



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

CRIMINAL APPLICATION (BA) NO. 601 OF 2024

Gopal Ukanda Mahalle

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Aasegaon, Mangrulpur, 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. M. N. Ali, Advocate for applicant.

Mr. N. B. Jawade, APP for respondent No.1/State.

Ms. S. K. Phaltankar, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 25/07/2024

1. By this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure.

2. The applicant came to be arrested on 06/06/2023 in connection with Crime No.139/2023 registered with Police Station Aasegaon, District Washim for the offence punishable under Sections 376(2)(I) and 323 read with Section 34 of the Indian Penal Code, 1860 and Sections 89 and 92(D) of the Rights of the Persons with Disabilities Act, 2016.

3. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of the statement of the victim who has alleged that she is deaf and dumb and

also mentally retarded aged about 20 years was subjected for sexual assault by the present applicant as well as other co-accused.

4. He submitted that as far as present applicant is concerned, who is falsely implicated and the DNA report completely exonerates him. As per the allegation of the victim, she was subjected for sexual assault by the present applicant on multiple occasions which resulted into her pregnancy. But the DNA report shows that one Om Shankar Pawar and the victim are concluded to the biological parents of products of conception of the victim. Thus, this material is sufficient to show that the applicant was implicated falsely. Now, the investigation is completed and charge-sheet is filed. The applicant is arrested on 06.06.2023 and there is no progress in the trial. The charges are also not framed against the present applicant. The applicant cannot be kept behind bars for an indefinite period. The other co-accused with the similar allegation was already released on bail by this Court. In view of that, on the ground of parity also the present applicant be released on bail.

5. Learned APP strongly opposed the said application on the ground that the deaf and dumb and mentally retarded victim is subjected for sexual assault by the present applicant. He further raised an apprehension that if applicant/accused is released

on bail, he would tamper with the prosecution evidence.

6. Learned appointed Counsel for the respondent No.2 – victim reiterated the same contentions and prays for rejection of the application.

7. After hearing the learned Counsel for the applicant and learned APP for the State as well as appointed learned Counsel for the respondent No.2 – victim, perused the FIR wherein it is alleged that the victim is deaf and dumb and by taking disadvantage of the said fact present applicant subjected her for sexual assault. It is alleged that present applicant has subjected her for sexual assault on multiple occasions which resulted into her pregnancy. But the DNA report exonerates the present applicant. One Om Shankar Pawar and the victim are concluded to be the biological parents of the foetus of the victim. Thus, considering the DNA report and now, the investigation is completed and charge-sheet filed, further incarceration of the present applicant is not required, the application deserves to be allowed. Accordingly, I proceed to pass following order:

(i) The application is allowed.

(ii) The applicant – **Gopal Ukanda Mahalle** shall be released on bail, in connection with Crime No.139/2023 registered with Police Station Aasegaon, District Washim for the

offences punishable under Sections 376(2)(I) and 323 read with Section 34 of the Indian Penal Code, 1860 and Sections 89 and 92(D) of the Rights of the Persons with Disabilities Act, 2016, on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the village Dabhadi, Taluka Mangrulpir, District Washim, till culmination of the trial.

(iv) The applicant shall not in any manner communicate with the victim or her relatives and shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.

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

(vi) On contravention of any of the conditions would lead to cancellation of the bail.

8. The application is disposed of.

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

(URMILA JOSHI-PHALKE, J.)