



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

CRIMINAL APPLICATION (BA) NO. 131 OF 2024

Shrikant s/o Suresh More 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. N.L. Jaiswal, counsel for the applicant.
Ms. Swati Kolhe, APP for the non-applicant/State.
Mr. S.G. Joshi, counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/04/2024.

1. The applicant came to be arrested on 21/10/2023 in connection with Crime No. 289/2018 registered with Police Station Doangaon, Tah. Mehkar, District Buldhana for the offence punishable under Sections 376(D)(A), 366, 201, 506(B) read with Section 34 of the Indian Penal Code and Sections 4 and 6 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 victim aged about 14 years, on an allegation that on 13/10/2018 when she was proceeding towards her Aunt's house, co-accused Akash More took her in one newly constructed house, where nobody is residing, at the relevant time, the present applicant and other co-accused also came there, they subjected her for sexual assault one by one, and thereafter ran away from the said spot. She further alleged that thereafter, she was taken by Ananda Khandu More and others at the house of her Aunt,

and thereafter, on 14/10/2018, when she was proceeding to the Police Station, the parents of the co-accused assured her that, they will perform the marriage of her with Akash More. On the basis of said report, the police have registered the crime against the present applicant and other co-accused.

3. Learned counsel for the applicant submitted that as far as the allegation against the present applicant is concerned, which is false one and the FIR came to be lodged merely because the marriage of co-accused Akash More is not perform with the victim. He further submitted that the medical report nowhere supports the case of the victim, other co-accused are already released on bail. He also invited my attention towards the various statements of the witnesses and submitted that considering the entire statements of the witnesses and the statement of the victim, it seems that merely because her marriage was not performed with the co-accused, this false report is lodged. The story narrated by the victim is not probable. Now, the investigation is completed, charge-sheet is filed other co-accused are already released on bail. In view of that, the applicant be released on bail.

4. Learned APP strongly opposed the said application on the ground that since the date of the incident, the applicant was absconding. The various general diary entry shows that though due efforts were taken by the investigating agency, the applicant was not found, and after approximately 5 years of the incident, the applicant was arrested. If he is released on bail, he would not be available for trial and the trial would be

held up. She further invited my attention towards the statement of Dr. Mashanka Amit Tajane, which shows that when he examined the victim, he found that her genitals i.e. hymen were completely torn and she was having pain in her private part. Thus, the statement of the medical officer sufficiently shows that she was subjected for sexual assault. Considering the victim was only 14 years of age at the time of the incident, who was subjected for sexual assault by the present applicant and other co-accused. The applicant was absconding approximately for five years, the bail application deserves to be rejected.

5. Having heard learned counsel for the applicant, learned APP for the State and learned counsel for the non-applicant no.2, perused the investigation papers. The recitals of the FIR shows that the victim was taken by the co-accused in a newly constructed house, where nobody was residing, and subjected for sexual assault, not only by the co-accused Akash More but the present applicant also. After lodging of the FIR, she was referred for medical examination, prior to that she was also examined by Dr. Mashanka Amit Tajane on 15.10.2018. The statement of this medical practitioner shows that, on examination of the genitals, she found that the victim was having pains in her private part, her hymen was torn and the genitals were completely torn. Thus, this medical officer is the person who examined the victim immediately after the incident. After lodging of the FIR, the victim was referred for the medical examination, the report of the medical officer shows that sexual assault on the victim cannot be ruled out.

During the medical examination of the victim, the medical officer also found that the hymen was torn. The statement of the victim substantiated by the medical certificate sufficiently shows that the victim was subjected for the sexual assault. The medical certificate of Dr. Tajane Hospital shows that labia, majora and minora, wherein there was no tear but hymen was torn and abrasions are also noted on the back.

6. Learned counsel for the applicant further invited my attention towards the medical certificate of the present applicant, wherein the medical officer has observed that he is incapable of having sexual intercourse. On the basis of which he submitted that considering the said medical report, the allegation by the victim itself falsified. In view of that also, he prays for releasing the applicant on bail.

7. Considering the entire material collected during the investigation, the statement of the victim who was only 14 years of age, at the time of the incident. The statement of the medical practitioner Dr. Mashanka Amit Tajane, the medical certificate issued by Dr. Mashanka Amit Tajane and medical certificate issued by the Government Hospital substantiated the fact that victim was subjected for sexual assault. After the date of the incident, the present applicant was absconding and finally, he was arrested on 21/10/2023 i.e. approximately after five years of the incident. The investigation papers shows that there are various general diary entries recorded by the investigating agency to show that sufficient efforts are taken by them to arrest the present applicant but he was not found

in the village, and after several efforts, the investigating officer could not arrest the accused, and finally he was arrested after five years. Considering the same, the apprehension raised by State, that if the applicant/accused is released on bail, would not be available for trial cannot be ruled out.

8. Considering the prima-facie evidence against the present applicant as well as the other co-accused, the fact that the applicant was absconding approximately for five years and the apprehension raised by the State that the trial would be held up, due to the absence of the applicant. In view of the above facts and circumstances, the present application deserves to be rejected. Accordingly, I proceed to pass the following order:

- a] The criminal application is **rejected** and disposed of.
- b] Considering the incident is dated 13/10/2018, the trial Court shall expedite the trial and shall dispose of the application as early as possible.

[URMILA JOSHI-PHALKE, J.]