



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

CRIMINAL APPLICATION (BA) NO. 288 OF 2024

Shubham Gajanan Menghare

Vs.

State of Maharashtra, Through Police Station, Karanja (Ghadge),
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. P. Panditkar, Counsel for the applicant.

Mrs. M. A. Barabde, APP for non-applicant No.1/State.

Mr. A. S. Shukla, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 20/09/2024

1. The applicant came to be arrested on 06.08.2023 in connection with Crime No.416/2023, registered with Police Station, Karanja (Ghadge) District Wardha for the offences punishable under Sections 354-A, 376(2)(n), 506 of the Indian Penal Code and under Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of the report lodged by the victim aged about 13 years and above alleging that the present applicant is her uncle (mother's sister's husband). It is alleged that as her mother has left her and her father is also not residing with her, she was residing with her grandmother. She was staying in hostel and on 16.04.2023 her aunt took her at her house during the vacation. She

alleged that when she was staying with her aunt, the present applicant who is the husband of her aunt disclosed to her that he likes her, thereafter he obtained room for her on rent and subjected for sexual assault. On the basis of the said report, police have registered the crime against the present applicant. After registration of the crime, the victim was referred for the medical examination. During the medical examination, it reveals that the position of the hymen was absent and position of the tears was 6 'O'Clock. After completion of the investigation, the charge-sheet is filed against the present applicant.

3. Learned Counsel for the applicant submitted that the victim aged about 13 years was communicating with one boy and therefore, she was scolded by him as well as his wife and therefore, the victim got annoyed and this false report is lodged. He submitted that as far as the involvement of the present applicant is concerned, which does not reveal from any other investigation papers and statement of the victim apparently appears to be false and baseless. Now the evidence of the victim is already recorded. During her evidence, he has not supported the prosecution case. In view of that, further incarceration of the present applicant is not required as no purpose would be served by keeping him behind bar. In view of that, he be released on bail.

4. Heard learned Counsel for the complainant.

5. Learned APP submitted that though victim has not supported the prosecution, but the medical evidence and the statement of the other witnesses shows the involvement of the present applicant. The victim is only 13 years of girl and she was subjected for the sexual assault. In view of that the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant and learned APP for the State and the learned appointed Counsel for the complainant. Perused the investigation papers from which it reveals that the applicant is the uncle of the victim and it is alleged that she was subjected for sexual assault at the hands of the present applicant. She further stated before the investigating agency that her communication with her friend was disliked by the present applicant as well as his wife and therefore, she was scolded by them. During her evidence, she has not supported the prosecution case and completely left the loyalty towards the prosecution. Considering the same, now there is medical evidence which is only to the extent that hymen was absent. Admittedly, there are many reasons for the absence of the hymen. Thus, considering the entire facts and the circumstances, further incarceration of the present applicant is not required and no purpose will be served by keeping

him behind bar. In the light of the above facts and circumstances, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
 - (ii) The applicant **Shubham Gajanan Menghare** shall be released on bail in connection with Crime No.416/2023, registered with Police Station, Karanja (Ghadge), District Wardha for the offences punishable under Sections 354-A, 376(2)(n), 506 of the Indian Penal Code and under Sections 4, 6 and 12 of the 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 induce, threat or promise any witnesses who are acquainted with the facts of the case.
 - (iv) The applicant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.
7. The fees of the appointed Counsel be quantified as per rules.
8. The application is disposed of.
9. *Hamdast* granted.

(URMILA JOSHI-PHALKE, J.)