

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1995 of 2024

Sister Mercy @ Elizabeth Jose (Devasiya)

---- **Petitioner**

Versus

State of Chhattisgarh Through Station House Officer, (Complainant) P.S. Manipur, Ambikapur, District- Surguja (C.G.) Pin 497001

---- **Respondent**

(Cause-title taken from Case Information System)

For Petitioner : Mr. Devershi Thakur & Mr. Rajat Agrawal,
Advocates.
For Respondent/State : Mr. Kanwaljeet Singh Saini, Panel Lawyer.

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Ravindra Kumar Agrawal, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

29.07.2024

1. Heard Mr. Devershi Thakur along with Mr. Rajat Agrawal, learned counsel for the petitioner. Also heard Mr. Kanwaljeet Singh Saini, learned Panel Lawyer, appearing for the respondent/State.

2. The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS') has been filed by the petitioner

Crime No. 34/2024 registered by the Police of Police of Station Manipur, Ambikapur, District Surguja (C.G.), PIN: 497001, whereby an FIR was registered under Section 305 of the Indian Penal Code (IPC) (Annexure P/1).”

3. Learned counsel for the petitioner submits that the petitioner is a Christian 'Nun' working as a regular teacher in _____ in Ambikapur, Surguja District. An FIR has been lodged in PS Manipur, Ambikapur, District Surguja wherein she has been accused of allegedly abetting the suicide of a student, namely, _____, of _____ where she is working as a regular teacher. He also submits that the petitioner has moved an application for grant of regular bail before this Court and vide order dated 28.03.2024, this Court granted regular bail to the petitioner in MCRC No. 1877 of 2024, by looking to the allegation as mentioned in the suicidal note and statement of accompanying friend of deceased, namely _____

4. It is further submitted by the learned counsel for the petitioner that the deceased _____ was a student of class 6th of the said Convent School and she has been a student of the school since class KG-2. There had never been any complaint against the deceased student and neither had the student or parents of the student made any complaint of any misbehavior or harassment meted out to the student in the school to the

deceased, nor does she recognize her. It is also subject to noted down that class 4th is situated on second floor of the school building and Class 5th and 6th are situated in the first floor of the school building. Each floor of the school building is equipped with its own staff room and a set of about 20 individuals toilets accessible from a common passage.

5. Learned counsel for the petitioner states that on the day of incident, the deceased along with two of her classmates had not attended the last period of the school, which commenced at 2.00 p.m. and ended at 2.40 p.m. They had gone out of the classroom a few minutes before their teacher arrived and had gone to the toilets on the second floor, where class 4th is situated. The the present petitioner had taken the last class of class 4th students and she came out of the class room, after the time schedule of last class was over. While she was on her way to staff rooms, she saw some students peeping out of the toilets and rushing back into the toilet upon seeing her. She gone into passage where the toilets were located, when one of the student informed her that three students went to the toilets, including deceased and they had not come out. The petitioner went to the toilet and knocked at the door of the toilet and when the door was opened, she found three students therein. One of the student replied that they had gone inside to clean the soiled cloth of one of the student. He also states that the petitioner being not aware of the students identity, taken their identity card and subsequently, went to staff room, as the last class was over and only things which remain is last bell for heading toward home.

and taken her ID card as per the usual disciplinary procedure followed in the school. The petitioner never had any intention to abet the suicide of the student. The petitioner was merely performing her duties as a teacher to maintain discipline in the school. He also contended that the deceased student was found to have committed suicide on 06.02.2014 and a suicide note was allegedly recovered wherein the name of the petitioner was mentioned. However, the contents of the suicide note are not sufficient to establish the offence of abetment to suicide against the petitioner.

7. Learned counsel for the petitioner was arrested merely because her name was found in the suicide note of the deceased. She did not mention any reason for doing so in her suicide note recovered by the Police. The suicide note states that the accused/petitioner had taken away the ID cards of the deceased and two other students accompanying her. It was after the teacher had taken away the ID cards that the accompanying two students had informed her that the said teacher was 'dangerous' and that she would inform the parents of the deceased. It is after listening to them that the deceased student might have got scared because of which she committed suicide. It is amply clear from this statement in the suicide note that none of the acts of the petitioner had put the deceased into any predicament or anxiety and it is the result of her talk with her co-students and her own hyperactive imagination that she had put herself into a situation out of which death was the only solution.

