



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

CRIMINAL APPLICATION (BA) NO.23 OF 2024

Tanvir @ Arman Salim Pathan

Vs.

State of Maharashtra, Through Police Station Officer, Shivaji Nagar Police
Station Khamgaon, District Buldhana 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. A. D. Bhate, Advocate for applicant.
Mr. A. R. Chutke, APP for respondent No.1/State.
Mr. H. V. Dhage, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 22/02/2024

1. The applicant came to be arrested on 30.07.2022 in connection with Crime No.178/2022 registered with Police Station, Shivaji Nagar, Khamgaon, District Buldhana for the offence punishable under Sections 363, 366, 366-A, 376(2)(f)(n), 376(3) read with Section 34 of the Indian Penal Code, 1860 and Sections 4, 6, 10, 12 and 17 of Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by father of the victim on an allegation that the present applicant is his son-in-law. On 11.05.2022 when he woke up at 1.30 a.m., he witnessed that his younger daughter – victim is not at home and therefore, he searched for her and it revealed to him that his daughter was taken by the present applicant. On the basis of said

report, police have registered the crime. During the investigation, the statement of the victim was recorded from which it revealed that without the consent of the parents, the victim was taken by the present applicant on the pretext of taking her on roaming and took her at Amravati and subjected her for sexual assault. On the basis of the said statement, the crime was also registered under Section 376 of the Indian Penal Code.

3. Learned Counsel for the applicant submitted that *prima facie* it reveals that it is a consensual act. The applicant belongs to the Muslim Community and the Muslim Personal Law permits the applicant to perform the marriage more than once. He further submitted that the relationship between the victim and the present applicant is that victim is his sister-in-law. Considering all these aspects and the applicant is behind bar since the date of arrest, he be released on bail.

4. Learned APP strongly opposed the application on the ground that considering the victim is 16 years of age, her consent even if it is there, is not relevant. The applicant is a married person took the victim on the pretext of taking her for roaming and kept her at rented premises and subjected her for sexual assault. Considering the *prima facie* case against the present applicant, the application deserves to be rejected. Learned Counsel for the victim also endorsed the same contention and

submitted that the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant, learned APP for the State and learned Counsel for the respondent No.2, perused the investigation papers. From the statement of the victim it revealed that victim was taken by the present applicant on a false pretext and took her at Amravati and thereafter, subjected for sexual assault. The victim is 16 years of age. This is not a case of love affair between the victim and the present applicant. The present applicant is a married person. The victim is his sister-in-law and without the consent of the parents, she was taken by the present applicant and was kept in a rented premises and subjected for sexual assault. The history narrated before the Medical Officer also substantiate the said fact. During the investigation, the victim was referred for the medical examination. The medical examination of the victim also substantiate the allegation. Considering the *prima facie* case made out against the present applicant. The application deserves to be rejected. Accordingly, I proceed to pass the following order.

ORDER

The application is rejected.

(URMILA JOSHI-PHALKE, J.)