



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

CRIMINAL APPLICATION NO.3488 OF 2023

Pratiksha d/o. Himmat Rathod	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.Rajendrraa Deshmukh, Senior Advocate i/b. Mr.S.P.Rathod,
Advocate for applicant

Mr.S.N.Morampalle, APP for respondent no.1

Mr.G.J.Pahilwan, Advocate for respondent no.2

**CORAM : R.G.AVACHAT AND
SANJAY A. DESHMUKH, JJ.**

DATE : NOVEMBER 08, 2023

ORDER :-

By this application under Section 482 of the Code of Criminal Procedure, the applicant prays for quashment of the FIR, being Crime No.490 of 2023, registered with MIDC Waluj Police Station, Aurangabad, for the offences punishable under Sections 363, 366-A and 376(2)(n) and 506 read with Section 34 of Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act and the consequential proceedings in Special Case No.413 of 2023, pending before learned Addl. Sessions Judge, Aurangabad.

2. Heard both sides.
3. Learned Senior Counsel appearing for the applicant would submit that the name of applicant does not figure in the FIR. The applicant has been selected for the post of Police Sub-Inspector. Same was in the knowledge of the informant and his family members. The applicant's name has, therefore, been introduced by the victim in her statement recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C.). However, the victim's statement recorded under Section 161 of Cr.P.C. is silent to attribute anything against the applicant herein. According to learned senior counsel, only with a view to mar selection of the applicant as Police Sub-Inspector, she has been roped in. He, therefore, urged for allowing the application.
4. Learned APP for respondent no.1 – State and learned counsel for respondent no.2 – informant, would, on the other hand, submit that the victim was below 18 years of age at the relevant time. The applicant's name is figured in the statement recorded under Section 164 of Cr.P.C. It was present applicant, who had threatened the victim, if she goes public with the incident. The applicant had even instructed the victim what was to be stated to

the police and others. According to both of them, no mini-trial can be conducted in this proceedings. They, therefore, urged for rejection of the application.

5. Considered the submissions advanced by learned counsel for the parties. Perused the FIR and the police papers.

6. The FIR has been lodged by the brother of victim. It has been averred therein that the victim, at the relevant time, was a 12th standard student. She would attend a private coaching class. He used to take her to the class from his residence and get her back after the class was over. On the given day, i.e. 13.06.2023, he reached the victim to her class and returned home. After a while, he received a phone-call from the teacher, informing that the victim did not attend the class. The family members, therefore, took search of the victim, but to no avail. He, therefore, lodged the FIR, alleging that some unknown person kidnapped his sister (victim) for unknown reason.

7. Based on the FIR, the crime was registered. Both victim and co-accused-Akshay were traced out at village Kingaon-Raja, Dist.Buldhana. Both of them had appeared at Police Station, Kingaon-Raja, Dist. Buldhana. Then, the victim was brought back to

Aurangabad. Her statement was recorded. The victim, in her statement recorded by the police on 06.08.2023, has stated that she was a 12th standard student of science stream. The co-accused - Akshay would reside along with his parents as her neighbour. There was acquaintance between her and Akshay. Both of them had exchanged their cell-phone numbers to each other. This happened about a year before her statement was recorded. Once, he had called her near Bajaj Nagar. She met him there. He expressed his love for her. Thereafter, he started meeting her frequently.

8. It is further in her statement that on 13.06.2023, Akshay met her at Bansod Classes, Bajaj Nagar, Aurangabad. He asked her to accompany him. It was 7.00 in the morning. He took her to various places, such as, Prozone Mall, CIDCO, etc. He, thereafter, took her to village Sindkhed-Raja in a bus. Then, he took her to his residence at village Pimperkhed. They stayed there overnight. He then took her to Thane and kept at the residence of one Lalitabai, who was of acquaintance of Akshay. Both of them stayed there for about one and half months. It is further in her statement that he then, took her to village Devachi-Alandi (Dist.Pune) on 02.08.2023. He compelled her to marry him. He then took her to his sister's

(Swati Chavan) residence at the very village. They stayed there overnight. Akshay committed sexual intercourse with her during night. The victim was reluctant to submit to sexual intercourse. He, however, told her to have been his wife. They stayed there for two days. He, then, took her to village Kingaon-Raja, Dist. Buldhana. Meanwhile, the parents of Akshay had lodged a missing person's report. Akshay, therefore, took her to Police Station, Kingaon-Raja. The police officials made inquiry with her. Then, she was brought to Aurangabad (Chhatrapati Sambhajnagar).

