



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

46 ANTICIPATORY BAIL APPLICATION NO. 344 OF 2024

SUDAM KANTILAL KOTHIMBIRE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Applicant : Mr. Rahul R. Karpe

APP for Respondent/State : Mr.R.B. Dhaware

Advocate for Respondent no.3 : Ms.Harsha Lomte (appointed)

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CORAM : **SHIVKUMAR DIGE, J.**

DATE : 29th July, 2024.

P.C.:

1. The applicant apprehends arrest in connection with F.I.R. No.1008 of 2023 registered with Shrigonda Police Station, Tq.Shrigonda, Dist. Ahmednagar, for the offences punishable under sections 376, 376(2)(J) of the Indian Penal Code (For short, "IPC") and sections 4, 11, 12 and 17 of the POCSO Act.

2. It is the prosecution's case that the daughter of the informant was sexually assaulted by accused no.1 in Lodge. At the time of incident, the daughter of informant was around 17 years age. It is alleged that the Lodge where the daughter of the informant was sexually assaulted belongs to the applicant.

3. It is the contention of the learned counsel for the applicant that during pendency of this application, accused no.1 tried before the Special Court and he has been acquitted from the charges levelled against him. The learned counsel further submitted that in the

statement before the Special Court the victim has stated that no incident of sexual assault happened with her. The applicant has been falsely implicated in this case, hence requested to allow the application.

4. It is the contention of the learned APP along with the learned counsel for respondent no.3 that the daughter of informant was 17 years old. She was sexually assaulted in the Lodge of the applicant. No entry of accused no.1 and daughter of victim was taken in the Lodge Register where they had been to Lodge of the applicant. There is involvement of the applicant in the crime, hence requested to reject the application.

5. I have heard all the learned counsel. Perused the F.I.R. and police papers produced on record.

6. The learned counsel for the applicant produced the judgment and order passed by the Special Court in Special Case No.14 of 2024. The Special Court has acquitted accused no.1 in the present case for the offences levelled against him on the ground that the victim has not supported her previous statement. In my view, if the allegations against the applicant are that in his Lodge accused no.1 had sexually assaulted the victim but the said allegations are not proved before the trial Court. Considering these facts, custodial interrogation of the applicant is not required and I pass the following order :-

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest of the applicant in connection with F.I.R. No.1008 of 2023 registered with Shrigonda Police Station, Tq.Shrigonda, Dist. Ahmednagar, for the offences punishable under sections 376, 376(2)(J) of the Indian Penal Code and sections 4, 11, 12 and 17 of the POCSO Act, the applicant be released on executing personal bond in the sum of Rs.15,000/- with one surety of the like amount, on the following conditions :-
- (a) the applicant shall attend the concerned police station as and when required by the Investigating Officer.
- (iii) Fees of Rs.5,000/- be paid to Ms.Harsha Lomte, the learned counsel appointed to represent the cause of respondent no.3 through the High Court Legal Services Sub-Committee, Aurangabad.

[SHIVKUMAR DIGE, J.]