

Neutral Citation No. - 2023:AHC-LKO:85392

Reserved On 24.11.2023

Delivered On 22.12.2023

Court No. - 11

Case :- APPLICATION U/S 482 No. - 11514 of 2023

Applicant :- Shiv Devi And 2 Others

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And 3 Others**

Counsel for Applicant :- Anil Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard learned counsel for the applicants, learned AGA for the State of U.P. and gone through the record.

The present application under Section 482 Cr.P.C. has been filed jointly by mother of accused namely Shiv Devi, accused namely Pankaj Verma @ Pankaj Kumar and victim for the following main reliefs:-

"Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash/set aside the entire criminal proceeding of Criminal Case No. 82/2018 (State Versus Pankaj Verma & Others) pending in the court of Additional Sessions Judge Special Judge, POCSO Act, Court No. 45. Barabanki initiated against the petitioner no. 1 and 2 in pursuance of the impugned charge sheet dated 22.6.2017 as well as summoning order dated 25.7.2018 and non bailable warrant dated 7.10.2023 passed/issued by Additional Sessions Judge/Special Judge, POCSO Act, Court No. 45. Barabanki arising out of the Case Crime No. 136/2017, Under Sections: 363, 366 IPC & 16/17 Protection of Children from Sexual Offences Act, Police Station Kothi, District - Barabanki, as contained in Annexure No 1, 2 & 3 respectively to this Petition.

It is also prayed that this Hon'ble Court may kindly be pleased to stay the further criminal proceeding of Criminal Case No. 82/2018 (State Versus Pankaj Verma & Others) pending in the court of Additional Sessions Judge/ Special Judge, POCSO Act, Court No. 45. Barabanki initiated against the petitioner no. 1 and 2 in pursuance of the impugned charge sheet dated 22.6.2017 as well as summoning order dated 25.7.2018 and non bailable warrant dated 7.10.2023 passed issued by Additional Sessions Judge/Special Judge, POCSO Act Court No. 45. Barabanki arising out of the Case Crime No.136/2017, Under Sections: 363, 366 IPC & 16/17 Protection of Children from Sexual Offences Act, Police Station-Kothi District-Barabanki during pendency of the instant petition in the interest of Justice."

Learned counsel for the applicants, for the purposes of main relief sought, submitted that the FIR in issue, which is the basis of entire criminal proceedings pending before the trial court, was lodged by the opposite party No.2 on 08.04.2017 under Sections 363 & 366 IPC & 16/17 of POCSO Act, Police Station-Kothi, District-Barabanki, against applicant Nos. 1 and 2 and the story of prosecution in nutshell in the FIR is to effect that on 18.12.2016 applicant Nos.1 and 2 enticed away the victim.

It is stated that challenging the said FIR, a Writ Petition No. 9083 (M/B) of 2017 was preferred and this Court vide order dated 27.04.2017 stayed the arrest of applicant No. 2. In this regard, reliance has been placed on Annexure No. 5 to this application.

It is further stated that during the course of investigation, statement of victim under Section 161 Cr.P.C. was recorded on 15.05.2017 and this statement of the victim indicates that her marriage was going to be solemnized against her will and she

was in affair with the applicant No.2 therefore she on her own will went with the applicant No.2 and in this statement victim stated that I am major and I want to live with the applicant No.2 and we have solemnized the marriage on 12.04.2017.

It is stated that the victim on 17.05.2017 was medically examined by the Doctor concerned and as per Medical report, no spermatozoa was found and age of the victim, as opined, was about 18 years. In this regard, reliance has been placed on the Medical Report as also Marksheet of Class-5 issued for the year 2011-2012.

It is stated that on 23.05.2017 statement of victim, as required under Section 164 Cr.P.C., was recorded. This statement is in consonance with the statement recorded under Section 161 Cr.P.C.

It is further stated that the Investigating Officer has filed his charge sheet dated 22.06.2017 against applicant No.1 under Sections 363, 366 IPC and Section 16/17 of POCSO Act and considering the same, the court concerned has taken cognizance and summoned the applicant No.1 and 2 for trial and issued non-bailable warrant dated 07.10.2023 against the applicant Nos. 1 and 2.

