



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

CRIMINAL APPLICATION (BA) NO. 142 OF 2024

Nikhil @ Akash s/o Vijay Sharma V/s State of Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. T.S. Deshpande, counsel for the applicant.

Mr. H.R.Dhumale, APP for the non-applicant/State.

Mr. Amol G. Hunge, counsel (appointed) for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 12/04/2024.

1. The applicant came to be arrested, in connection with Crime No. 306/2023 registered with Police Station Ajni, District Nagpur for the offence punishable under Sections 376(3), 376(2)(i), 506 of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by the mother of the victim girl, on an allegation that her daughter aged about 16 years was studying in 10th Standard, she got acquaintance with the present applicant through Instagram, and present applicant subjected her for sexual assault on 11/05/2023 by taking her in one garden. On the basis of report, the Police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that as far as the allegations are concerned, sexual harassment may be there, but there is no allegation of penetrative sexual

assault which is not substantiated by the medical report, as no injuries are found on her person. Now, that the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the present application on the ground that the victim is suffering from 'Mild Intellectual Disability' who is subjected for sexual by the present applicant by taking dis-advantage of her disability. He submitted that the injury is not required to make out the case of the sexual assault. The victim was subjected for sexual assault by the applicant, if he is released on bail, he would tamper with the prosecution evidence. He submitted that the statement of the victim recorded under Section 164 of the Code of Criminal Procedure shows the role of the present applicant. In view of that, the application deserves to be rejected.

5. Learned counsel for the victim also endorsed the same contention and prays for rejection of the application.

6. Having heard learned counsel for the applicant, learned APP for State and learned appointed counsel for the victim/non-applicant No.2, perused the recitals of the FIR. From the statement of the victim and recitals of the FIR, it reveals that the victim got acquaintance through Instagram and thereafter, there was communication between them. They met with each other and it is alleged that on 11/05/2023, the

applicant took her into the Garden and subjected her for sexual assault.

7. During her statement under Section 161 of Cr.P.C. she has not made allegation about the penetrative sexual assault, but in a subsequent statement recorded under Section 164 Cr.P.C. specifically stated about the penetrative sexual assault by the present applicant. However, considering the fact that, victim got acquaintance with the present applicant through an Instagram Account, they were communicating each other. As per the allegation, the applicant promised her for marriage and thereafter, there was a physical relationship between them. Now, the investigation is also completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. Considering the above fact, however, the apprehension raised by the learned APP is to be taken into consideration. In view of that some conditions are required to be imposed on the applicant. Accordingly, I proceed to pass the following order:

- i] The criminal application is **allowed**.
- ii] In connection with Crime No. 306/2023 registered with Police Station Ajni, District Nagpur for the offence punishable under Sections 376(3), 376(2) (i), 506 of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, the applicant -**Nikhil @ Akash s/o Vijay Sharma**, shall be released on bail

on executing of 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 jurisdiction of the Ajni Police.
- iv] The applicant shall not induce, threat or promise any witnesses including the victim in any manner either by communicating with her by himself or through any persons, till the culmination of the trial.
- v] The fees of the appointed counsel be quantified as per the Rules.

The criminal application **disposed of.**

[URMILA JOSHI-PHALKE, J.]