



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

CRIMINAL APPLICATION (BA) NO.381 OF 2024

Manish Rameshwar Gaikwad

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Daryapur, District Amravati and another

WITH

CRIMINAL APPLICATION (BA) NO.451 OF 2024

Vishal s/o Sudhir Bonde

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Daryapur, District Amravati 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. V. Borekar, Advocate along with Mr. D. N. Mudgale, Advocate for
applicant.

Mr. A. S. Mardikar Senior Advocate a/b Mr. Digvijay Singh, Advocate for
applicant in BA. 451/2024.

Ms. Swati Kolhe, APP for respondent No.1/State.

Ms. Aarti Singh, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 09/05/2024

1. The applicants in both the applications came to be arrested on 24.11.2023 in connection with Crime No.657/2023 registered with Police Station Daryapur, District Amravati for the offences punishable under Sections 354(A)(1)(i), 354-C, 354-D, 376, 376-D, 506 read with Section 34 of the Indian Penal Code and Sections 4(i), 5(g), 6, 12 of the Protection of Children from Sexual Offences Act.

2. The accusation against the present applicants is on the basis of report lodged by the

victim on an allegation that she was studying in the 12th Standard and her birth date is 26/11/2005. On the day of the incident, she was blow of 18 years of age. In the year 2020, she was studying and she got acquaintance with the applicant Vishal Sudhir Bonde. She was also acquainted with the another applicant Manish Rameshwar Gaikwad and was in contact with him on phone and Instagram.

3. It is further alleged that she was having love affair with the said applicant Manish. She used to travel in auto of Gajanan Devanand Telhare for the private classes. In March 2021, the co-accused Manish used to follow her and thereafter asked her for sexual favour, which she refused. It is further alleged that thereafter, all these three persons i.e. Vishal Bonde, co-accused Devanand Telhare and Manish Gaikwad used to follow her and thereafter, subjected her for sexual assault. It is further alleged that the applicant Vishal Bonde has asked to obtain the obscene photographs and forward him, accordingly she had forwarded. It is further alleged that she was subjected for sexual assault by said Vishal Bonde and the video shooting of the said incident was done by the applicant Manish Gaikwad. On the basis of the said report, police have registered the crime against both the applicants. During the investigation, the victim was referred for medical examination and her medical examination was

carried out. After due investigation, the charge-sheet is filed.

4. Learned Senior Counsel Mr. Mardikar for the applicant Vishal Bonde has submitted that as far as the applicant is concerned, the allegations are false. He further submitted that as per his instructions the video shooting which was obtained by the applicant Manish Gaikwad wherein the face of the person is not visible, it is blurred.

5. He further submitted that as far as the applicant Manish Gaikwad is concerned with whom she was having a love affair. It is further submitted by him that the photographs which alleged to be forwarded to the present applicants are not obtained by applicants, but it is the victim who herself has obtained the said photographs and the video shooting of the said incident, which are also collected by the Investigating Officer. Thus, considering the entire obscene photographs are obtained by the victim herself, the video shooting of the alleged incident was also video-graphed on the say of the victim. In view of that, considering the investigation is completed and the involvement of the present applicant Vishal Bonde in a sexual assault does not reveal therefore, he be released on bail.

6. Learned Counsel for the applicant Manish Gaikwad also endorsed the same contention and

placed on record the WhatsApp communication which shows that there was a love affair between the victim and the said applicant Manish. The another role attributed to the Manish Gaikwad is that he has obtained the video shooting of the alleged sexual assault which was committed in one Car. He submitted that said Car is not owned by Vishal Bonde nor by Manish Gaikwad. Thus, the entire incident shows that it was some unknown person and even the video shooting nowhere discloses the involvement of the present applicant Manish Gaikwad.

7. Learned APP strongly opposed the said application on the ground that the statement of the victim and the video shooting collected by the Investigating Officer recorded in the Memory Card sufficiently shows the involvement of the present applicants in the alleged offence. The nature of the crime is serious in nature. Considering the prima facie material against the present applicants, the application deserves to be rejected.

8. The appointed Counsel for the respondent No.2 – victim also endorsed the same contention.

9. Considering the entire case revolves around the video shooting and photographs obtained in the mobile phone of the victim. The concerned Memory Cards which are seized by the Investigating

Officer are called before the Court to ascertain the fact. The said Memory Cards are produced before the Court in sealed condition. It were unsealed and the video shooting was seen in presence of the learned APP and the Investigating Officer in Camera. I have also perused the statement of the victim wherein she alleged that the present applicants have sexually assaulted her by following her and also blackmailed her by obtaining her obscene photographs. It is further alleged that regarding the sexual assault the applicant Manish Gaikwad has obtained the video shooting. The Investigating Officer has carried out the hash value panchnama wherein it is specifically mentioned that there were photographs of the victim disrobing herself, but from the video shooting it reveals that none of the accused present at the time, but she herself has obtained the said photographs at her house in the Washroom. The hash value panchnama further shows that another video shooting was witnessed by the panch wherein it is seen that one person is subjecting the victim for sexual assault and the applicant Manish was taking the video shooting. On unsealing the said Memory Cards video shooting was seen in camera from which it reveals that the face of the person who have subjected her for sexual assault is not visible, whereas the video shooting appears to be obtained by her by asking the applicant Manish Gaikwad to take the video shooting of the same.

10. Thus, it is apparent that the said video shooting was obtained by the applicant Manish Gaikwad on the say of victim herself. Considering the entire material as far as the allegation regarding the obtaining her obscene photographs which are obtained by herself as per the investigation papers. As far as the video shooting of the said incident allegedly taken by the accused Manish Gaikwad is also obtained on the say of victim. The face of the person who subjected her for sexual assault in a Car is also not visible. Considering the entire investigation papers, at this stage involvement of the present applicants appears to be doubtful. However, it is the matter of evidence. Considering the nature of the evidence and the electronic evidence which is collected by the Investigating Officer and the investigation is already completed, the application of both applicants deserves to be allowed by imposing certain conditions. At this stage, it is not necessary to evaluate evidence therefore, no detailed discussion is made while passing this order. Accordingly, I pass following order.

ORDER

(i) The applications are allowed.

(ii) The applicant **Manish Rameshwar Gaikwad and Vishal s/o Sudhir Bonde** be released on bail on executing PR bond of Rs.25,000/- each with one solvent surety in the like amount in connection with Crime No.657/2023 registered with Police Station Daryapur, District Amravati for the offences

punishable under Sections 354(A)(1)(i), 354-C, 354-D, 376, 376-D, 506 read with Section 34 of the Indian Penal Code and Sections 4(i), 5(g), 6, 12 of the Protection of Children from Sexual Offences Act.

(iii) The applicants shall not enter into the vicinity of Daryapur, till the culmination of the trial.

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

(v) The applicants shall attend the proceeding before the trial Court without seeking any exemption unless there are exceptional circumstances.

(vi) The applicants shall attend the Achalpur Police Station once in a month on first of every month, till culmination of the trial.

(vii) The Memory Cards which are produced before the Court by the Investigating Officer are resealed and shall be handed over to the Investigating Officer.

11. The fees of the appointed counsel be quantified as per rules.

12. The observation is prima facie in nature. The trial Court shall not be influenced by the said observation.

13. Both the applications are disposed of.

(URMILA JOSHI-PHALKE, J.)