



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

CRIMINAL APPLICATION (BA) NO.100 OF 2023

Mahesh Madhukar Kalaskar Vs. State of Maharashtra and another

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

Court's or Judge's orders.

Shri S.V. Sirpuarkar, Advocate for applicant.
Shri A.M. Kadukar, APP for non-applicant no.1/State.
Ms S.P. Dhotre, Advocate appointed for non-applicant no.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : JULY 19, 2023.

This application is preferred for grant of bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.205/2022 registered with Police Station, Malkapur Rural, District Buldhana for the offences punishable under Sections 376, 376(2)(n), 376(3), 376AB, 376(2)(i), 452, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 4(2), 6 and 8 of the Protection of Children from Sexual Offences Act alongwith Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006, and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 17 and 21 of the Protection of Children from Sexual Offences Act. The applicant is arrested on 03.09.2022 and since then he is in jail.

2. The crime is registered against the present applicant on the basis of report lodged by PSI – Namdeo

Ughaduji Tayade. As per the accusation made by him in the First Information Report, on 27.08.2022, the victim had been to the Rural Hospital for vaccination of the child. The nurse deputed there suspected that the victim is a below 18 years of age therefore she informed the police. During interrogation with the girl, it reveals to the police that the marriage of the girl was performed at the age of 14 years. The victim girl has disclosed that she stayed alongwith her husband for two months and during that period she had pregnancy and she has delivered a child. On the basis of said information, the FIR was lodged and the crime is registered. During investigation, the victim was referred for medical examination. Thereafter, her subsequent statement is recorded under Section 164 of the Code of Criminal Procedure. During that statement, she disclosed that after she returned from matrimonial house and was staying with her parents one Vijay alias Viju Madhukar Mandwale, who has subjected her for sexual assault which resulted into pregnancy and she has delivered a child. Thus, on the basis of her subsequent statement said Vijay was also made an accused.

3. As per contention of the present applicant, who is the husband of the victim, that victim stayed alongwith him only for two months after the marriage. There was no physical relationship between those days so the question of pregnancy from the present applicant does not arise. The victim has implicated him falsely in the alleged offence. Now

investigation is completed and charge-sheet is already filed. The DNA report is negative and shows applicant is not a biological father of the said child. The co-accused Vijay Mandwale is already released on bail. Considering now investigation is completed and charge-sheet is filed, his further custody is not required and hence he be released on bail.

4. The said application is strongly opposed by the State on the ground that though the DNA report exculpate the present applicant as a biological father of the child however the statement of the victim, which inspires the confidence, is sufficient to connect the present applicant with the alleged offence. There is no reason for the victim to implicate the present applicant, who is her husband, in the alleged offence. Prima facie, it reveals that at the time of the marriage the victim was only 14 years of age and the applicant has performed the marriage with her contravening the provisions of the Prohibition of Child Marriage Act, 2006. Thus, prima facie case is made out against the present applicant and hence bail application deserves to be rejected.

5. Heard Shri S.V. Sirpurkar, learned counsel for the applicant. He reiterated the contentions and submitted that now the DNA report exculpate the present applicant as a biological father the child. As far as provisions of Prohibition of Child Marriage Act is concerned, for which punishment of two years is provided. He further submitted that the victim

stayed alongwith the present applicant for two months only and there was no physical relation between said period. DNA report substantiate the said contention. Thus, there is no prima facie material against the present applicant to connect with the alleged offence. The co-accused – Vijay Mandawale is already released on bail, against whom similar allegations are leveled. Considering the same, the applicant also be released on bail.

6. Learned APP submitted that merely because DNA exculpate the present applicant is not sufficient to show that his involvement is false one. The statement of the victim is sufficient to implicate with the alleged offence.

7. Learned counsel for the non-applicant no.2 reiterated the contentions and opposed the application.

8. Having heard both sides and on perusal of the investigation papers, which reveals that marriage of the victim was performed with the present applicant when she was below 18 years of age. The crime is registered on the basis of report lodged by PSI – Namdeo Tayade, to whom it reveals that the marriage of the victim was performed when she was below 18 years and she has delivered a child when she was a minor. Therefore, he has interrogated with her and it reveals from the statement of victim that the present applicant, who is husband performed marriage with her, when he was 14 years of age. Her statement shows she

stated when the present applicant only for two months and thereafter she left the matrimonial house and not returned back. In subsequent statement recorded under Section 164 of the CrPC, she made an allegation that co-accused Vijay has subjected her for sexual assault. Now DNA report is on record which exculpate the present applicant as well as co-accused Vijay also. Now investigation is completed and charge-sheet is also filed. Two statements of the victim are on record, which are inconsistent. Implication of the present applicant is only on the basis of statement of the victim. There is no other material to connect the present applicant with the alleged offence. Considering now investigation is completed and charge-sheet is filed, no purpose will be served by keeping the applicant behind bars. The application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

ORDER

- i. The criminal application is allowed.
- ii. The applicant – Mahesh Madhukar Kalaskar be released on bail in connection with Crime No.205/2022 registered with Police Station, Malkapur Rural, District Buldhana for the offences punishable under Sections 376, 376(2)(n), 376(3), 376AB, 376(2)(i), 452, 506 read with Section 34 of the Indian Penal Code, 1860 and under Section 4(2), 6 and 8 of the Protection of Children

from Sexual Offences Act alongwith Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006, and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 and Sections 17 and 21 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of ₹25,000/- with one solvent surety in the like amount.

iii. The applicant shall furnish his cellphone number and addresses with address proof.

iv. The applicants shall not tamper prosecution evidence or shall not induce, threaten or pressurize any witness, who are connected with the alleged crime.

v. The applicant shall not contact with the victim in any manner till conclusion of the trial.

vi. Professional fees of the learned counsel appointed for the non-applicant no.2 be quantified and paid, as per Rules

With this, the application is disposed of.

JUDGE

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