



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

CRIMINAL APPLICATION (BA) NO. 695 OF 2024

Pavan Patiram Dighore 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. N.B. Rathod, counsel for applicant.

Mr. A.J. Gohokar, APP for non-applicant/State.

Ms. Ragini Swami, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 09/09/2024.

1. The applicant came to be arrested on 23/02/2024, in connection with Crime No. 172/2024 registered with Police Station M.I.D.C. Nagpur for the offence punishable under Section 363, 366-A, 376 and 506-B of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. Initially, the crime is registered on the basis of a report lodged by the brother of the victim, alleging that on 21/02/2024, his sister had been to attend the nature call and not returned back. Though he searched, she was not traced, and therefore, he lodged the missing report. On the basis of said report, a crime is registered against an unknown person. During the investigation, the victim was found and her statement was recorded, from which it

reveals that, on that day when she had been to attend the nature call, the present applicant forcefully took her at his room, subjected her for forceful sexual assault, and thereby committed an offence. On the basis of the said statement, the crime is registered against the present applicant.

3. Heard learned counsel Mr. N.B. Rathod for the applicant, who invited my attention towards recitals of the FIR as well as the statement of the victim, medical report, and the history narrated before the medical officer and submitted that, that itself is sufficient to show the first implication of the present applicant. He submitted that, initially, the victim was taken for the medical examination, wherein she has not disclosed that she was subjected for the sexual assault by using force. Subsequently, she was referred to the psychiatrist, and thereafter, her medical examination was carried out. At the relevant time also, she has not given any history of forceful sexual contact or unconsciousness because of the same. He submitted that, on the examination of the genital also, no injuries were found, and even there was no tear found on the examination of the hymen. He submitted that, examination of the hymen shows, it was normal, ages were regular, and position of tears was absent. There were no external injuries also sustained by the victim.

4. He submitted that, subsequent to her statement, the medical examination of the accused is also carried out. The article which was seized from the spot of incident i.e. condom is not referred for the chemical analysis. Thus, considering the nature of investigation, no prima-facie case is made out against the present applicant. In view of that, considering the investigation is completed, charge-sheet is filed, further incarceration of the applicant is not required, and he be released on bail.

5. The learned APP and learned counsel for the victim strongly opposed the said application and submitted that the statement of the victim and the statement of the friend of the victim sufficiently show the involvement of the present applicant with the alleged offence. They have also invited my attention towards the spot panchanama and submitted that from the spot panchanama, one condom packet is recovered by the investigating agency. Considering the statement of the victim and recovery of the incriminating articles on the spot of the incident, the application deserves to be rejected as prima facie case is made out.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the entire investigation papers and the statement of victim, as well as the medical papers. Undisputedly, the victim has not

narrated the history before any of the medical officers to whom she was referred for the medical examination that she was subjected for the sexual assault. Subsequent to her medical examination, she has alleged that the present applicant took her forcefully and thereafter subjected her for sexual assault. Her statement and the statement of her friend show that on an earlier occasion also, she was subjected for sexual assault, but the examination of the enema is not substantiated the same. It shows that position of the hymen was normal, ages were regular, and there was no external injury on the person of the victim. Admittedly, the injuries are not sine-qua-non for establishing the sexual assault. However, considering the statement of the victim and initially she has not disclosed the said incident to anybody, no history was given to the medical officer, there are no signs of sexual assault on the medical examination, and now the investigation is completed and charge-sheet is filed, the application deserves to be allowed. However, considering the apprehension raised by the State, that if the applicant is released on bail, he would tamper with the prosecution evidence, some conditions are required to be imposed on the present applicant. In view of that, I proceed to pass the following order:

- a] The criminal application is **allowed**.

- b] The applicant - **Pavan Patiram Dighore**, shall be released on bail, in connection with Crime No. 172/2024 registered with Police Station M.I.D.C. Nagpur for the offence punishable under Section 363, 366-A, 376 and 506-B 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 jurisdiction of the Wadi Police Station till the culmination of the trial.
- d] The applicant shall not enter into the village of Sonegaon Nipani, MIDC Police Station, till the culmination of the trial.
- e] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- f] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

g] The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]