test was conducted and her pregnancy was revealed. As per the DNA report (Annexure R-1) the accused is the biological father of the child of prosecutrix.

11. In view of the foregoing discussion and in light of the serious allegations levelled against the accused, this Court does not deem it a fit case to quash the FIR registered against him.

12. Accordingly, the present petition stands dismissed.

August 20, 2025

Ithlesh

**(KIRTI SINGH)
JUDGE**

Whether speaking/reasoned:-	Yes/No
Whether reportable:	Yes/No