



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

CRIMINAL APPLICATION (BA) NO. 540 OF 2024

Shivshankar s/o Rakeshkumar Sharma V/s 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. R.C.Tomar, counsel for the applicant.

Mr. M.J.Khan, APP for the non-applicant/State.

Ms. Radha Sharma, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 28/06/2024.

1. The applicant came to be arrested on 19/07/2023, in connection with Crime No. 695/2023 registered with Police Station M.I.D.C., Nagpur for the offences punishable under Sections 376(ab), 376(2)(i) of the Indian Penal Code, 1860 and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences (POSCO) Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by the mother of the victim girl, alleging that the applicant lured her daughter and committed rape by influencing the chocolate. The victim girl is about five years. On 09/07/2023, she made a complaint that she was having abdominal pain and also pain at the urinal place, therefore, she immediately took her at Lata Mangeshkar Hospital, where, after a medical examination, some medication was given to her. On 11/07/2023, when she was sitting at her house, her daughter disclosed that she would not visit the house of the present applicant, and therefore, she

made an inquiry, it revealed that the applicant had subjected her for sexual assault by promising her to give chocolate. On the basis of said report, the police have registered the crime against the present applicant. During the investigation, the investigating officer referred the victim for medical examination, and her medical examination was conducted. The statement of the victim as well as the other witnesses is recorded, and after completion of the investigation, a charge - sheet is filed.

3. Initially, the applicant has filed the application for grant of bail, which was withdrawn. As such, no liberty was given to the present applicant to file an application, thereafter, by skipping the stage of filing the application before the Sessions Court, the present application is filed before this Court.

4. Heard learned counsel for the applicant, who took me through the entire material and submitted that the FIR was lodged after 10 days of the incident. There is a delay in lodging the FIR, and the said delay is not explained. He also invited my attention towards the medical examination, which was conducted in Lata Mangeshkar Hospital as well as General Hospital, and submitted that the allegation of sexual assault is not substantiated by the medical evidence. No injuries were found on the person of the victim. Thus, no offence is made out against the present applicant. He submitted that, now investigation is completed and charge-sheet is filed, further custodial interrogation of the present applicant is not required,

his incarceration is not at all required, and in view of that, he be released on bail.

5. In support of his contention, he placed reliance on the decision of this Court at Principal Seat in the case of ***Suraj S. Paithankar V/s State of Maharashtra [2020 SCC OnLine Bom 11696]***, wherein this Court has considered that the investigation is completed and charge-sheet is filed, and on consideration of the merit of the matter, there is no provision that the applicant cannot be released on bail, and released the accused therein on bail.

6. The learned APP strongly opposed the said application on the ground that not only the statement of the victim but also the statement of the mother is substantiated by the medical certificate, which shows the injury on the genital portion of the victim sufficiently shows that she was subjected for sexual assault. In view of that, he prays for rejection of the application.

7. The learned counsel appointed for the victim also invited my attention towards the medical certificate issued by the Lata Mangeshkar Hospital, which shows that there are signs of injuries around the vulva. She submitted that the vaginal opening was seen by the medical officer. She also invited my attention towards the medical examination papers issued by the General Hospital, wherein also, the injury was also shown in a fourchette, which inflammation is seen in the area of the posterior fourchette. On the basis of this material, she submitted that the prima-facie case is made out against

the present applicant and, therefore, the application deserves to be rejected.

8. After hearing learned counsel for the applicant, learned APP as well as learned appointed counsel, perused the recitals of the FIR as well as the statement of the victim. The victim is 5 years old girl. As per the recitals of the FIR, initially on 09/07/2023, the victim had only complained about abdominal pain as well as the pain at the urinal place, and therefore, she was examined at Lata Mangeshkar Hospital. The medical treatment papers issued by Lata Mangeshkar Hospital show that there are signs of injuries around Vulva. The medical examination, which was subsequently conducted after the registration of the crime, also shows that inflammation was seen around the fourchette. The statement of the victim is also recorded, who has also narrated before the investigating officer about the act committed by the present applicant, which shows that she was subjected for sexual assault.

9. As far as the submission of the learned counsel for the applicant, there are no injuries on the person of the victim, which is sufficiently shows that she is not the victim of the sexual assault. It is well settled that the injuries are not *sine-qua-non* to attract the offence under Section 376 of the IPC. The Medical Jurisprudence by 'Dr. K.S. Narayan Reddy's in *Medico Legal Manual*' especially regarding the sexual assault on children observes that in young children there are few or no signs of general violence, for the child usually has no idea of what is happening and also incapable of resisting. The

hymen is deeply situated, and as vagina is very small, it is impossible for penetration of the adult organ to take place. Usually, the penis is placed either within the vulva or between the thighs. As such, the hymen is usually intact and there may be little redness and tenderness of the vulva.

10. In the light of the above observation in medical jurisprudence, in the present case, the injury found near the vulva sufficiently shows that the victim was subjected for sexual assault. Considering the prima-facie case made out against the present applicant, and considering the fact that a small victim girl is subjected for sexual assault by the grownup boy. As far as the judgment on which the learned counsel placed reliance, the fact therein shows that there was friendship between the boy and girl, and out of that, a physical relationship was there. Here, it is the case tender-aged girl for five years subjected for sexual assault, which is a more heinous crime in the eyes of law.

11. In view of the above facts and circumstances, this is not a fit case for grant of bail. Hence, criminal application deserves to be rejected. Accordingly, I proceed to pass the following order:

- a] The criminal application is rejected and disposed of.
- b] The fees of the appointed counsel be quantified as per the Rule.

[URMILA JOSHI-PHALKE, J.]