



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1485 OF 2023

XYZ

... PETITIONER

VERSUS

1. The State of Maharashtra
through its Chief Secretary,
Home Department,
Mantralaya, Mumbai – 32
2. The Director General of Police,
Maharashtra State, Mumbai
3. The Special DIG of Police,
Dakshata Building, Gadkari Chowk,
Nashik.
4. The Superintendent of Police,
Ahmednagar, Dist. Ahmednagar
5. The Sub-Divisional Police Officer,
Karjat, Dist. Ahmednagar
6. The Police Inspector
Police Station Shrigonda,
Dist. Ahmednagar.

... RESPONDENTS

...
Advocate for the Petitioner : Mr. Shekade Shashikant E.
APP for Respondents: Mr. K.N. Lokhande

...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 08.02.2024

PER COURT:

We have heard both the sides for some time in view of the peculiar circumstances as indicated in the order dated 11.01.2024.

2. In short, after the father had filed a FIR and Crime No.667/2022 was registered *inter alia* for the offences punishable under Section 363, 366A, 109, 212 read with Section 34 of the Indian Penal Code, the offence under Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 as well as the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

3. It transpires that subsequently the petitioner was traced and she levelled several allegations against three other individuals. (It transpires that pursuant to some oral directions of the concerned Court, a separate Crime No.646/2023 was registered). Consequently Section 376, 376D, 506 of the Indian Penal Code as well as Section 3, 4, 9 and 10 of the POCSO Act were included in Crime No.667/2022 and even the three accused named by her were included in the crime.

4. However, pursuant to the oral directions of the concerned Magistrate separate offence was registered as Crime No.646/2023 for the offences punishable under Section 376, 376D, 506 of the Indian Penal Code as well as Section 3, 4, 9(g) and 10 of the POCSO Act and Section 3(2)(v), 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. It transpires that her statement

under Section 161 of the Code of Criminal Procedure was recorded as a part of the investigation into Crime No.667/2022 on 26.04.2023. Subsequently even her statement under Section 164 of the Code of Criminal Procedure was recorded before the concerned Judicial Magistrate on 28.04.2023. She expressly narrated the episode as to how she on her own had eloped with one Abhayraj, however, his uncle whom she named as Gopichand and two other persons carried them in their vehicle and thereafter Gopichand asked Abhayraj to alight midway under the pretext that police were after them and asked him to take some other vehicle and reach Maliwada bus stand. She thereafter alleges about Gopichand @ Nana and two other individuals having taken her to a secluded place and thereafter committed rape. She thereafter has stated about they having dropped her at Maliwada bus stand, Ahmednagar, where Abhayraj was already present. Gopichand @ Nana paid him Rs.1,00,000/- and thereafter the couple boarded a bus to Pune. She claimed to have narrated the incident to Abhayraj during travel.

5. The petitioner is now seeking transfer of the investigation.
6. Learned APP, on instructions, submits that the Investigating Officer has completed the investigation even in Crime No.646/2023 and would be submitting a final report, may be in the form of 'B' summary report. The learned APP also places on record the written instructions received by him from the Investigating Officer dated 08.02.2024.
7. If such is the state of affairs, according to us it would be

appropriate that if at all the Investigating Officer files a 'B' summary report, it would always be open for the petitioner to contest it by filing a protest petition which will have to be considered by the Magistrate before accepting the 'B' summary report.

8. The writ petition is disposed of.

(SHAILESH P BRAHME, J.)

(MANGESH S. PATIL, J.)

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