



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

CRIMINAL APPLICATION (BA) NO.489 OF 2024

Shailesh s/o Mulchand Rathod

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Hingna Nagpur City, 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. K. Bhangde, Advocate for applicant.

Ms. H. N. Prabhu, APP for respondent No.1/State.

Ms. P. R. Arbat (Awathale), appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 08/07/2024

1. The applicant came to be arrested on 19.11.2023 in connection with Crime No.709/2023 registered with Police Station Hingna, District Nagpur for the offences punishable under Sections 376(2)(j), 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of report lodged by the victim girl on an allegation that on 01.07.2023 her maternal uncle i.e. the present applicant aged about 25 years sent her a message and she replied the same. Thereafter, there was a friendship between them. In the last week of July the present applicant called her and therefore, she went along with him. They chit-chatted with each

other and the applicant expressed his feelings to her. She roamed along with him. It is alleged that in August 2023, the present applicant took her and subjected her for sexual assault, which resulted into her pregnancy. On the basis of the said report, Police have registered the crime against the present applicant.

3. Learned Counsel Mr. Bhangde submitted that from the statement of the victim itself it reveals that out of a love affair, there was a physical relationship and subsequently, this false FIR is lodged against the present applicant. Now, the investigation is already completed and charge-sheet is filed. Though applicant has not attained the age of majority but she was on the verge of attaining the majority and whatever happened is out of a love affair. Considering the investigation is completed and charge-sheet is filed, further incarceration is not required. In view of that he be released on bail.

4. Learned APP and learned appointed Counsel for the respondent No.2 strongly opposed the application on the ground that the victim is minor her consent is not relevant. The applicant has subjected her for sexual assault on the promise of marriage which resulted into the pregnancy, the child is aborted, the DNA report is awaited, in view of that, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers, from the statement of the victim it reveals that victim herself joined the company of the present applicant out of friendship. It reveals that there was a love affair between them and due to that love affair, there was a physical relationship. Whether the consent of the victim was relevant or obtained under the misconception is a matter of evidence. At this stage, now the investigation is completed and charge-sheet is filed and considering the statement of the victim from which it reveals that out of a love affair, the physical relationship was there, the bail application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Shailesh s/o Mulchand Rathod** shall be released on bail, in connection with Crime No.709/2023 registered with Police Station Hingna, District Nagpur for the offences punishable under Sections 376(2)(j), 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the 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 not induce, threat or promise any witnesses who are acquainted with the facts of the case.

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

(v) The applicant shall not enter into the vicinity of Sonba Nagar, Wadi, Nagpur, till the culmination of the trial.

(vi) The fees of the appointed Counsel be quantified as per rules.

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)