

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) NO.783 OF 2017

Ankush Suresh Giri

..vs..

The State of Maharashtra, thr. PSO Deoli, Tahsil and District Wardha

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders

Court's or Judge's Order

.....
Shri N.M. Kolhe, Counsel for the applicant.

Shri V.P. Gangane, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 1, 2017.

Heard learned counsel Shri N.M. Kolhe for the
applicant and learned Additional Public Prosecutor Shri V.P.
Gangane for the State.

Though the case is coming for the first time, since
along with the application entire charge-sheet is annexed by the
applicant, learned Additional Public Prosecutor Shri V.P.
Gangane for the State is ready with the matter. Such an
approach of learned Additional Public Prosecutor Shri V.P.
Gangane for the State is highly appreciated.

The victim is a minor, belongs to the Scheduled
Caste, and is from very poor strata of the society residing along
with her widowed mother. The victim lost her father 15 years
ago. Thus, she must be hardly of 2 or 3 years when an

unfortunate incident of losing her father has occurred.

The mother of the victim first informant Smt. Ushatai Bhagat somehow pulled herself along with her two daughters. She oftenly was supported by her parents.

On 13.4.2014 when Ushatai noticed that her daughter the victim is not available with her and when she tried to contact the victim, phone of the victim was found to be switched off. First informant Ushatai was having suspicion in her mind that one Golu Junghare must have done something to cause disappearance her daughter since many a time she found Golu talking with the victim girl. Therefore, first information report was lodged against Golu Junghare with Deoli Police Station. The said was registered as FIR No.52 of 2014 for the offences punishable under Sections 363 and 366A of the Indian Penal Code.

After setting criminal law into motion, investigating officer tried his level best to ascertain whereabouts of the victim even Golu was also arrested.

It appears from the charge-sheet that since the investigating officer was unable to collect any legal evidence against Golu, on 2.1.2017 he filed discharge application under Section 169 of the Code of Criminal Procedure, 1973. There is nothing available on record that learned Magistrate accepted the said discharge application. So, merely because the

discharge application is filed by the investigating officer, that by itself is not sufficient for getting the accused discharged from the offence.

Be that as it may, the investigating officer in January 2017 got a clue in respect of whereabouts of the victim girl and it was revealed to the investigating officer that she is at Nagla Madhao (Kannu), District Aligad, Uttar Pradesh. Therefore, on 31.1.2017, the investigating officer obtained custody of the victim girl. It was also noticed that during the period when she was minor, she was forced to get married to one Rajkumar Singh of Uttar Pradesh, resident of Kannu, Post Gauda, Taluka Iglas, District Aligad.

The statement of the victim was recorded in which she has clearly stated that the accused persons, ultimately against whom the charge-sheet is presented, forced and was compelled to marry with said Rajkumar and said Rajkumar committed sexual intercourse with the victim, resulting into pregnancy and delivery of a child.

It is the prosecution case that the victim was compelled to marry with Rajkumar when she was minor and when she was minor, so called husband established physical relations with her. Resulting into, pregnancy.

During the investigation it was found that the present applicant was present at the time of performing

marriage at Pavnur.

According to learned counsel Shri N.M. Kolhe for the applicant, the only role, i.e. attributed against the present applicant, is that he was only present during performance of the marriage of the victim with Rajkumar. Except that, according to learned counsel Shri Kolhe for the applicant, no role is attributed against the present applicant.

Normally, merely because there is a presence, one cannot attribute anything against such a person attending as a guest. However, the facts of the present case are very peculiar and in the peculiar facts the presence of the applicant at the time of performance of marriage has to be appreciated by the Court even while considering the application for bail.

Admittedly, the applicant is not a relative either of the victim or Rajkumar with whom the victim was compelled to marry against her wish when she was minor. It is also not the case of the applicant that in any way he is related to any other accused persons.

Learned counsel Shri N.M. Kolhe for the applicant tries to submit that accused No.1 Komal Wankhede is his sister not by relation but by he considered her as his sister.

Normally, it is not expected for any third person to attend the marriage. Normally, in the marriage the guests are invited. A fully grown up person, without there being any

invitation, will not attend the marriage.

Further, here is the case where the victim's parents were not present at the time of performance of her marriage. All other persons, who attended the marriage with accused Rajkumar who is resident of Uttar Pradesh, are not related to the victim in any manner whatsoever. Further, there was no occasion for this victim girl to get herself married with Rajkumar, a person residing in Uttar Pradesh and with whom there are no family relations or family of the victim was not aware of the family background of Rajkumar.

Further, it is crystal clear that the girl was minor at the time when she was forced to marry with Rajkumar.

Under these circumstances, *prima facie* it shows that the presence of the applicant at the marriage place is not innocent and he is actively participated in connivance with other co-accused persons who compelled the minor girl for marriage against her wish.

All other accused persons are in jail.

The Court cannot keep blind eye towards happenings in the society. When a minor girl, having no concern with Uttar Pradesh, is marrying with a person from Uttar Pradesh, that fact itself shows that the girl must have been married with said person for consideration which are otherwise than legal.

Under such circumstances, I feel that it will be dangerous to release such a person on bail since future of other girls residing in the said vicinity will be at stake.

Hence, the criminal application is rejected.

JUDGE

!! BRW !!