



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

CRIMINAL APPLICATION (BA) NO.387 OF 2024

Anand s/o Rajpal Saket (Harijan)

Vs.

State of Maharashtra, Through Police Station Officer M. I. D.C. 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. A. P. Raghute, Advocate for applicant.

Mr. A. B. Badar, APP for respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 07/05/2024

1. The applicant came to be arrested on 13.12.2023 in connection with Crime No.1141/2023 registered with Police Station M.I.D.C., Nagpur for the offences punishable under Sections 363, 366, 376(2)(n), 376(3), 313 of the Indian Penal Code and under Sections 3, 4, 5(J)(ii) and 6, 5(i) of Protection of Children from Sexual Offences Act.

2. The accusation against the present applicant is on the basis of report lodged by the victim who alleged that at the relevant time she was 15 years of age and was begging in the train at that time she was taken by child line and kept in one hostel. After four years, her grandmother brought her from the shelter home to her house. When she was proceeding in the train, she got acquaintance

with the present applicant. The present applicant brought her at Nagpur. She stayed along with the present applicant, as present applicant promised her for marriage. As per her allegation, on the promise of marriage, she has subjected her for sexual assault. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as the age of victim is concerned, the ossification test report shows her age between 17 to 20 years. As per the medical jurisprudence, there is always error of two years which sufficiently shows that she has already attained the age of majority. She stayed with the present applicant as a wife and nowhere she made any grievances that forcefully she was kept by the present applicant. Even the statements of the labours who were working along with present applicant discloses that she was staying along with present applicant. He submitted that considering the above said fact it appears that by consent there was a physical relationship between them. Now investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required, in view of that, he be released on bail.

4. Learned APP strongly opposed the said application on the ground that the applicant has

brought her at Nagpur on the promise of marriage and thereafter subjected her for sexual assault. He submitted that she was pregnant and the child was aborted. Considering that the victim was 15 years of age at the time of incident, her consent is not relevant. Though investigation is completed and charge-sheet is filed, if applicant released on bail, there is apprehension of fleeing away and therefore, the application deserves to be rejected.

5. Having heard the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the victim was referred for the ossification test, the ossification test report shows her age between 17 to 20 years. Admittedly, there is an always error two years and besides the ossification test report there is no other material to show that the victim was below 18 years of age at the time of incident. After considering the statement of the victim, it reveals that she got acquaintance with the present applicant and at her own she come along with the present applicant at Nagpur. Thereafter, they stayed together at Hyderabad as well as at Nagpur. Admittedly, though she was residing with the present applicant and there were labourers, she has not made any grievance to anybody that she was brought forcefully by the present applicant. The statement of the victim further shows that on the promise of marriage, she was brought by the present applicant. Thus, it

reveals that there was consent on the part of the victim, whether that consent was on the promise of marriage or under any misconception is a matter of evidence. The victim was pregnant due to the sexual assault on her as alleged and she undergone the abortion. The DNA report is yet to be received. Considering the fact that the victim who is already grown up girl stayed along with the present applicant at her own and there was a physical relationship between them by consent. The investigation is already completed, charge-sheet is filed, further incarceration of the present applicant is not required. However, considering as the present applicant is resident of Madhya Pradesh and the apprehension raised by the State that he would not be available for the trial, some conditions requires to be imposed, in view of that, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant **Anand s/o Rajpal Saket (Harijan)** shall be released on bail, in connection with Crime No.1141/2023 registered with Police Station M.I.D.C., Nagpur for the offences punishable under Sections 363, 366, 376(2)(n), 376(3), 313 of the Indian Penal Code and under Sections 3, 4, 5(j) (ii) and 6, 5(i) of 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 attend M.I.D.C. Nagpur Police Station once in a month on first of every

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month and the Investigating Officer shall record his presence.

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

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)