



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

CRIMINAL APPLICATION (BA) NO. 482 OF 2024

Mr. Avinash s/o Ghanshyam Ghutake Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Rajas Durge, counsel h/f Mr. R.R.Vyas, counsel for the applicant.
Mrs. H.N.Prabhu, APP for non-applicant/State.
Mrs. Archana Murrey, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/07/2024.

1. The applicant came to be arrested on 23/11/2023, in connection with Crime No. 545/2023 registered with Police Station Bramhapuri, District Chandrapur for the offence punishable under Section 341, 363, 354(A), 376(1), 376(3) of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of the report lodged by the victim, aged about 16 years, on an allegation that on 08/11/2023 at about 7.15 a.m., when she reached in front of the school gate, the present applicant came in a four-wheeler and forced her to sit in the said four-wheeler, subjected her for sexual assault, and thereafter locked the car and left the place. After some time, he again came and dropped her at Betada Phata, in front of D-Pharma College. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the applicant is the neighbor of the victim, and due to the previous dispute, he is implicated falsely. In fact, no such incident has taken place, and it is not supported by the medical evidence only hymen is shown to be torn. He submitted that, the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. He also pointed out that during the investigation, though the investigating officer has recorded various statements of the witnesses, but none of the witnesses were examined by the investigating agency to show the presence of the present applicant at the spot of the incident. Moreover, the alleged incident has taken place at about 7.15, when the victim had been there to attend the school. No statements of independent witnesses are recorded.

4. Learned APP and learned appointed counsel strongly opposed the said application, on the ground that a small victim girl, aged about 16 years, was subjected for sexual assault by the present applicant. Considering the gravity of the offence, the application deserves to be rejected. There is every apprehension of tampering of the witnesses.

5. After hearing learned counsel for the applicant, learned APP for the State and learned appointed counsel for the victim, perused the recitals of the FIR as well as various statements of the witnesses. Admittedly, the alleged incident has taken place at about 7.15 a.m. in the morning. The investigating officer admittedly has not recorded the

statements of any witnesses to show the presence of the present applicant at the spot of the incident. The medical report supports the case of the prosecution, as the hymen was shown to be torned, though a prima-facie case is made out against the present applicant. Considering now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. As far as the contention of the learned APP is concerned regarding tampering of the witnesses, it can be taken care of by imposing certain conditions on the applicant. Accordingly, I proceed to pass the following order;

- a) The criminal application is allowed.
- b) The applicant- Avinash s/o Ghanshyam Ghutake shall be released on bail, in connection with Crime No. 545/2023 registered with Police Station Bramhapuri, District Chandrapur for the offence punishable under Section 341, 363, 354(A), 376(1), 376(3) of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the vicinity of Chaugaon, Tah. Bramhapuri, District Chandrapur, till the culmination of the trail.

- d) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- e) The applicant shall attend the proceedings before the trial Court without seeking any exemption unless there are exceptional circumstances.
- f) The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]