

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION (APL) NO. 1606 OF 2023

Dr. Nilesh Nandkishore Pund

Age:38 years, Occ: Doctor,
R/o. Flat No.2 First Floor, Hill
View No.2 Mount view Building,
Hill road, Bandra (E), Mumbai 52

...Applicant

Versus

1. The State Of Maharashtra

2. XYZ

(Victim/Complainant)

through Khar Police Station

...Respondents

Mr.Rizwan Merchant a/w Mr.Abhishek Patil, Ms.Pooja Deelip Patil
i/by Mr.Mayur Govind Sanap Advocate for Applicant.

Ms. Rutuja Ambekar, APP for Respondent-State.

Mr. Sanjeev Kadam a/w Mr.Manoj Sabale i/by Kamar Ali Shaikh
for Respondent No.2/victim.

PI Vinod Gaonkar, Khar Police Station is present.

Victim/complainant is present in the Court.

**CORAM : PRAKASH D. NAIK &
N. R. BORKAR, JJ.**

DATE : 8th FEBRUARY 2024

P.C.:-

1. The Applicant and Respondent No.2 have urged before the the Court to quash the impugned proceedings in Sessions Case No.1006 of 2023 pending on the file of learned Sessions Court for Greater Bombay, arising out of F.I.R. No.410 of 2023 registered with Khar Police Station under Sections 354, 376(2),(e),(j),(k), 506 of Indian Penal Code, 1860.

2. It is jointly submitted that, the misunderstanding between the parties have been resolved and the impugned proceedings may be quashed with the consent of Respondent No.2/victim.
3. First Information Report was registered with Khar Police Station on 24th May 2023. The alleged incident had occurred on 21st May 2023. It was alleged that, the victim had accompanied accused while both consumed alcohol. The victim was under the influence of liquor, she was subjected to sexual assault. On completing investigation, charge-sheet was filed.
4. The Applicant preferred Application for Anticipatory Bail before the Court of Sessions. It was allowed by order dated 20th June 2023.
5. It is submitted that, the Applicant had moved an applications before the Sessions Court for modification of conditions imposed while granting anticipatory bail. The respondent No.2 had filed reply in the said application stating that, she has no objection for allowing those applications and the alleged incident which is subject matter of FIR No. 410 of 2023 was consensual. The charge-sheet arising out of FIR No. 410 of 2023 registered with Khar Police Station may be quashed with the consent of victim. The material on record indicate that, relationship was consensual. The victim has filed affidavit stating that, she has no objection for quashing the impugned proceedings. The medical report submitted by KEM hospital

about alcohol test is negative. The photographs which are part of charge-sheet about presence of victim and accused in the hotel premises where the alleged incident had occurred indicate that both were enjoying their company. The victim intends to move ahead with her life. The pendency of proceedings would be disturbing her peace.

6. Reliance has been placed on the decision of the Apex Court in the case of **Kapil Gupta Vs. State of NCT of Delhi and Anr.** delivered in Criminal Appeal No. 1217 of 2022 decided on 10th August 2022.

7. Learned APP took us through the statement of complainant and witnesses.

8. We have perused the FIR and the statement of witnesses. The statement of victim indicate that, she had accompanied accused. They had consumed liquor. She was subjected to sexual relationship. The incident had occurred on 21st May 2023. FIR was lodged on 24th May 2023. The statement of one of the witness indicate that, she is the friend of victim. She had accompanied victim and accused. She left their company. Victim did not join her and chose to accompany accused. She also refers to conversation between her and victim which indicate that victim did not return home immediately. The victim intended to give excuse for being out by alibi. The statements of other witnesses were also recorded. The

material on record would indicate that the victim was in company of accused. She volunteered to do so. The relationship was apparently consensual.

9. The victim is present in the Court. She has filed Affidavit of no objection for quashing the proceedings. She has reiterated that, she has no objection for quashing the impugned proceedings. She admitted the contents of Affidavit.

10. The Apex Court in the case of Kapil Gupta Vs. State of NCT of Delhi and Anr. (supra) has dealt with the law relating to quashing by consent on account of settlement between the parties. The Apex Court had referred to its earlier decision in the case of **Narender Singh Vs. State of Punjab**¹. The Court considered whether the FIR registered for offence under Section 376 of IPC could be quashed with the consent of the victim. In the light of observations reflected in paragraph 13, 14 and 15 of the said decision, the proceedings were quashed.

11. Considering the aforesaid factual aspect, the impugned proceedings can be quashed with the consent of victim.

ORDER

(i) Criminal Application (APL) No. 1606 of 2023 is allowed.

(ii) The impugned proceedings in Sessions Case No.1006 of 2023

¹ (2014) 6 SCC 466

pending on the file of learned Sessions Court for Greater Bombay, arising out of FIR No.410 of 2023 registered with Khar Police Station is quashed and set aside.

(iii) The Applicant shall pay the cost of Rs.5,00,000/- (Rupees Five Lakhs Only) to Advocates' Association of Western India Generation Next within a period of four weeks from today and submit the receipt of the same in the Registry of this Court. The details of the Bank Account for payment of costs are as under:-

Account Name	: Advocates Association of Western India Generation Next
Account Number	: 000110110007807
Bank Name	: Bank of India
Branch Name	: Mumbai Main
IFSC Code	: BKID0000001

(iv) Application stands disposed off.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)