



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

CRIMINAL APPLICATION (BA) NO.330 OF 2024

Vishwadeep @ Pandya s/o Bhojraj Fule
Vs.

State of Maharashtra, Through Police Station Officer, Ajani, 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. M. V. Rai, Advocate for applicant.
Mr. Nitin Autkar, APP for respondent No.1/State.
Ms. Anuprita Mishirikotkar, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/05/2024

1. The applicant came to be arrested on 11.11.2023 in connection with Crime No.555/2023 registered initially under Section 363 of the Indian Penal Code and thereafter, under Sections 366, 370, 376, 376(3), 376(2)(i)(n) read with Section 34 of the Indian Penal Code and under Section 4, 8, and 12 of the Protection of Children from Sexual Offences Act.

2. The accusation against the present applicant is on the basis of the investigation carried out by the Investigating Officer. The FIR is lodged by father of the victim alleging that his daughter – victim is aged about 13 years. In the month of February 2023, his daughter left the house without informing anybody. It is further stated by him that she in habit of leaving the house without informing

anybody and accordingly, she had left prior also on 2 – 3 occasions and thereafter, again came to home. As she was in habit of leaving the house and coming to the home, he has not lodged the report immediately. But as she did not return, therefore he approached the Police Station and lodged the report. On the basis of the said report, police have registered the crime against the unknown person.

3. During investigation, the Investigating Officer has searched for the victim and victim has also given a call to her father from which it reveals that she is staying in Madhya Pradesh. Accordingly, police visited the said place and taken her custody. Her statement was recorded. From her statement, it reveals that in 2022 on the request of her father, she was kept in Priyadarshani Bal Vikas Gruha for 4 to 5 months. During that period, she got acquaintance with one Afsana who is resident of Ujjain. After coming home, she met said Afsana, her husband and their friend. Thereafter, on the day of incident i.e. in the month of February said Afsana called her to attend one function at her house at Ujjain, therefore she went along with her. After reaching at Railway Station, she was taken by the said Afsana at Susnar, Taluka Nalkheda, District Agarmalva Madhya Pradesh. They all stayed there in one room for 3 to 4 days, wherein she got acquaintance with the co-accused Googly and Salman. These persons got another person by name Arjun Meghwal and performed her

marriage with the said Arjun. Said Arjun has subjected her for sexual assault. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused.

4. Learned Counsel Mr. Rai for the applicant submitted that as far as the allegation which revealed from the investigation is concerned, the name of the present applicant is not stated by the victim. But during investigation his name was revealed and it revealed that he was along with the victim when she was taken at Susnar, Taluka Nalkheda, District Agarmalva. Except this investigation, there is no other material to connect the present applicant to show that he either subjected her for sexual assault or trafficked her. He submitted that now investigation is completed and charge-sheet is filed. There are no criminal antecedents against him. Considering the fact that now his further incarceration is not required, he be released on bail.

5. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the said application on the ground that considering 13 years girl was trafficked by the co-accused and the present applicant was also along with them. They further submitted that if the applicant released on bail, he would tamper with the prosecution evidence. In view of that, the application deserves to be rejected.

6. Having heard the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel for the respondent No.2, perused the entire investigation papers. Admittedly, the victim has neither stated the name of the present applicant in a statement before the police or while recording her statement under Section 164 of the Code of Criminal Procedure. During investigation, the Investigating Officer has recorded various statements of the witnesses including the statement of the present applicant. From this statement, it revealed that when victim was taken in Madhya Pradesh at that time present applicant has also accompanied one Afsana, her husband and others. Thus, the allegation is that the present applicant has abetted the other co-accused to commit such offence. Except the allegation of abetment, there is no other material to connect him with the alleged offence. Considering the fact and the nature of the evidence which is collected during the investigation against the present applicant, his further incarceration is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

(i) Application is allowed.

(ii) The applicant **Vishwadeep @ Pandya s/o Bhojraj Fule** shall be released on bail in connection with Crime No.555/2023

registered with Police Station Ajani, Nagpur, District Nagpur for the offences punishable under Sections 363, 366, 370, 376, 376(3), 376(2)(i)(n) read with Section 34 of the Indian Penal Code and under Section 4, 8, 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 enter into the jurisdiction of Ajani Police Station especially Omkar Nagar, till culmination of the trial.

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

(v) The applicant shall attend the Nagpur City Police Station once in a month of first of every month and the Police Officer of Nagpur City shall record his presence.

(vi) The applicant shall attend the proceeding before the trial 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.

(URMILA JOSHI-PHALKE, J.)