



Judgment

929 apl 257.24 (2)

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

CRIMINAL APPLICATION (APL) NO. 257/2024

Arvind s/o Bharat Rathod,
Aged about 28 yrs.,
R/o. Dattamanjri, Tah. Mahur,
Dist. Nanded.

... APPLICANT

VERSUS

1. State of Maharashtra,
through Police Station Officer,
Police Station, Mahagaon,
Dist. Yavatmal.
2. XYZ,
In Crime No. 698/22,
thr. P.S.O., P.S. Mahagaon,
Dist. Yavatmal.

... NON-APPLICANTS

Correction is
carried out as per
order dated
19.09.2024

Mr. R.M. Daga, Advocate for applicant.
Mr. A. Badar, APP for non-applicant No.1/State.
Ms. Anuprita Mishrikotkar, Advocate (appointed) for non-applicant
No.2

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE : 10.09.2024.

ORAL JUDGMENT (PER: VINAY JOSHI, J.) :

Heard.

2. **Admit.**

3. By this application, the applicant Arvind s/o Bharat Rathod (accused No.3) is seeking to quash the prosecution namely Special Case No. 34/2023 arising out of Crime No. 698/2022 registered with Police Station Mahagaon, Dist. Yavatmal for the offence punishable under Sections 363, 366, 366(A), 376(2)(n), 109 read with Section 34 of the Indian Penal Code, Sections 4, 6, 8, 12 of the Protection of Children for the Sexual Offences Act. In particular, the applicant has been arraigned for commission of offence punishable under Sections 363, 109 read with Section 34 of the Indian Penal Code.

4. At the instance of report lodged by the father of victim girl aged 17 years, crime has been registered. It is informant's case that on 16.11.2022 around 06.00 a.m, the victim left her house, but did not return. The informant made inquiry in the village, on which he learnt

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that co-accused Nitin Chavhan is also missing and therefore, he lodged report. Initially, the Police Registered the crime against co-accused Nitin for the offence punishable under Sections 363 of the Indian Penal Code. During the course of investigation, the role of several persons was revealed, on which further sections have been added as well as various persons have been arraigned as an accused. So far as the applicant Arvind is concerned, it is alleged that the applicant has abetted main accused Nitin in kidnapping a minor from lawful guardianship. In this regard, we have gone through the statement of victim girl. It is her contention that at the relevant time at the instance of Nitin, she went out of the house. Co-accused Nitin expressed his love, desire to marry, and asked her to run away from her house. Co-accused Nitin was accompanied with another co-accused Nilesh. At the relevant time, both Nitin and Nilesh made victim to sit on motorcycle and took her at Karanjkhed Phata. The victim stated that applicant Arvind was already at that place. As per victim's contention one black colour four wheeler came there, by which victim and main accused Nitin left the place then victim stated further story regarding

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her stay with Nitin at different places and finally she came back on 28.12.2022.

5. The statement of informant discloses that role assigned to applicant is that when the couple has changed the means of transportation, at that place applicant Arvind was present. While resisting the application, the learned APP took us through the statement of victim recorded by the learned Magistrate in terms of Section 164 of the Code of Criminal Procedure (“Code”). This time, victim stated that at said place the applicant was waiting with car. Concededly, the role assigned to the applicant is of abettor to the offence of kidnapping a minor.

6. The learned counsel appearing for applicant would submit that the First Information Report and material collected during the course of investigation fails short even to constitute an offence of abetment or the act done in furtherance of common intention. Obviously, the victim’s statement is material, as admittedly besides her statement, there is nothing against the applicant Arvind. We have

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revisited her statement, wherein she never stated that either the applicant brought four wheeler to facilitate the couple to escape or assisted them in any manner. Rather she stated that when the couple went to Karanjkhed Phata, the applicant Arvind was already present on the spot. She stated that thereafter one four wheeler came, obviously meaning thereby someone else has brought the vehicle, in which couple fled away. True, in the statement under Section 164 of the Code, the victim stated differently, however that does not have foundation in the victim's earlier statement. Even if it is accepted that when the main accused along with victim have changed mode of transportation, the applicant was present, it will not constitute any offence. Mere presence of accused cannot be construed that he has abetted the couple to go away. Unless there is mental element coupled with positive act, the offence cannot be made out. The allegation about the sexual assault are against main accused Nitin. Moreover, the allegation of taking away minor from the lawful guardianship is against Nitin and co-accused Nilesh. However, mere reference that the applicant Arvind was found on the spot would not lead to draw

inference against him.

7. Considering the material collected during the course of investigation, we do not see any prima facie case to put the applicant on trial. The case is covered by criteria Nos. 1 and 3 of the guidelines led by the *Supreme Court in case of State of Haryana Vs. Bhajan Lal*, *AIR 1992 SC*. In the circumstances, continuation of trial amounts to abuse of the process of the Court.

8. In view of above, application is allowed. We hereby quash and set aside the prosecution namely Special Case No. 34/2023 arising out of Crime No. 698/2022 against applicant Arvind s/o. Bharath Rathod registered with Police Station Mahagaon, Dist. Yavatmal for the offence punishable under Sections 363, 366, 366(A), 376(2)(n), 109 read with Section 34 of the Indian Penal Code. Sections 4, 6, 8, 12 of the Protection of Children for the Sexual Offences Act.

9. Application stands disposed of in above terms.

Correction is
carried out as per
order dated
19.09.2024

10. The fees of the appointed counsel shall be paid as per the
Rules.

(MRS. VRUSHALI V. JOSHI, J.)
Gohane

(VINAY JOSHI, J.)