



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

CRIMINAL APPLICATION (BA) NO.623 OF 2023

Arun Udebhan Mendhe

Vs.

State of Maharashtra, Through PSO Arvi District Wardha and another

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

Court's or Judge's orders

Mr. Amul G. Hunge, Advocate for the applicant.
Mr. Nikhil Joshi, APP for respondent No.1/State.
Ms. Falguni Badani, Advocate (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 21/12/2023

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure in connection with Crime No.1199/2022 registered with Police Station, Arvi, District Wardha for the offence punishable under Sections 363, 354(a), 376(3), 376(2)(n) read with Section 34 of the Indian Penal Code and Sections 4, 6, 8, 12, 17, 18, 21(1) of the Protection of Children from Sexual Offences Act, 2012. The applicant is arrested on 16.12.2022 and since then he is behind bar.

2. Learned Counsel for the applicant submitted that initially offence is registered on the basis of report lodged by victim's father alleging that on 11.12.2022 he has taken his auto for repairing and thereafter he has attended one engagement ceremony and returned home

at about 6.00 p.m. His wife disclosed to him that his daughter victim girl aged about 14 years had not returned to home, therefore he searched for her but she was not traced. On the basis of said report, police registered the missing report. During investigation, the victim was found, her statement was recorded. In her statement dated 12.12.2022, she alleged that she is having affair with accused No.1. On 11.12.2022 he called her near one bridge thereafter, they went in one Lodge. The co-accused has shown the Aadhar Card of his another friend and obtained the room wherein they stayed and there was physical relationship between them. Subsequently, in a supplementary statement dated 16.12.2022 she alleged that present applicant who is running a grocery shop and she used to visit the said shop. He called her inside the shop and subjected her for sexual assault but she has not disclosed the said incident to anybody. On the basis of allegation made by her on 16.12.2022, the crime is registered against the present applicant.

3. Learned Counsel for the applicant submitted that applicant is 73 years old. Out of previous dispute between the parties on account the payment of the grocery articles purchased by the parents, this false report is lodged against the present applicant. He further submitted that disclosure about the said incident by the victim is after four days which is after thought.

The clothes of the victim as well as clothes of the present applicant are seized and forwarded to Chemical Analysis (C.A.). The C.A. report is negative. He further submitted that considering the medical report, the statement of the victim shows that she was having love affair and had sexual relationship with the co-accused, therefore the act of sexual assault cannot be attributed to the present applicant and prays for releasing the applicant on bail.

4. Learned APP strongly opposed the application on the ground that in her statement she specifically made allegation against the present applicant and there is no necessity for her to make an allegation falsely as there is no previous enmity between them. There is a *prima facie* case and prays for rejection of the application.

5. Learned Counsel for the victim also endorsed the same contention and submitted that the medical examination of the victim was carried out on 12.12.2022 and she has narrated about the act of the present applicant before the Medical Officer which sufficiently shows the involvement of the present applicant in the alleged offence. In view of the same, the application deserves to be rejected.

6. Heard learned Counsel for the applicant, learned APP for the State and learned Counsel for the victim. Perused the recitals of the FIR. From the recitals of the FIR it reveals that it was the victim who has left the house as she has not returned home on 11.12.2022. On 12.12.2022 she was referred for medical examination and she narrated the history before the Medical Officer showing the involvement of the present applicant. It is pertinent to note that on the same day on 12.12.2022 her statement was recorded by the police wherein she has only alleged that her boy friend i.e. co-accused took her in one restaurant/lodge, obtained the room and subjected her for sexual assault. She has not whispered anything about the incident that prior to 11.12.2022 she was subjected for sexual assault by the present applicant. After four days her supplementary statement was recorded and for the first time she has implicated the present applicant alleging that she was subjected for sexual assault by the present applicant on the promise of chocolate. The clothes of the victim as well as the clothes of the present applicant was seized and forward to C.A. The C.A. reports are negative. Considering the entire circumstances and facts and considering that the applicant is 73 years old, there is no immediate disclosure by the victim regarding the involvement of the present applicant, considering the investigation is completed and further incarceration of the present

applicant is not required. The application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Arun Udebhan Mendhe** be released on bail in connection with Crime No.1199/2022 for the offences punishable under Sections 363, 354(a), 376(3), 376(2)(n) read with Section 34 of the Indian Penal Code and Sections 4, 6, 8, 12, 17, 18, 21(1) of the Protection of Children from Sexual Offences Act, 2012, on executing PR bond in the sum of Rs. 25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the vicinity of Maroti Ward, Arvi, District Wardha.
- (iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (v) The fees of the appointed Counsel for respondent No.2 be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)