



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

CRIMINAL APPLICATION (BA) NO.392 OF 2024

Ajay Vinod Manwar

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Mangrulpir, District Washim 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. R. M. Daga, Counsel for applicant.

Ms. Sneha Dhote, APP for non-applicant No.1/State.

Mrs. Sonali Saware Gadhawe, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 07/08/2024

1. The applicant came to be arrested on 18.08.2023 in connection with Crime No.298/2023 registered with Police Station Mangrulpir, District Washim for the offences punishable under Sections 376(3) and 363 of the Indian Penal Code and Sections 4 and 5 of the Protection of Children from Sexual Offences Act.

2. The crime was registered on the basis of report lodged by the mother of the victim girl. Initially, the crime was registered under Section 363 of the Indian Penal Code on an allegation that on 02.05.2023 present applicant kidnapped the non-applicant – victim by removing her from the custody of her parents on the promise of marriage on the basis of said, the investigation was initiated.

During the investigation, the non-applicant No.2 – victim was found along with the accused. Her statement was recorded. As per her statement, she is aged about 15 years. On 15.03.2022, the applicant expressed her about his feelings and took her along with him on the promise of marriage, thereafter they stayed together approximately for three months. During these three months, there was a physical relationship between them. On the basis of the same, Section 376 of the Indian Penal Code was added.

3. Heard learned Counsel Mr. Daga for the applicant. He submitted that though victim is below 18 years of age, but considering the alleged incident has occurred out of a love affair and now it is settled law that the sexual assault cases arising out of the love affair are to be treated differently. He submitted that now, the investigation is completed and charge-sheet is filed. As far as the other criminal case pending against the present applicant is concerned, he submitted that it cannot be the hurdle to release the applicant on bail. In support his contention he placed reliance on **Prabhakar Tewari Vs State of Uttar Pradesh and another** reported in **(2020) 11 SCC 648**, the judgment passed by this Court in **Criminal Appeal No.257/2024 [Krishna s/o Shankar Kadam Vs. State of Maharashtra and another]** decided on **26.07.2024** and **Vishal Omprakash Verma Vs. The State of Maharashtra**

and another reported in **(2021) ALL MR (Cri) 187.**

4. Learned APP strongly opposed the said application on the ground that there is criminal antecedents against the present applicant. The victim is 15 years of age and her consent is not relevant. She was subjected for sexual assault by the present applicant and she has to carry out the pregnancy in a small age, in view of that, the application deserves to be rejected.

5. The learned appointed Counsel for the non-applicant No.2 – victim also endorsed the same contention and strongly opposed the said application.

6. After hearing the learned Counsel for the applicant and learned APP for the State and learned appointed Counsel for the non-applicant No.2 – victim, perused the investigation papers from which it reveals that on 02.05.2023 as victim was not found in the house, her mother lodged the report and on the basis of the same initially, the crime was registered under Section 363 of the Indian Penal Code. During the investigation, the statement of the non-applicant No.2 - victim was recorded and it is revealed that on the promise of marriage, the present applicant took her along with him, they stayed together in a rented premises and during that period there was physical relationship between them.

The victim was referred for the medical examination. It revealed that she is a pregnant.

7. On perusal of the statement of the victim, it reveals that the physical relationship between the victim and the present applicant was out of a love affair. As far as the crimes which are arising out of a love affair are concerned, now it is well settled that these cases are to be considered differently. Moreover, now the investigation is completed and charge-sheet is filed. It is not the case that the victim is subjected for sexual assault out of lust, but the physical relationship was developed between them due to the teenage attraction and out of the love affair. This aspect is considered by this Court in the case **Vishal Omprakash Verma** (supra) relied upon by the learned Counsel for the applicant. Wherein by referring the judgment of **Sunil Mahadev Patil Vs. State of Maharashtra [2016 ALL MR (Cri) 1712]** it is observed that the offence of rape can be distinguished on the basis of the intention of the accused. There are incidents of rapes committed by gang like the case of Nirbhaya or Maya Thagi or Mathura which cannot be forgotten by Indian Society. So also rape committed in a savage manner or repeatedly by a single accused. There are some instances of rape which take place as a man wants to satisfy his lust and animal within him overpowers his reason. There are instances of rape where a man and a woman both are in love with each

other and get involved into sexual relationship due to either physical or psychological need and in such type of rape, there is no violence which exists in other types of rape. It is further observed that today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.

8. This Court has also considered the decision of the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another** reported in **2019 (9) SCC 608** wherein it was observed that the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false

promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.

9. In the present matter, considering the relationship between the victim and the applicant was out of a love relationship and now, the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required.

10. The learned APP also raised an objection on the ground that there is a criminal antecedents against the present applicant, however, merely because there is a criminal antecedent is not sufficient to reject the application for bail of the applicant. It is observed by the Hon'ble Apex Court in the case of **Prabhakar Tewari Vs State of Uttar Pradesh and another** (supra) that the offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail.

11. In view of that, the applicant has made out a case for grant of bail. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.

(ii) The applicant **Ajay Vinod Manwar** shall be released on bail in connection with Crime No.298/2023 registered with Police Station Mangrulpir, District Washim, on executing PR of Rs.25,000/- with one solvent surety in the like amount.

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

(iv) The applicant shall not enter into the village Jamb, Taluka Mangrulpir, District Washim, till culmination of the trial.

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

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

13. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)