

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

CRIMINAL APPLICATION (APL) NO.1336 OF 2022

Rohit Sidharth Manawatkar .Vs. State of Maharashtra, through P.S.O., P.S. Kanhan,
Tah. Parshioni, Dist. Nagpur and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Y.Y. Humne, Advocate for the applicant.

Ms Shamsi Haider, A.P.P. for the non-applicant No.1/State.

CORAM : ANIL S. KILOR, J.

DATED : 10/11/2022

1. In the present proceeding filed under Section 482 of Code of Criminal Procedure, the order below Exh.12 dated 17.05.2022 passed by the Extra Jt. District Judge and ASJ., Special Court No.2 (POCSO), Nagpur, dismissing the application for discharge, is under challenge.

2. I have heard the learned counsel for the applicant and learned APP for the State.

3. The learned counsel for the applicant submits that there was a love affair between the victim and the applicant and the victim on her own, went along with the applicant. Thereafter, the report was lodged by the cousin of the victim. Accordingly, the offence was registered.

4 It is further submitted that thereafter, the statement of the victim was recorded in which she has categorically stated that during the period when she was with the applicant, no physical relations were established by the applicant with her and she voluntarily went along with the applicant/accused. Therefore, it is submitted that, the applicant is entitled for discharge for the offence punishable under Sections 363, 66-A, 376(2)(n) of the Indian Penal Code and under the provisions of POCSO Act.

5. He further submits that, the medical report is not supporting to the prosecution and in absence of FSL report, there is no evidence of any sexual assault by the applicant and accordingly, he prays for discharge.

6. On the other hand, learned APP strongly opposed the application. She submits that *prima facie* there is sufficient incriminating material against the applicant.

7. It is pointed out from the medical report that though the FSL report is awaited, a specific opinion has given by observing that sexual violence cannot be ruled out. Thus, she submits that the said report is sufficient to show *prima facie* involvement of the applicant in the alleged offence. Accordingly, she prays for dismissal of the present application.

8. In the light of the above submission made by the learned counsel for the applicant and the learned APP, I have perused the application and the documents filed along with it.

9. Though, in the statement of the victim, she has stated that no sexual intercourse was committed by the applicant with her during the period when she went away along with the applicant, the medical report cannot be discarded which *prima facie* supports the case of the prosecution. In the medical report, the doctor has specifically opined that sexual violence cannot be ruled out. Moreover, it can be seen that hymen is old torn and healed.

10. Thus, at this stage, there is sufficient *prima facie* material to show the involvement of the applicant and therefore, I have no hesitation to observe that no case is made out by the applicant for discharge and the learned trial Court has rightly rejected his application for discharge. Accordingly, I pass the following order:

The criminal application is hereby **rejected**.

JUDGE