



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

CRIMINAL APPLICATION (BA) NO. 58 OF 2024

Sunil s/o Wasantrao Navghare
Vs.
State of Maharashtra and another

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

Court's or Judge's orders

Ms. P. D. Pisurde, Counsel for applicant.
Mr. U. R. Phasate, APP for respondent No.1/State.
Ms. A. S. Mishrikotkar, appointed Counsel for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 01/04/2024

1. The applicant came to be arrested on 26.08.2022 in connection with crime No.763/2022 for the offence punishable under Sections 376, 376(AB) of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. The accusation against the present applicant is on the basis of report lodged by the mother of the victim on an allegation that the applicant is the grandfather of the victim. The informant along with the victim is residing with the applicant, as the husband of the informant passed away two years ago. On the date and time of the incident, the informant along with her mother was working in the Kitchen. On 25.08.2022 at about 8.00 p.m., the grandmother of the informant shouting. The informant heard noise of her mother and immediately

came out of the Kitchen and went towards the bedroom of the applicant and saw that the applicant and the victim were lying on the bed and the victim was watching something on a mobile and the applicant had inserted his finger into the undergarments of the victim. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that due to the family dispute, this false FIR is lodged against the present applicant. The victim has not supported the case of the informant, during her statement under Section 164 of the Code of Criminal Procedure. The medical report also not substantiates the said contention. Now, the investigation is completed and charge-sheet is filed. Further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that the victim of seven years was subjected for sexual assault. The statement of the victim was recorded by the police substantiated the said contention. Though the investigation is completed there is apprehension of tampering the witnesses. In view of that the application deserves to be rejected.

5. Learned Counsel for the respondent No.2 – victim also endorsed the same contention and prays for rejection of the application.

6. 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. Admittedly, the statement of the victim recorded by the police and the history narrated before the Medical Officer shows that she was subjected for sexual assault. Subsequently, her statement under Section 164 of the Code of Criminal Procedure was recorded wherein she has not supported the story of the prosecution. The medical report also nowhere shows any injury on the genitals of the victim. Considering the fact that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. The application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Sunil s/o Wasantrao Navghare** be released on bail in connection with crime No.763/2022 for the offence punishable under Sections 376, 376(AB) of Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of

Rs. Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the village Arvi, District Wardha, till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

7. The fees of the appointed Counsel for the respondent No.2 be quantified as per rules.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)