

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

CIVIL APPLICATION (BA) NO.459/2024

Devanand Gajanan Telhare Vs. State of Maharashtra, through its P.S.O. P.S.
Daryapur, Tah. Daryapur, Dist. 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

Shri M.P. Kariya, Advocate for applicant
Ms Soniya Thakur, APP for State
Shri Sagar Katkar, Advocate for respondent No.2

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/07/2024

The applicant came to be arrested on 30/11/2023 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 under Sections 4(1), 5(G), 6, 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of the report lodged by the victim on an allegation that she was studying in 3rd standard and birth of date is 26/11/2005. On the day of incidence, she was below 18 years of age. In the year 2020, she was studying and she got acquaintance with co-accused 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 co-accused Manish, she used to travel in the Auto of Gajanan Devanand Telhare i.e. the father of the present applicant for the private classes. In March, 2021, the present applicant and the other co-accused used to follow her and, thereafter, asked her for sexual favour, which she refused. It is further alleged that all these three persons used to follow her and, thereafter, subjected her for sexual assault and they have obtained her obscene photographs and video and threatened her that they would make it viral. It is further alleged that she was subjected by sexual assault by co-accused Vishal Bonde and the video shooting of the said incident was done by the co-accused Manish Gaikwad. On the basis of the said report, police have registered the crime against the present applicant as well as other co-accused. During investigation, the victim was referred for medical examination and her medical examination was carried out and after completion of the investigation, the charge-sheet was filed.

4. Learned Counsel for the applicant Shri Kariya submitted that as far as the present applicant is concerned, only allegation against him is that he has threatened to make the said photographs and video shooting viral. It is further alleged that the present applicant was present when the video shooting of the incident in the car was obtained.

5. It is submitted that as far as the present applicant is concerned, there is no allegation that she was subjected for sexual assault by the present applicant. Only allegation against him is that he threatened her to viral the said photographs and the video shooting. He submitted that now investigation is completed and the charge-sheet is filed. Further incarceration of the present applicant is not required. The other co-accused are already released on bail, against whom, the most serious allegations are levelled.

6. The learned APP for the State and the learned Counsel for the victim 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 applicant and the co-accused in the alleged incident. The nature of the crime is serious. Considering the *prima facie* material against the present applicant, the application deserves to be rejected.

7. The entire case revolves around the video shooting and the 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 while considering the application of the co-accused to ascertain the facts. The said memory

cards are produced before the Court at the relevant time in a sealed condition and the said 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 has alleged that the co-accused has sexually assaulted her by following her and also blackmailed her by obtaining her obscene photographs. It is further alleged that regarding the sexual assault, co-accused Manish Gaikwad has obtained the video shooting. The investigating officer has carried out the hash value panchanama 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 when she herself has obtained the said photographs at her house in the wash-room. The hash value panchanama further shows that the another video shooting was witnessed by the panch wherein, it is seen that one person is subjecting the victim for sexual assault and the co-accused Manish was taking the video. 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 co-accused Manish Gaikwad to take the video of the said incident.

8. As far as the present applicant is concerned, the allegation is that he has threatened her that he

would make the said video viral. From the investigation papers, the learned APP could not point out any material to show that it was the present applicant who has made the said video shooting or her photographs viral. Only allegation is that he has threatened that he would make it viral. Moreover, from the video shooting, it was apparent that it was the co-accused Manish Gaikwad, who has obtained the said video shooting on the say of victim herself. Thus, considering the entire material, as far as the allegations against the present applicant, who is concerned, there is no material to show that he has made it viral. On the contrary, the evidence shows that the said video shooting was obtained on the say of victim herself. The face of the person who subjected her for her sexual assault is blurred. Considering the entire investigation papers, at this stage, admittedly, there is no material to show that the present applicant has subjected her for sexual assault or he has made the said video shooting viral. Thus, considering the fact that other two accused are already released on bail, as far as the role of the present applicant is concerned, which is lesser than the accused who are released on bail. In view of that the further incarceration of the present applicant is not required. Accordingly, I proceed to pass the following order.

ORDER

- (i) The application is allowed.

(ii) The applicant- **Devanand Gajanan Telhare**, be released on bail 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 under Sections 4(1), 5(G), 6, 12 of the Protection of Children from Sexual Offences Act, 2012, on executing a P.R. Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) 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.

(iv) The applicant shall not enter into the Taluka Daryapur, till the culmination of the trial.

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

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

(vii) The observation is prima facie in nature and trial Court shall not be influenced by the said observation.

9. The application is disposed of.

JUDGE

R.S. Sahare