



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

CRIMINAL APPLICATION (BA) NO.407 OF 2024

Pranay s/o Sunil Dekate

Vs.

State of Maharashtra, Through the Officer-in-Charge, Police Station
Khapa, District 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. Ayushi Dangre, Advocate for applicant.

Mr. N. B. Jawade, APP for respondent No.1/State.

Ms. Anuprita Mishrikotkar, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 24/06/2024

1. The application is for grant of bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 28.09.2023 in connection with Crime No.413/2023 registered with Police Station, Khapa, District Nagpur for the offences punishable under Sections 354-A, 354-D, 376(2)(n), 376-D, 376-DA and 506 of the Indian Penal Code and under Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act 2012 and under Sections 67, 67(a), 67(b) of the Informant Technology Act.

3. Learned Counsel Ms. Dangre for the applicant submitted that the crime is registered on the basis of report lodged by the mother of the victim

on an allegation that on 23.09.2023 the bother-in-law of the informant came to her house and informed her that open photos of her daughter have been leaked online. On inquiring about the same with her daughter, victim informed that on 02.03.2024 when she was returning home from school after her examination the co-accused Dhiraj Hiwarkar restrained and demanded from her to send the open pictures to him and when she refused, he threatened to kill her father and cause loss to his shop. As a result, she got scared and sent her open pictures to said co-accused on Snapchat, then said co-accused asked her to meet him after 2 – 3 days, but she did not contact him.

4. It is further alleged that after few days when victim returning home after her examination, the co-accused Dhiraj met her again and asked her to meet him otherwise he would leak her open pictures. Thus, on threatening by making the said photographs viral, he has subjected her for sexual assault. On the basis of said report, police have registered the crime against the co-accused.

5. During investigation, the Investigation Officer has recorded the statements of the witnesses. In a last statement dated 26.09.2023 she disclosed that the present applicant along with the co-accused has also threatened her that they would make her

photographs viral. On the basis of said, the applicant is arraigned as an accused.

6. She further submitted that as far as the first incident was concerned, the applicant is not at all concerned. The name of the present applicant is neither mentioned in the FIR, nor mentioned in the statement which was recorded subsequently. First time the name of the present applicant was narrated by the victim on 26.09.2023 i.e. on the stray statement that the present applicant along with the other co-accused stated her that he would make the photos viral.

7. Learned Counsel for the applicant invited my attention towards the panchnama, by which the mobile phone of the applicant was seized and submitted that the mobile phone was seized while drawing the panchnama. In the said panchnama, it is nowhere discloses that the Investigating Officer has seen any folder or file in the said mobile phone or any application showing that he has stored the said photographs in the said mobile phone. She also invited my attention towards the forwarding letter to the Chemical Analyzer wherein, it is mentioned that if there is any photographs or the photographs are deleted, the Chemical Analyzer should recover the same and submit a report. She further submitted that thus, there is only suspicion that the applicant is

having any obscene photographs in the said mobile phone.

8. Thus, considering the nature of the allegation, admittedly, no case is made out against the present applicant to attract the offences alleged and now for a sufficient period he is behind bar. The co-accused with the similar allegations is already released on bail, in view of that, he be released on bail.

9. Learned APP strongly opposed the said application on the ground that the CA reports are yet to be received and the allegation of the victim which is serious in nature, the application deserves to be rejected.

10. Learned Counsel for the respondent No.2 – victim also endorsed the same contention.

11. After hearing the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel for the respondent No.2 – victim and perused the entire investigation papers, there is no dispute as to the fact that in initial statement, name of the present applicant was not mentioned. In a last statement, she had made a stray statement that the applicant has threatened her, though mobile phone was seized. The panchnama nowhere shows that the Investigating Officer has seized any

photographs in the said mobile phone. The forwarding letter to the Chemical Analyzer also shows that the investigating agency is having only suspicion that he may have obscene photographs in the mobile phone. The CA report are not yet received, though directions are given, no steps are taken by the Investigating Officer to ascertain whether analysis report is ready with the Forensic Analyser. Considering the co-accused with the similar allegation is already released on bail, the ground of parity is available to the present applicant also, in view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant **Pranay s/o Sunil Dekate** in connection with Crime No.413/2023 registered with Police Station, Khapa, District Nagpur for the offences punishable under Sections 354-A, 354-D, 376(2)(n), 376-D, 376-DA and 506 of the Indian Penal Code and under Sections 4, 6, 11 and 12 of the Protection of Children from Sexual Offences Act 2012, under Sections 67, 67(a), 67(b) of the Informant Technology Act, shall be released on bail on executing a PR bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall not leave the jurisdiction of Nagpur District without prior permission of the District Court, Nagpur.

(iv) The applicant shall attend the concerned Police Station once in a month i.e. on first day of every month, till the culmination of the trial.

(v) The applicant shall attend the proceedings regularly without seeking any exemption unless there are exceptional circumstances.

(vi) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

12. The fees of the appointed Counsel be quantified as per rules.

13. The application is disposed of.

14. In view of disposal of the Bail Application, pending application(s), if any, shall stand disposed of.

(URMILA JOSHI-PHALKE, J.)