



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

CRIMINAL APPLICATION (BA) NO. 394 OF 2024

Suraj s/o Mahadeo Gaikwad V/s State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.C. Jaltare, counsel for the applicant.

Ms. Soniya Thakur, APP for the non-applicant/State.

Mr. N.D. Dawda, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 26/06/2024.

1. The applicant came to be arrested on 02/01/2024, in connection with Crime No. 65/2023 registered with Police Station Purada, Tah. Kurkhed, District Gadchiroli for the offences punishable under Sections 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO), 2012.

2. The learned counsel for the applicant submitted that the applicant and the victim are related to each other, and the applicant is the son of the maternal uncle of the victim. It reveals from the recitals of the FIR that there was a love affair between the present applicant and the victim, and out of that love affair, they developed a physical relationship. The learned counsel for the applicant submitted that the victim has supported the bail application of the applicant before the lower Court, however, considering the victim is 14 years of age, at the time of the incident, and the consent

of the victim is not relevant, therefore, the application of the applicant is rejected.

3. He further submitted that even considering the allegation as it is, it appears that two young persons came together out of a love affair and developed a physical relationship. Though consent of the victim is not relevant, but considering now, the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. Learned counsel for the applicant submitted that the applicant will be ready to abide all the conditions imposed by this Court.

4. The learned APP strongly opposed the said application on the ground that, victim is only of 14 years of age, admittedly, her consent is not relevant. It further appears from the recitals of the FIR that, the applicant has obtained her consent on the promise of marriage. Though investigation is completed and charge-sheet is filed, considering the tender age of the victim, and offence committed is grievous in nature, the application deserves to be rejected.

5. The learned counsel for the complainant only submitted that before the lower Court, the victim has supported the application of the applicant, as far as the present application is concerned, he has no instructions about the same.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the order passed by the

Sessions Court also. From which, it reveals that, before the Sessions Court, the victim stated that though there was a physical relationship between them, and the applicant has promised her for marriage, she has no objection to release him on bail.

7. After going through the recitals of the FIR, it reveals that the victim was staying alongwith her maternal uncle and was taking education. At the relevant time, the son of her maternal uncle i.e. applicant and she developed an intimate relationship, and out of a love affair, they came together and physical relations were developed between them. Admittedly, the consent of the victim is not relevant. The victim was only 14 years of age, at the relevant time when she had a physical relationship with the present applicant first time. Though prima-facie case is made out against the present applicant but considering that both have come together, out of love affair between them, and now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is allowed.
- b] The applicant – Suraj Mahadeo Gaikwad, shall be released on bail, in connection with Crime No. 65/2023 registered with Police Station Purada, Tah. Kurkhed, District Gadchiroli for the offences punishable under

Sections 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act (POCSO), 2012, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter into the village Kurkheda, District Gadchiroli till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e] The fees of the appointed counsel be quantified as per the Rule.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]