

IN THE SPECIAL COURT FOR PROTECTION OF CHILDREN FROM
SEXUAL OFFENCES ACT, 2012, AT FORT GR. BOMBAY

ORDER BELOW EXHIBIT-09 (DISCHARGE APPLICATION)

IN

SESSIONS CASE NO. 540 OF 2020

(CNR NO.:- MHCC02-008211-2020)

The State of Maharashtra,

(Through Cuffe Parade Police Station, Mumbai)

... Complainant

Versus

Hirana Shankar Walmiki

... Accused

Appearance :-

Ld. Special Public Prosecutor Mrs. Pranjali Joshi for Complainant.

Ld. Advocate Dr. Pradeepkumar Laloo Pardeshi for Accused.

CORAM :- HER HONOUR JUDGE,
A. S. WAIRAGADE,
The Designated Court under
Protection of Children from
Sexual Offences Act, 2012.
(COURT ROOM NO.33)

DATE :- 25th June, 2026

(O R D E R)

(Dictated and pronounced in the open Court)

1. The Accused has preferred this application under section 227 of Criminal Procedure Code for discharge. The say of prosecution was called and it is filed vide Exhibit-11.

2. Heard learned Advocate Dr. Pradeepkumar Laloo Pardeshi for Accused. Perused the say of I.O. vide Exhibit-11, heard learned Ld. Special Public Prosecutor Mrs. Pranjali Joshi for Complainant/State. Also perused the record.

3. It is submitted on behalf of the accused that the informant is legally wedded wife of the accused. The marriage was love marriage and at the time of marriage, the informant was 27 years old. As per exception 2 of Section 375 of the IPC, sexual intercourse or sexual acts by a man with his own wife, the wife not being under the age of 18 years is not rape, therefore the offence of rape and unnatural sex is not attracted to the present accused. The medical examination report clearly shows that there were no injuries on the genitals of the informant nor there was any evidence of penetrative assault, therefore case of informant is falsified. All the witnesses in the present matter are interested witnesses. The informant herself wanted to re-marry and as per the knowledge of accused, she is already married to some other person and having two children with him. The photographs about the same are annexed on record. At the behest of interested witnesses, this false case is lodged. There is delay in lodging report which also creates doubt in the version of informant. The F.I.R. does not bear the signature of informant. This also support the case of accused that the case is lodged the behest of interested witnesses. The informant is drug addict and her other husband is drug peddler. Contradictory statement are given by the informant. The statements of witnesses is that of hearsay witnesses and therefore can not be acted upon. The medical report dated 08-06-2020 shows that the informant was suffering from Corona

virus and with a vengeful attitude, the present F.I.R. is lodged. The accused had warned informed on several occasions regarding her affair and marriage with one Ganesh Rajput. On the date of incident accused refused to attend the birthday party, due to the pandemic. However, the informant insisted in attending the party. Three-Four times in six months passed lodging the F.I.R. similar kind of incident were committed by the informant. However, if at all the incident had took place then naturally the informant would have complained about it. The offences of rape and unnatural sex are not made out from the material on record. There is no material against the accused, therefore prayed for discharging the accused.

4. The Ld. Advocate for accused has placed reliance upon the case in ***Gorakhnath Sharma S/o Devcharan Sharma Vs. State of Chhattisgarh*** (CRA No.891 of 2019) where in it is held in “**Para no.16.** *Thus, it is quite vivid, that if the age of wife is not below age of 15 years then any sexual intercourse or sexual act by the husband with her wife cannot be termed as rape under the circumstances, as such absence of consent of wife for unnatural act loses its importance, therefore, this Court is of the considered opinion that the offence under Section 376 and 377 of the IPC against the appellant is not made out.*”

Perused the case law in its entirety.

5. Per contra this, the Ld. SPP submitted that the incident occurred in presence of 05 years old daughter and the forensic report shows that vegetable oil was found in Exhibit-04 which clearly supports the case of prosecution. The evidence is required in order to establish if

the case is falsely lodged or not. There is material to proceed against the accused and therefore prayed to reject the application.

6. Perused the record, it reveals that the report is given by the informant aged 25 years alleging that she is married with the accused and has 02 children from the wedlock. On 06-06-2020, at about 10:30 p.m. alongwith her husband, she had gone to the house of her foster sister. In the intervening night at about 00:30 hours, they returned home and at about 01:00 hours, her husband was drinking liquor, therefore she stopped him, but he started assaulting her and committed unnatural sex with her. The informant pushed him and stopped him from doing it. At that time the informant received call from her mother, however the accused did not allow to take it and committed unnatural sex with her by inserting rolling pin and oil bottle in her private parts. Therefore, the report was given.

7. In the present matter, admittedly the informant aged 25 years and the accused are married person, therefore as per the exception 2 given to Section 375 of IPC, then any sexual intercourse or sexual acts by the husband with her wife can not be termed as rape. Under the circumstances, as such absence of consent of wife for unnatural acts loses its importance as his held in the case of ***Gorakhnath Sharma*** cited Supra. The ratio lead down in the case of ***Gorakhnath Sharma*** is applicable in the present case. Prima-facie there is no material to proceed against the accused under Section 376(2)(f)(m), 377 and 323 of the IPC. Resultantly, I proceed to pass following order :-

ORDER

- 1) Application Exhibit-09 in Sessions Case No. 540 of 2020 is hereby allowed.
- 2) Accused namely **Hirana Shankar Walmiki** is discharged for the offences punishable under Sections 376(2)(f)(m), 377 and 323 of the Indian Penal Code.
- 3) Bail bonds of accused if any stands cancelled.
- 4) **The matter stands disposed off accordingly.**

Date :- 25-06-2026

(A. S. Wairagade)
Designated Special Judge
under POCSO Act,
Court Room No.33
City Civil & Sessions Court,
Greater Mumbai.

Date of Dictation : 25-06-2026
Date of Transcription : 25-06-2026
Date of signature : 25-06-2026

<u>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”</u>		
Upload Date	Upload Time	<u>Name of the Stenographer</u>
25-06-2026	03:56 p.m.	Mr. Jitesh Suresh Shinde, Stenographer (Grade-I)
Name of the Judge (With C.R. No.)		H.H.J. A. S. WAIRAGADE (COURT ROOM NO.33)
Date of Pronouncement of JUDGEMENT /ORDER		25-06-2026
JUDGEMENT /ORDER signed by P.O. on		25-06-2026
JUDGEMENT /ORDER uploaded on		25-06-2026