

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

99 CRIMINAL APPLICATION NO.4151 OF 2019

Shakoor Aziz Ahmed Shaikh
Age : 55 years, Occ : Business & Journalist,
R/o Shani Galli, Zendi Gate,
Ahmednagar.

..APPLICANT

-VERSUS-

1. The State of Maharashtra
2. X.Y.Z.

..RESPONDENTS

...
Advocate for Applicant : Mr. Narwade Narayan B.
APP for Respondent/State : Mr. P.N. Kutti
Advocate for Respondent No.2 : Mr.R.S. Kasar
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**CORAM : R.G. AVACHAT AND
SANJAY A. DESHMUKH, JJ.
DATED : 23rd OCTOBER, 2023.**

PER COURT :-

- . Heard.
2. This application is for quashing of the proceeding in Special Case No.206 of 2019 pending before the Sessions Court, Aurangabad in pursuance to Crime No.130 of 2019 registered with Karmad Police Station, Tq. & Dist. Aurangabad, for the offence punishable under sections 376(1), 354, 506 of the Indian Penal Code and under sections 7 and 8 of the P.O.C.S.O. Act, 1966.

3. FIR has been lodged by the victim herself on 2nd April, 2019 in relation to the incident that took place on 10th November, 2018. It has been alleged in the FIR that informant/victim along with her mother and other sister were traveling in a Car of the applicant. Near village Shekta, mother of the informant asked the applicant to stop the vehicle as she wanted to answer the nature's call. He accordingly stopped the vehicle. The mother went away to relieve herself. In the meanwhile, the applicant asked the victim to come on the front seat. She accordingly occupied the front seat by his side. He was at driver seat. It has further been alleged in the FIR that the applicant touched her inappropriately. He even fondled her private part. So as to prevent the informant from raising alarm, he even threatened her at a small gun point. Then he threatened to kill her, her father and brother, if she discloses the incident to anybody else. Thereafter, her mother came.

It has further been alleged in the FIR that in January, 2019, the applicant made a phone call to the father of the informant and made demand of Rs.6,00,000/- so as to avoid making obscene photographs of the informant viral. Then there is incident dated 25th February, 2019 on which the father of the informant set himself ablaze in front of office of Superintendent of Police, Ahmednagar. Fortunately, he was survived. It has further been alleged that the informant's father tried to commit suicide because of the applicant's

such behaviour with him and all the family members.

4. We are concerned with the incident that took place with the informant in a Car on 10th November, 2018. There is statement of the informant's sister to indicate that she was traveling in the very car along with the applicant, informant and her mother. The same reinforces that all of them were together and proceeding in the Car of the applicant. No mini trial can be conducted in this case. Although there is material to indicate, the applicant might have been implicated in this case but the said material is in the nature of CDRs of Cell phone of informant's mother, which indicates that tower location of her cell phone was at Ahmednagar. This is circumstantial evidence, which needs to be appreciated by the trial Court.

5. Our attention has also been drawn to the FIR lodged by the father of the informant against someone else as regards demand of sum of Rs.6,00,000/-. In anticipatory bail application moved by the person named therein, the Investigating Officer had filed reply stating therein that no such incident in fact took place.

6. From the material on record, the learned advocate for the applicant may have reason to contend that the applicant has not committed the offence. True, there is delay of over six months in lodging of the FIR, there is also some material to indicate that some other way relationship between the applicant and informant's mother. Needless to mention, for proving of offence, no particular number of

witnesses are required. FIR has been lodged by the victim herself alleging the applicant to have molested her. Her sister's statement is there to suggest they were together. In view of the same, we find no case for the applicant to have the FIR and consequential charge-sheet to be quashed in toto.

7. We are however surprised, as to how and why section 376 (1) of the IPC has been attracted since there was no material attributing any such act. In view of the same, we allow the application partly. We therefore allow the application to the extent of quashing of the FIR and consequential charge-sheet so far as regards offence punishable under section 376(1) of the IPC.

8. We quantify Rs.10,000/- to be paid to Mr.R.S. Kasar, learned advocate appointed to represent the cause of respondent no.2, as fees.

(SANJAY A. DESHMUKH, J.)

(R.G. AVACHAT, J.)

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