IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

901 CRIMINAL APPLICATION NO.3164 OF 2018

Bajirao S/o Dhondiram Rathod,
Age 57 years, Occu. Service,
R/o House No.7/16, Sambhaji Colony,
N-6, CIDCO, Aurangabad.
Tq. & Dist. Aurangabad. ... **Applicant**.

Versus

1. The State of Maharashtra,
Through the Investigation Officer,
In Crime No.291/2018, registered with
Police Station CIDCO, Aurangabad.

2. Ashok S/o Bhimrao Hande,
Age 39 years, Occu. Business,
R/o Shivjyoti Colony, CIDCO N6,
Aurangabad. ... **Respondents**.

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Mr. P.A.Bharat, Advocate for Applicant.
Mr. M.M.Nerlikar, APP for Respondent-State.
Ms. Asha N.Gore, Advocate for Respondent No.2 (appointed).

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CORAM : T.V.NALAWADE AND
MANGESH S. PATIL, JJ.

DATE : 5th April, 2019

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The proceeding is filed for relief of quashing of FIR

No.291 of 2018 registered with CIDCO Police Station, Aurangabad for the offences punishable under Sections 363, 366-A, 376, 506 read with 34 of IPC and Section 4 of the POCSO Act. Relief of quashing the case itself is also claimed.

3. In the crime registered report given by maternal uncle of the victim. The incident took place on the night of 12.08.2018. On that day, in the night time the victim girl was aged about 17 years at the relevant time left home without informing anything to anybody. The wife of the first informant gave intimation about this conduct of the victim girl to first informant after 10.30 p.m. Then the search was taken on that night. They could not trace the victim girl. Then they came across one mobile handset and they realized that by using this handset main accused Madhusudan was in touch with the victim girl and when they checked the conversation they realized that one Vyankatesh was friend of Madhusudan. Present applicant is the father of Madhusudan and so they approached the applicant to make inquiry. It is contended in the FIR that the present applicant said that she had talk with the son and his son was expected to return by 11.00 a.m. on next day and he requested the first informant to wait till 11.00 a.m. of the next date. As on the next day

Madhusudan did not return with the victim girl FIR came to be given on 13.08.2018 for the aforesaid offences.

4. The victim girl was reached to home on the next day and her statement shows that the present applicant was not at all involved in the incident. The learned counsel representing the first informant submitted that provision of Section 34 can be used against the applicant in view of the promise given by the applicant that his son would return home at about 11.00 a.m. of the next day. She submitted that due to this promise, it can be inferred that present applicant had knowledge about the incident and he has participated in the incident.

5. Only on the basis of aforesaid contention of the first informant, it cannot be inferred that applicant had played active role in the incident. On the contrary there is clear probability that applicant was not happy with this incident and he must have asked his son to return back with the victim girl. In any case, the victim girl has not uttered a word against applicant to indicate that he had in any way helped Madhusudan in the act. In view of these circumstances, this Court holds that the provision of Section 34 of the IPC cannot be used against the applicant and it will

be abuse of the process of law if the applicant is asked to face the trial for the aforesaid offence.

6. In the result, application is allowed. Relief is granted in terms of prayer clause 'B' and 'B-1'.

7. Rule made absolute in the above terms.

8. Fees of the learned Advocate Ms. Asha N. Gore appointed on behalf of Respondent No.2 is quantified at Rs.3,000/ (Rupees Three Thousand), which would be payable by the High Court Legal Services Sub - Committee at Aurangabad.

(MANGESH S. PATIL, J.) **(T.V.NALAWADE, J.)**

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