



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

CRIMINAL APPLICATION (BA) NO. 562 OF 2024

Harish @ Harry s/o Swami Konkat 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. A.C. Jaltare, counsel for the applicant.

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

Mrs. Shubhada K. Phaltankar, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/07/2024.

1. The applicant came to be arrested on 16/01/2024, in connection with Crime No. 27/2024 registered with Police Station Ghuggus, District Chandrapur for the offence punishable under Sections 376, 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 6 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, on an allegation that, at the relevant time, she was studying in 8th Standard and her age was 16 years, she got acquaintance with the present applicant as he used to visit her house. As per her allegation, on 26/08/2023 at about 2.00 p.m. when nobody was at home, he came and subjected her for sexual assault. On the basis of said report, police have registered the crime.
3. It is submitted that in the said FIR, she alleged against the co-accused, Vivek Raidas, had also subjected her for sexual assault on repeated occasions. On the basis of the

said report, the crime was also registered against the said co-accused. During the investigation, she was referred for medical examination, and she was found to be pregnant. The statement of the victim was also recorded under Section 164 of the Cr. P. C., and during that statement, she alleged that the present applicant has attempted to sexually molest her, as well as there was an attempt to sexually assault her.

4. Learned counsel for the applicant submitted that there are inconsistent statements. As far as the present applicant is concerned, the co-accused against whom the similar allegations are levelled is already released on bail. Now the investigation is already completed and charge-sheet is already filed, further incarceration of the present applicant is not required.

5. Learned APP and the learned appointed counsel strongly objected the application, on the ground that due to sexual assault on the victim by the present applicant as well as the co-accused, she was pregnant. Her DNA samples are obtained, and DNA Report is awaited. There is a consistent statement of the victim regarding sexual assault by the present applicant, in view of that, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the recitals of the FIR as well as the medical report. There is no dispute as to the fact that the victim, who is an unmarried girl, was pregnant, and her DNA samples were obtained. During her medical

examination, the samples of the present applicant were also obtained. As far as the statement of the victim is concerned, admittedly inconsistent statements are given by her. Initially, she stated that the present applicant has subjected her for sexual assault, and during her statement under Section 164 Cr.P.C., she alleged to the extent of the attempt by the present applicant. Now, the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. Considering the inconsistent statement and the fact that the DNA Report is yet to be received. The applicant has made out a case for grant of bail. In view of that, I proceed to pass the following order:

- a) The criminal application is allowed.
- b) The applicant- Harish @ Harry s/o Swami Konkat shall be released on bail, in connection with Crime No. 27/2024 registered with Police Station Ghuggus, District Chandrapur for the offence punishable under section 376, 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the vicinity of Gandhinagar, Tq. Ghuggus, 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 Special 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.]