

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.162 of 2015

- 1) Amol s/o Dattatraya Jadhav,
Age 21 years,
Occupation : Labour,
R/o Raghapur, Taluka Ashti,
District Beed.
- 2) Nitin s/o Dattatraya Jadhav,
Age 26 years,
Occupation : Labour,
R/o Raghapur, Taluka Ashti,
District Beed.
- 3) Ushabai w/o Dattatraya Jadhav,
Age 48 years,
Occupation : Household,
R/o Raghapur, Taluka Ashti,
District Beed.
- 4) Navnath s/o Madhukar Kawale,
Age 29 years,
Occupation : Agriculture,
R/o Sinhagad Road,
Wadgaon (Bk), Ambegaon,
Pune - 46.

.. Petitioners.

Versus

- 1) The State of Maharashtra
- 2) Suresh s/o Bansi Chavan,
Age 38 years,
Occupation : Agriculture,
R/o Raghapur, Taluka Ashti,
District Beed.

.. Respondents.

Shri. R.A. Jaiswal, Advocate, holding for Shri. N.S. Ghanekar, Advocate, for petitioners.

Shri. U.H. Bhogle, Additional Public Prosecutor, for respondent No.1.

Shri. V.P. Narwade, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 1st JULY 2015

JUDGMENT:

1) Rule. Rule made returnable forthwith. Heard both sides for final disposal by consent. Learned counsel for the original complainant was allowed to assist the Additional Public Prosecutor.

2) The proceeding is filed for relief of discharge in Special Case No.17/2014 presently pending in the Sessions Court Beed which is filed on police report for offences punishable under sections 363, 366, 376, 34 of the Indian Penal Code and sections 4,8 of Protection of Children from Sexual Offences Act.

3) The prosecutrix is daughter of complainant Suresh. She was studying in 10th Standard. The incident in question took place on the night between 10-2-2014 and 11-2-2014. On 11-2-2014 at about 6.00 a.m. the complainant noticed that the prosecutrix was not at home. They searched for her but they could not trace her out. They had suspicion against main accused Sharad that he must have taken her with him as he was also not available. The complainant suspected that parents of Sharad and his brothers, his maternal uncle must have helped Sharad and he gave report against all these persons. Initially crime was registered for offence of kidnapping. Sharad took the prosecutrix to police station on 21-2-2014 and on that date statement of the prosecutrix came to be recorded. She disclosed that Sharad had come in contact with her before one year of the incident. She disclosed that Sharad used to say that he was liking her and they used to meet secretly. She disclosed that her parents had suspicion about them and so they had started searching for bridegroom for the prosecutrix. She disclosed that she had informed about it to Sharad and then on 10-2-2014 Sharad had said that they would run away and they

would get married. As per their plan, prosecutrix left the house of the parents on the night between 10-2-2014 and 11-2-2014 when Sharad was waiting for her in the vicinity of her house. The prosecutrix had taken cash amount of Rs.15000/- with her. They went to Shirdi and there they stayed in a lodge. They had stayed there for 4 to 5 days. Then they went to Alandi and there also they stayed. The prosecutrix stated that at various places Sharad had raped her. After recording statement of the prosecutrix section 376 IPC was added. In the supplementary statement the prosecutrix gave description of the places where Sharad had taken sexual intercourse with her.

4) Age of the prosecutrix was below 18 years. Police arranged for medical examination of the prosecutrix. During investigation they collected mobile record of some persons and all these persons came to be made accused. There will be charge of offence of abetment of kidnapping against the petitioners.

5) Learned counsel for the petitioners submitted that even if the record is accepted as it is, the record is

not sufficient to frame charge even for the offence of abetment of kidnapping against the petitioners. The statement and supplementary statement of the prosecutrix show that at no time she had seen present petitioners in the company of Sharad on that date or during stay of Sharad and the prosecutrix at various places. It is not her case that at any time Sharad had contacted the petitioners. Petitioner Nos.1 and 2 are real brothers of Sharad, petitioner No.3 is mother of Sharad and petitioner No.4 is maternal uncle of Sharad. Statements of the relatives including the complainant show that they had only suspicion against the present petitioners. CDR record in respect of Sharad shows that at no time the present petitioners were in touch with Sharad. Thus, even if the record is accepted as it is, there will be only the contentions made by some witnesses on the basis of so called hearsay information. This material is not sufficient to frame charge. It will be unnecessary harassment to the petitioners if they are made to face the trial for the aforesaid offences. Application was filed by them before the trial Court also but the trial Court has rejected the application. It appears that the trial Court has observed

that there is record of CDR against the petitioners but no such record is there to connect the petitioners with the crime and the record is of mobile phones of other persons. In view of these circumstance this Court holds that the petitioners are entitled to the relief of discharge.

6) In the result, the petition is allowed. The petitioners are discharged in the aforesaid case for the aforesaid offences. Rule is made absolute in the aforesaid terms. Their bail bonds stand cancelled.

Sd/-
(T.V. NALAWADE, J.)

rsl