



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

CRIMINAL APPLICATION (BA) NO.538 OF 2024

Pawan s/o Ashok Gaikwad

Vs.

State of Maharashtra through Police Station Officer, Police Station,
Mangrulpir, District Washim 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. P. R. Agrawal, Counsel for the applicant.

Mr. N. B. Jawade, APP for non-applicant No.1/State.

Mr. Anirudh Ananthakrishnan, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : 12.08.2024
PRONOUNCED ON : 19.08.2024

1. The applicant came to be arrested on 03.02.2024 in connection with Crime No.57/2024 registered with Police Station, Mangrulpir, District Washim for the offences punishable under Sections 363, 376-D, 366, 341, 323, 506 of the Indian Penal Code and under Sections 5 and 6 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 mother of the victim girl on an allegation that her daughter – victim is studying in 11th standard. On 30.01.2024 at about 10.00 a.m. she left the house to attend the college and not return back. On the basis

of the said report, police have registered the offence initially under Section 363 of the Indian Penal Code.

3. During the investigation, the statement of the victim was recorded and it revealed that on 30.01.2024, she met co-accused Shahbaz @ Ankit Sumedh Veer as there was a love affair between them. He promised her that he would perform the marriage with her and took her in his car at Karanja. At about 4.00 p.m. he left her at Karanja bus stop by saying that he will immediately come back. At the relevant time, four boys came towards her and informed her that Shahbaz has called her therefore, she sat in the car along with these four persons. They took her in a forest area and subjected her for forceful sexual assault and she was also assaulted. On the basis of the said report, the crime was registered against the unknown persons. Subsequently, her another statement was recorded wherein she has stated that on 30.01.2024 the co-accused Shahbaz took her at Karanja at his house at the relevant time, the present applicant was also along with him till village Jamb. At village Jamb the present applicant left them and he proceeded towards village of co-accused. On this allegation the present applicant is also arraigned an accused.

4. Heard learned Counsel Mr. P.R. Agrawal for the applicant. He submitted that as far as the allegations are concerned against the present

applicant which is only to the extent of accompanying the co-accused **Karan** who is already released on bail. As far as the offence of kidnapping is concerned, there is no allegation that present applicant either abetted the co-accused to kidnap the victim or he has played any role in kidnapping of the victim. As far as the subsequent incident is concerned, wherein the involvement of the present applicant is not revealed. He submitted that even accepting the prosecution case as it is, from the statement of the victim it reveals that he accompanied the co-accused till village Jamb and not thereafter. The statement shows that on the next day mother of the co-accused dropped the victim at the bus stand and thereafter four persons approached to her and took her in a forest area and subjected her for sexual assault. Thus, as far as the applicant is concerned, he is neither involved in the kidnapping nor in the incident of sexual assault, in view of that, he be released on bail.

5. Learned APP for the State and learned appointed Counsel for the non-applicant No.2 – victim strongly opposed the said application on the ground that during the course of the investigation a detailed statement of the victim was recorded wherein she has alleged that when she was taken by the co-accused Shahbaz, the present applicant was along with him and subsequently, she was subjected

for the gang rape. Considering the gravity of offence, the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel for the non-applicant No.2 – victim, perused the investigation papers from which it reveals that the victim has changed her version from time to time. Initially, she has stated that the co-accused Shahbaz Khan approached to her outside the College and by promising her that he would perform marriage with her and took her along with him thereafter dropped her at bus stand, and thereafter four persons approached to her and took her by informing her that the co-accused Shahbaz has called her and she was taken in the isolated place and subjected for sexual assault. Vide subsequent statement dated 28.02.2024 shows that on 30.01.2024 the co-accused Shahbaz Khan kidnapped her, subjected her for forceful sexual assault and at that time the present applicant was along with said Shahbaz Khan. Whereas another statement is also recorded wherein she has stated that the present applicant was along with them till the village Jamb. The statements of the other witnesses also show that when victim went along with the co-accused Shahbaz Khan at that time the present applicant was along with them till village Jamb, thereafter she and the co-accused went towards the house of the co-accused, whereas present applicant has left the

place. As far as the sexual assault allegation is concerned, it is not made against the accused. There is no inducement or aiding appearing from the statements of the witnesses or from any documents which are collected during the investigation. The other co-accused **Karan** Khan is already released on bail by this Court. Considering the role attributed to the present applicant, his further incarceration is not required, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Pawan s/o Ashok Gaikwad** shall be released on bail in connection with Crime No.57/2024 registered with Police Station, Mangrulpir, District Washim, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the vicinity of village Tapovan Punjaji Nagar, Post Tarhala, Taluka Mangrulpir, District Washim, till culmination of the trial.
- (iv) The applicant shall not leave the jurisdiction of the Washim District Court without prior permission of the Court.
- (v) The applicant shall attend the proceedings before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

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

7. The fees of the appointed Counsel be quantified as per rules.

8. The criminal application is disposed of.

(URMILA JOSHI-PHALKE, J.)

[Name of co-accused 'Karan' is corrected at para No.4 on page No.3 and para No.6 on page No.5 as per Court's order dated 27.08.2024 passed in Criminal Application (APPP) No.1537/2024.]