



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

CRIMINAL APPLICATION (BA) NO. 145 OF 2024

Deochand @ Deva Fattuji Borkar 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. A.S. Manohar, counsel for the applicant.

Mr. N.B.Jawade, APP for the non-applicant/State.

Mr. Ashutosh Chaudhari, counsel (appointed) for the non-applicant No.2

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/04/2024.

1. The applicant came to be arrested on 24/04/2023.
2. By this application, the applicant is seeking bail in connection with Crime No.104/2023 registered with Police Station Rawanwadi, Tahsil and District Gondia for the offence punishable under Sections 363, 376(2)(f) and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
3. The accusation against the present applicant is on the basis of statement of the victim who alleged that the present applicant is a Teacher of a school wherein she is studying. On 15/04/2023, she was subjected for sexual assault by the present applicant by taking her into the lab of the school and thereafter, she was sent along with another co-accused Shailesh Dabhane, thereafter she went at Mumbai. Police traced her at Mumbai and recorded her statement. On the basis of said statement, police have registered the crime against the present applicant.

4. Learned counsel for the applicant submitted that the applicant is a paralytic person and with false allegation, the report is lodged on the basis of the statement of the victim. He invited my attention towards the medical papers, which shows that the applicant is suffering from Left frontal parasagittal acute hemorrhage since 2022 i.e. prior to the incident.

5. He invited my attention towards the statement of the victim and submitted that as per the allegation of the victim, when she was returning from washroom, the present applicant shut her mouth, took her in the college lab, and subjected her for sexual assault. He submitted that this act is literally difficult for the applicant who is paraplegia patient. He further submitted that the alleged incident has taken place according to the victim during college timing. This version is also improbable as it is highly impossible for the present applicant to subject the victim for sexual assault during collage timing. He submitted that the spot panchanama also shows that all the articles kept in the said lab were found intact. If she was subjected for sexual assault in the lab, definitely there would have been damage to the articles during the said act, because there ought to have been resistance on the part of the victim. Thus, he submitted that in the above circumstances, it appears that with the improbable and unacceptable story, the applicant is implicated in the alleged offence.

6. Learned APP and learned appointed counsel objected the said application on the ground that offence is of a serious nature. The statement of the victim supported by the medical examination substantiates the contention that the

victim was subjected for sexual assault. They submitted that, during the medical examination hymen was found to be torned. In view of that, the applicant who is in the authoritative position subjected the victim for sexual assault and considering the nature of the offence, the application deserves to be rejected.

7. Having heard learned counsel for the applicant, learned APP for the State, and learned appointed counsel for the non-applicant No.2, perused the investigation papers. Admittedly, the medical papers on record shows that the applicant is a paraplegic patient since 2022. Even the jail authorities are providing him the treatment, as he has behind bar. The physiotherapy is provided by the jail authorities to the present applicant also. The medical certificate i.e. M.R.I Scan report, which is produced on record shows that the applicant has suffered Left frontal parasagittal acute hemorrhage measuring about 2.2 x 4.5 cms with surrounding edema. Thus, there is a substance in the contention of the learned counsel for the applicant that the applicant being a paraplegic patient, it is difficult for him to shut the mouth of the victim and take her in the lab. At this stage, it would not be appropriate to comment on the merit of the case but considering the fact that the applicant is a paraplegic patient, and now the investigation is completed and charge -sheet is already filed , and as far as the apprehension raised by the prosecution is concerned, that the applicant would tamper the prosecution evidence can be taken care by imposing certain conditions on

the applicant. In view of that, I proceed to pass the following order:

- (a) The criminal application is **allowed**.
- (b) The applicant – Deochand @ Deva Fattuji Borkar in connection with Crime No.104/2023 registered with Police Station Rawanwadi, Tahsil and District Gondia for the offence punishable under Sections 363, 376(2)(f) and 506 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, shall be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.
- (c) The applicant shall not enter into vicinity of G.E.S. Junior College Rawanwadi as well as the Rawanwadi Area wherein the victim is residing, till the evidence of the victim is recorded before the learned trial Court.
- (d) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- (e) The fees of the appointed counsel be quantified as per the Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]