



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

CRIMINAL APPLICATION (BA) NO.101 OF 2024

Sachin s/o Kailash Tayade
Vs.

State of Maharashtra, Through Police Station Officer, Khamgaon City,
Buldana 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. K. H. Anandani, Advocate along with Mr. B. K. Suchak, Advocate for
applicant.

Mr. A. B. Badar, APP for respondent No.1/State.

Ms. Radha Mishra, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 04/04/2024

1. Applicant came to be arrested on 06.10.2023 in connection with Crime No.524/2023 registered with Police Station, Khamgaon City, District Buldhana for the offences punishable under Sections 354, 354-B of the Indian Penal Code and Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act').

2. The accusation against the present applicant is that the victim eight years old girl was playing outside the house, the present applicant has called her inside the house and subjected her for sexual assault. On the basis of said report police have registered the crime.

3. It is contention of the applicant that there is no allegation of penetrative sexual assault against the present applicant therefore, Section 4 of the POCSO Act is not applicable in the present case. He further submitted that considering the rest of the allegations for which maximum punishment provided is up to seven years. 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 and submitted that eight years girl was subjected for the sexual assault. In view of that, the application deserves to be rejected.

5. Learned appointed Counsel for the respondent No.2 reiterated the said contention and prays for rejection of the application.

6. Having heard the learned Counsel for the applicant and learned APP for the State as well as learned appointed Counsel for the respondent No.2, perused the recitals of the FIR. From the recitals of the FIR, it reveals that there is a physical touch by the present applicant to the private part of the victim and the act of the applicant covers under the definition given under Section 7 of the POCSO Act constituting the sexual assault on the victim girl. As far as the investigation part is concerned, which is

now already completed and charge-sheet is also already filed.

7. Considering the role of the present applicant, as there is no allegation of penetrative sexual assault on the victim and the investigation is completed, charge-sheet is filed, the application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Sachin s/o Kailash Tayade** shall be released on bail in connection with Crime No.524/2023 registered with Police Station Khamgaon City, Buldhana for the offences punishable under Sections 354, 354-B of the Indian Penal Code and Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the village Lakkadganj, Taluka Khamgaon, 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.

The application is disposed of.

(URMILA JOSHI-PHALKE, J.)