9. Statement of the victim was recorded under Section 164 of Cr.P.C. She has stated therein that while residing at the house of Akshay's relative, present applicant (Akshay's sister) had threatened her as :-

".....तिथे त्यांनी आम्हाला त्याच्या नातेवाईकांकडे नेले. तिथे त्यांनी आम्हाला दिड महिना ठेवले. तिथे मला प्रतीक्षा राठोड हिने खूप मानसिक व शारीरिक त्रास दिला. ती मला म्हणाली की तुला सांगावे लागेल की, तू व अक्षय दिड महिना वेगवेगळे राहिले, तू जर असे सांगितले नाही तर मारून टाकू. मला अक्षयच्या बहिणी स्वाती व आश्विनी यांनी सुद्धा त्रास दिला होता. मला अक्षय याने सुद्धा शारीरिक त्रास दिला. मी नकार देत असतांना सुद्धा त्याने माझ्यावर जबरदस्ती केली होती. त्यांनी मला असेही सांगायला लावले की मी स्वतःहून अक्षय सोबत पळून आली आहे."

We do not propose to advert to rest of the police papers, as there is nothing against the present applicant therein.

10. The record indicates that the date of birth of the victim is 29.07.2005. The same indicates that on the day, on which she went missing, i.e. 13.06.2023, she was little over 17 years and 10 months old, an age of understanding. Reading between the lines indicates that both victim and Akshay were emotionally involved. They eloped on 13.06.2023 and visited various places. Even, they got married at village Devachi-Alandi on 02.08.2023. As such, both of them were together for little over one and half months. The victim was medically screened. The history given by her to the Medical Officer reads thus :-

“As per history narrated by the Survivor, the assailant was her neighbor. Gradually, they became friends, shared contacts and their relationship started. 1yr back the assailant shifted to Sindkhed Raja. In month of June, they both met near her coaching class in Aurangabad. Survivor went out with him when her relatives came to know about them. Then both of them went to Sindkhed Raja on 1st of June. But the assailant's parents did not accept their relationship. So they both on 15 June went to Mumbai and stayed together at his relative's residence for 15 days. Then on 31st July both went to Pune. They got married in some organization on 2nd August. They had a sexual contact on the same day then went and stayed at his sister's place. After 2 days both returned to Sindkhed Raja as his parent lodged complaint and survivor was brought by police to Aurangabad.

11. Our attention has been adverted to the statement of one Vasant Waghmare. It is in his statement that he was resident of

Janata Nagar, Kashimira, Dist. Thane. In June, 2023, a boy named Akshay Rathod, had been to him to take premises on rent. He let out him a room for Rs.3,000/- per month. Both Akshay and one girl (victim) stayed together in the said room. Akshay introduced the victim as his wife. It is further in his statement that Akshay used to go for work during day time. His wife (victim) would stay alone in the room. As such, both of them stayed together for about one and half months.

12. The victim did not utter anything against the present applicant in her statement recorded by police under Section 161 of Cr.P.C. It was a consensual relationship. She appears to have joined the company of the co-accused Akshay. Both of them eloped and stayed together at various places. Even, they got married with each other. It is only in the victim's statement recorded under Section 164 of Cr.P.C., she has implicated the applicant herein.

13. It is reiterated that the applicant is noway concerned with her brother Akshay and the victim getting emotionally involved. The applicant did neither assist both of them in whatsoever way to elope and get married nor she provided them shelter. Whatever has been alleged by the victim against the applicant is necessarily an

afterthought, since the same has not been stated by the victim in her statement to police that was recorded first in point of time. The applicant has been selected for the post of Police Sub-Inspector. The victim, the applicant and her family members were neighbors. The applicant has, therefore, every reason to contend that the victim's family members were in the know of her selection for the post of Police Sub-Inspector. Since the present applicant is found to be noway involved in the commission of the alleged crime and more so, when the police papers make out a case of it being a consensual relationship, asking present applicant to stand trial based on the afterthought statement of the victim, would necessarily be an abuse of process of the court. We are, therefore, inclined to allow this application.

14. The observations made herein are *prima facie* in nature.

15. In the result, the application succeeds. The same is allowed in terms of prayer clause (B-1).

[SANJAY A. DESHMUKH, J.]

[R.G. AVACHAT, J.]

KBP