



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

CRIMINAL APPLICATION (BA) NO.242 OF 2024

Ulhas s/o Babarao Bhoyar
Vs.

State of Maharashtra, Through Police Station Officer, Hinganghat District
Wardha 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. S. W. Sambre, Advocate for applicant.
Mr. Nitin Autkar, APP for respondent No.1/State.
Mr. A. S. Band, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/04/2024

1. The applicant came to be arrested on 25.07.2023 in connection with Crime No.748/2023 registered with Police Station, Hinganghat, District Wardha for the offence punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act.

2. The accusation against the present applicant is on the basis of report lodged by the Police Constable Homkant Gulabrao Mashakhatri alleging that on 28.06.2023 when he was on duty, the Police Constable Aaglave and Lady Police Constable Pragati Vilas Bhoyar brought the victim who is aged about 17 years and 6 months at the

Police Station. During inquiry with her it revealed that her parents are not alive and her relatives namely her elder brother, her maternal uncle have performed her marriage with the present applicant. On the basis of the said report, police have registered the crime.

3. During the investigation, the Investigating Officer has recorded the statement of the victim. In initial statement, she has not alleged about any sexual assault or the physical relationship by the present applicant with her. In a subsequent statement, she stated that she was sexually assaulted by the present applicant. On the basis of the said the crime was registered under Section 376(2)(n) of the IPC and by applying the provision of Protection of Children from Sexual Offences Act.

4. Learned Counsel Mr. Sambre for the applicant submitted that as far as the allegations are concerned, the statement of the victim shows that as her marriage was performed with the present applicant and being a husband of the victim there was a physical relationship between them. He submitted that the entire charge-sheet nowhere shows that the applicant was aware that she is a minor and her marriage is performed with him against her consent. Thus, after marriage being he was husband of the victim there was physical relationship and therefore, the offence under Section

376 of IPC is not made out against the present applicant. He further submitted that as regards the minority of victim there is no material on record to show that the victim was minor at the time of the incident. He invited my attention towards the radiological examination which shows that the estimated radiological bone age of the victim is approximately between 16 to 17 years. He submitted that the benefit of two years also goes to the accused in view of that also, no case is made out against the present applicant and therefore, considering now investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. He be released on bail.

5. Learned APP and learned Counsel for the respondent No.2 strongly opposed the application on the ground that considering the victim was minor, the applicant has performed marriage with her and subjected her for sexual assault, the application deserves to be rejected.

6. Having heard the learned Counsel for the applicant and learned APP for the State as well as learned Counsel for the respondent No.2, perused the entire investigation papers. From the charge-sheet it reveals that radiological age of the victim determined is 16 to 17 years. It further revealed that her relatives have performed the marriage with the present applicant. The subsequent statement

recorded of the victim fairly discloses that the applicant was having physical relationship with her as he is husband of the victim. Nowhere her statement discloses that the applicant has subjected her for forceful sexual assault. Considering the fact that now investigation is already completed and charge-sheet is filed and the material investigation carried out creates the doubt regarding the age of the victim. Moreover, the physical relationship between them is out the marriage. In view of that, at this stage further incarceration of the present applicant is not required and therefore, application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Ulhas s/o Babarao Bhoyar** shall be released on bail in connection with Crime No.748/2023 registered with Police Station, Hinganghat, District Wardha for the offences punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act, 2012 and Sections 9, 10 and 11 of the Prohibition of Child Marriage Act, 2006, on executing PR bond in the sum of R.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)