



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

CRIMINAL APPLICATION (BA) NO. 287 OF 2024

Kunal s/o Shankar Dongare

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Ballarshah, District Chandrapur 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. R. M. Daga, Advocate for applicant.

Ms. H. N. Prabhu, APP for respondent No.1/State.

None for the respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 15/07/2024

1. The applicant came to be arrested on 28.07.2022 in connection with Crime No.431/2022 registered with Police Station Ballarshah, District Chandrapur for the offences punishable under Sections 376, 376(1), 376(2)(j), 376(3) of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. Learned Counsel for the applicant submitted that the crime is registered on the basis of a report lodged by the victim girl aged about 15 years and 2 months, on an allegation that out of a love affair, she was subjected for sexual assault by the present applicant. He submitted that the applicant is 19 years old boy, whereas the victim is aged about 15 years and two months. Out of love

affair, there was a physical relationship between them. As far as further incarceration of the applicant is concerned, which is not required as since last two years he is behind bars. There is no progress in the trial as charge is not yet framed. Considering the investigation is completed and the alleged offence which alleged to be committed is a relationship out of a love affair. He submitted that considering the nature of the allegation, the applicant be released on bail.

3. Learned APP strongly opposed the said application and submitted that considering the victim is minor, her consent is not relevant, the application deserves to be rejected.

4. Though the victim is served, not appeared before the Court. The appointed learned Counsel for the victim is also not present before the Court.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the recitals of the FIR which is lodged by the victim girl, from which it reveals that she got acquaintance with the present applicant and said acquaintance resulted into the love affair. Out of a love affair, there was a physical relationship between them and subsequently, it resulted into her pregnancy and therefore, FIR came to be lodged. Considering the nature of the allegations, it is apparent that out of a love affair, the

physical relationship was developed. It is now time and again observed by the various Courts that the relationship and the offences which are arising out of the love affair are to be treated differently. It is not a case, wherein the accused has subjected the victim for a sexual assault out of lust, but whatever happened is due to the physical attraction between the two teenagers. Considering the same, the applicant is for a sufficient period behind bars. Now the investigation is already completed, charge-sheet is filed and further incarceration of the present applicant is not required, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Kunal s/o Shankar Dongare** shall be released on bail, in connection with Crime No.431/2022 registered with Police Station Ballarashah, District Chandrapur for the offences punishable under Sections 376, 376(1), 376(2)(j), 376(3) of the Indian Penal Code and under Sections 4 and 6 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 enter into the Ballarashah City, District Chandrapur, till culmination of the trial.

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

(v) The applicant shall attend the proceedings before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)