



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

CRIMINAL APPLICATION (BA) NO.207 OF 2024

Vishal s/o Prabhu Janbandhu

Vs.

State of Maharashtra, Through Police Station Officer, Police Station Khapa,
District Nagpur 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. Rahul Waghmare, Advocate h/f Mr. S. N. Nandeshwar, Advocate for
applicant.

Mr. Shamshi Haider, APP for respondent No.1/State.

Mrs. Sonali Saware Gadhawe, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 03/05/2024

1. The applicant came to be arrested on 03.10.2023 in connection with Crime No.422/2023 registered with Police Station, Khapa, District Nagpur for the offences punishable under Sections 363, 377 of the Indian Penal Code and under Section 4 and 6 of Protection of Children from Sexual Offences Act.

2. As per the allegation against the present applicant that present applicant has subjected the victim boy aged about 11 years for sexual assault by promising him of a chocolate and took him in the forest. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that besides the statement of the victim

boy, there is no other material to connect the present applicant with the alleged offence. The allegation is not substantiated by the medical papers also, as no injury was seen on the person of the boy. He further submitted that even the prosecution has not recorded the statement of the witnesses, who were playing the football along with the boy. Thus, he submitted that there is no substance in the allegation. Moreover the applicant is a mentally retarded person and the medical certificate shows that he is of a low I.Q. Considering all these facts, he be released on bail.

4. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the application on the ground that considering the 11 year boy was subjected for sexual assault and this is the second incident in which present applicant has subjected the victim boy for sexual assault, if he is released on bail, there is possibility of tampering the witnesses and therefore, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant, learned APP for the State and appointed learned Counsel for the respondent No.2, perused the investigation papers. The recitals of the FIR shows that the boy has disclosed the incident to the mother of the victim and thereafter, mother has lodged this report. The statement of the boy is also recorded who has reiterated the said contention and stated

that he was taken from the football ground in a forest by the present applicant and subjected for sexual assault. The medical certificate nowhere shows any injury on the person of the victim boy. Admittedly, no reason came forward before the Court regarding the false implication of the present applicant in the alleged incident. However, considering now investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. Moreover, the fact that the applicant is of a low I.Q. Admittedly, the investigating agency has not recorded any other statements of the witnesses at least to show that the present applicant was there on the football ground and he took the victim boy from the football ground along with him. Considering the nature of the evidence and further incarceration of the present applicant is not required. The application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) The application is allowed.

(ii) The applicant **Vishal s/o Prabhu Janbandhu** shall be released on bail in connection with Crime No.422/2023 registered with Police Station, Khapa, District Nagpur for the offences punishable under Sections 363, 377 of the Indian Penal Code and under Sections 4 and 6 of Protection of Children from Sexual Offences Act, on executing 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 village Saoner District Nagpur, till culmination of the trial.

(iv) The applicant shall attend the proceeding before the Court without seeking any exemption unless there are exceptional circumstances.

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

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)