It is also stated that applicant No.2 and 3 out of their own sweet will, solemnized the marriage initially in a Temple and subsequently, on 19.11.2018 in Samuhik Vivah Karayakram and now both are living together happily as husband and wife and out of their wedlock they have blessed with one child. In

this regard, reliance has been placed on Annexure Nos.10 and 11 to this application.

Learned counsel for the applicants further submitted that considering the aforesaid facts and circumstances of the case as also that the story of prosecution is not supported by medical evidence as according to medical report, the victim at the time of incident was about 18 years, present application is liable to be allowed.

Learned counsel for the applicant, for the purposes of main relief sought, has placed reliance on the judgments of the Apex Court in the case(s) of *Romgopal and others Vs. State of Madhya Pradesh, 2022 (1) SCJ 536*, *Gian Singh Vs. State of Punjab [2012 10 SCC 303]*, *Mohd. Ibrahim Vs. State of U.P., 2022 SCC Online ALL 106*, *Gold Quest International Ltd. Vs. State of Tamilnadu, 2014 (15) SCC 235*, *B.S. Joshi Vs. State of Haryana, 2003 (4) SCC 675*, *Jitendra Raghuvanshi Vs. Babita Raghuvanshi, 2013(4) SCC 58*, *Madhavarao Jiwajirao Scindia Vs. Sambhajirao Chandrojirao Angre, 1988 1 SCC 692*, *Nikhil Merchant Vs. C.B.I. and another, 2008(9) SCC 677*, *Manoj Sharma Vs. State and others, 2008(16) SCC 1*, *State of M.P. Vs. Laxmi Narayan and others, 2019(5) SCC 688*, *Narindra Singh and others Vs. State of Punjab and another, (2014) 6 SCC 466*, *Manoj Kumar and others Vs. State of U.P and others (2008) 8 SCC 781*, *Union Carbide Corporation and others Vs. Union of India and others (1991) 4 SCC 584*, *Manohar Lal Sharma Vs. Principal Secretary and others (2014) 2 SCC 532* and *Supreme Court Bar Association Vs. Union of India (1998) 4 SCC 409*.

In addition to above, reliance has been placed on the judgments passed by the Hon'ble Apex Court in the case of *P. Yuvaprakash vs. State Rep. By Inspector of Police; AIR 2023 SC 3525; Vishwas Bhandari vs. State of Punjab And Another; (2021) 2 SCC 605.*

Reliance has also been placed on the judgments passed by this Court on the *Application U/S 482 No. 9813 of 2023 (Ram Kishor @ Kishor vs. State of U.P. And Another), Criminal Appeal U/S 372 Cr.P.C. No. 6 of 2023 (Ram Chandra vs. State of U.P. And Another), Monish vs. State of U.P. & Others; 2023 (2) ACR 1546; Application U/S 482 No. 3040 of 2023 (Bhim Sen vs. State of U.P. and Ors.); MANU/UP/0496/2023; Application U/S 482 No. 16207 of 2022 (Guddu and Ors. vs. State of U.P. and Ors.); MANU/UP/1962/2022.*

Prayer is to allow the present application.

Learned Additional Government Advocate could not dispute the aforesaid facts including the Medical Report as also the age of the victim at the time of incident.

Considering the submissions advanced by learned counsel for the parties and perusing the Medical report as also other documents on record including the statements of victim and the fact that the applicant Nos.2 and 3 have solemnized the marriage and out of their wedlock they have blessed with one child as also taking note of the observations made by Hon'ble Apex Court as also by this Court in the judgments, referred above, this Court is of the view that if interference is not made in exercise of power under Section 482 Cr.P.C. then the pending proceedings would affect the entire family including

future of minor, which in other words means that entire family would be shattered and also that the prospects of conviction in this case are bleak and being so, this Court is of the view that no purpose would be served in keeping the proceedings pending before the trial court and hence, the same are hereby quashed in terms of the compromise.

Accordingly, the present application U/S 482 Cr.P.C. is *allowed*.

Office is directed to send a copy of this order to the court concerned through email/fax immediately for necessary compliance.

Order Date :- 22.12.2023

Vinay/-