8. It is further submitted by the learned counsel for the petitioner that the

absolutely innocent and has not committed any offence. She has been falsely accused of commission of the alleged offence. The petitioner is a Christian 'Nun', peace loving and dedicated to service of the society. She has chosen 'teaching' as her career. She has a good reputation in the school and in the society and by no stretch of imagination can she be accused of an offence like abetment of suicide of a student. He submits that she has been falsely implicated in the case and she had no intention or motive to abet the suicide of the deceased student. The petitioner is innocent and has no criminal antecedents. Due to the strict nature of the petitioner she is being targeted and being falsely accused by the respondent and the complainant. Any act done by the petitioner does not qualify the ingredients of the sections that are being framed against the petitioner. Furthermore, any proceeding that follows the charge-sheet is nothing, but an abuse to the process of law and the protective legislations are being abused and the repute of the petitioner is being dragged down in the mud because of the same. He also placed a reliance of the judgment of the Hon'ble Supreme Court in the matter of ***Geo Varghese vs. State of Rajasthan & Another***, reported in ***AIR 2021 SC 4764***.

9. On the other hand, learned State counsel opposes the prayer of quashing the impugned charge-sheet as well as FIR against the petitioner / accused and argued that the perusal of the material on record shows that the cognizable offence is made out against the petitioner / accused and the case is fixed for framing of charges on 30.08.2024. He further submits that

she went from the school to her house and thereafter, she committed suicide and left the suicide note.

10. We have heard learned counsel for the parties and perused the material available on record.

11. It is trite law that at the stage of quashing, only the material of the prosecution has to be seen and the Court cannot delve into the defence of the accused and then proceed to examine the matter on its merit by weighing the evidence so produced. The disputed questions of facts in the case cannot be adjudged and adjudicated at this stage while exercising powers under Section 528 of the BNSS and only the *prima facie* prosecution case has to be looked into as it is. Evidence needs to be led to substantiate the defence of the accused.

12. It is also evident that imposition of corporal punishment on the child is not in consonance with his right to life guaranteed by Article 21 of the Constitution of India. Right to life has been construed by the Courts widely. On a larger canvass right to life includes all that which gives meaning to life and makes it wholesome and worth living. It means something more than survival or animal existence. Right to life enshrined in Article 21 also embraces any aspect of life which makes it dignified. Article 21 in its expanded horizon confers medley of rights on the person including the following rights:- (1) A life of dignity (2) A life which ensures freedom from arbitrary and despotic control, torture and terror (3) Life protected against

the child to physical violence in school in the name of discipline or education. Child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. Subjecting the child to corporal punishment for reforming him cannot be part of education. As noted above, it causes incalculable harm to him, in his body and mind. In ***F.C. Mullin vs. Administrator, Union Territory of Delhi & Others***, reported in ***(1988) 1 SCC 608***, wherein the Hon'ble Supreme Court held that every limb or faculty through which life is enjoyed is protected by Article 21. This would include the faculties of thinking and feeling. Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the body, but that freedom is also violated when it scars the mind of the child and robs him of his dignity. Any act of violence which traumatises, terrorises a child, or adversely affects his faculties falls foul of Article 21 of the Constitution of India. In saying so we are also keeping in view the Convention on the Rights of the Child which in clear terms cast an obligation on the state party to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, maltreatment, torture, inhuman or degrading treatment, exploitation including sexual abuse while in the care of the parent, legal guardian or any other person who are in the care of the child. The signatory state is also obliged to protect the dignity of the child. We have relied upon the Convention in consonance with the decision of the Hon'ble Supreme Court in ***Bandhua Mukti Morcha vs.***

also observed that child cannot develop to be a responsible and productive member of the society unless an environment is created which is conducive to his social and physical health.

13. In the instant case, specific allegation against the petitioner that she has been accused of allegedly abetting the suicide of a student, namely, _____, of _____, where she is working as a regular teacher, therefore, at this stage, averments made in the petition that the allegations levelled against petitioner is false, cannot be looked into while exercising powers under Section 528 of the BNSS and the judgment relied by the learned counsel for the petitioner is distinguishable from the present case.

14. In view of the aforesaid, this Court do not find any ground to quash impugned charge-sheet as well as FIR against the petitioner/accused, as the case is fixed for framing of charges against the petitioner before the learned trial Court on 30.08.2024.

15. In view of the aforesaid, the present petition lacks merit and thus, liable to be dismissed.

16. Accordingly, the present CRMP is **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice