

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

CRIMINAL APPLICATION (BA) NO.303/2024

Shubham @ Prayog s/o Prakashrao Panbude Vs. The State of Maharashtra, thr.
P.S.O., P.S. Arvi, Tah. Arvi, Dist. Wardha and another

WITH

CRIMINAL APPEAL 318/2024

Ashpak Shaha s/o Akbar Shaha Vs. The State of Maharashtra thr. P.S.O., P.S. Arvi,
Dist. 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

Shri P.S. Kadam, Advocate for applicant in BA No.303/2024
Shri N.B. Jawade, APP for respondent No.1/State
Ms Anuprita S. Mishrikotkar, Advocate (appointed) for respondent No.2
Shri N.V. Lohe, Advocate for appellant in Appeal No.318/2024

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/07/2024

By preferring the appeal by the appellant Ashpak Shaha s/o Akbar Shaha challenged the order passed by the Special Court, Wardha in Special Case No.107/2023 prefers this appeal as the prayer for bail was rejected. Whereas Criminal Application (BA) No.303/2024 is filed by the another co-accused Shubham @ Prayog s/o Prakashrao Panbude for grant of bail.

2. Criminal Appeal No.318/2024 is admitted.
3. Both the appellants came to be arrested on 18/10/2023 in connection with Crime No.1156/2023 registered with Police Station Arvi for the offences punishable under Sections 363, 366(A), 376(D),

376(2)(n), 323, 506 r/w Section 34 of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 as well as Sections 3(1)(r), 3(2)(v), 3(2)(va), 3(1)(w)(i), 3(1)(w)(ii) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. The accusation against the present appellant and applicant are that on 03/07/2007, victim was proceeding towards the college, she was kidnapped by the present applicant and subjected for forceful sexual assault. At the relevant time, the victim was 15 years and 9 months of age.

4. Heard learned Counsel Shri Kadam, as well as Shri N.V. Lohe, they both have submitted that now investigation is completed and chargesheet is filed. As far as the statement of the victim is concerned, is not trustworthy as she has changed her version time to time and implicated both the applicants worst. They have submitted that there was a love affair between victim and appellant Ashpak Shaha s/o Akbar Shaha and out of love affair, there was physical relationship between them. Wherein learned Counsel Shri Kadam submitted that as far as appellant Shubham @ Prayog s/o Prakashrao Panbude is concerned, he is not at all concerned with the allegation of sexual assault, he also placed reliance on the attendance register wherein the victim was shown to be absent in the school and he submitted that this document itself is sufficient to show that victim has not attended the school on that day. He also invited my attention

towards the statement of class teacher of the victim, which shows that from last 10-15 days, the victim has not attended the school. Thus she submitted that the entire prosecution case is based on the false statement of the victim. Considering the same, the custodial interrogation for further investigation is not required. Further incarceration of the applicant is also not required. In view of that they be released on bail.

5. Learned APP and learned appointed Counsel strongly opposed the said application on the ground that the statement of the victim is consistent. As far as the alleged incident regarding sexual assault is concerned, which is also corroborated by one of the eye-witness namely Ravindra Baringe, who has shown the present applicant along with the victim in a dilapidated house and the vehicle of the applicant was also in front of the said house. The statement of Mangesh Atram is also sufficiently shows the involvement of the present applicants as there was immediate disclosure by the victim to him. Thus, *prima facie* case is made out against the present applicant. In view of that present application deserves to be rejected.

6. Heard learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which, it reveals that the statement of victim was recorded who was minor at the relevant time. As far as statement on 13/10/2013, she informed the teacher that she is not feeling well and

was proceedings towards bus stand, at that time, one Scorpio vehicle came from the back side, restrained her and she was forcibly taken in the said vehicle and thereafter, both the applicants subjected her for sexual assault. The statement of her parents shows that there was immediate disclosure by her to them regarding the sexual assault by both the applicants. The presence of the present applicants is further substantiated by the statement of Ravindra Baringe, who has seen both the applicants along with the victim as well as four wheeler bearing No. MH-12 PN 4161. Thus the statement of the victim is substantiated by the statement of this eye-witness also who has seen victim in dilapidated house in a weeping condition. Thereafter, she has made a statement to her maternal uncle disclosing that she was subjected for sexual assault by both the applicants. As far as the applicant Shubham is concerned, she further alleged that he by assaulting her forcibly subjected for sexual assault. Thus, considering the *prima facie* case which is made out against the present applicant and also substantiated by the medical report sufficiently shows the involvement of the present applicant. Considering the manner in which the alleged incident has taken place and victim is minor at the time of the alleged incident, the bail application deserves to be rejected.

7. Criminal Application (BA) 303/2024 deserves to be rejected.

8. Criminal Appeal No.318/2024 deserves to be

dismissed accordingly.

9. The appeal as well as application are dismissed.

10. Fees of the appointed Counsel be quantified as per Rules.

JUDGE

R.S. Sahare