



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

CRIMINAL APPLICATION (BA) NO. 760 OF 2024

Sheikh Mustak @ Raju s/o Sheikh Rasid 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. Rajesh S. Nayak, counsel for the applicant.

Mr. Nitin Autkar, APP for non-applicant/State.

Mr. Yash A. Kullarwar, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/10/2024.

1. The applicant came to be arrested on 21/10/2023, in connection with Crime No. 525/2023 registered with police station Sakardara, Nagpur for the offence punishable under Sections 354(A), 376 of the Indian Penal Code, 1860 and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

2. The crime is registered on the basis of a report lodged by the mother of the victim girl on an allegation that her daughter, aged about 8 years, is studying in 5th class. On 19/10/2023, she returned from tuition at about 6.30 and was playing outside house. After some time, she went outside the house and not witnessed her daughter along with her son, and therefore, she gave a call to her daughter. At the relevant time, she saw her daughter coming out of the house of the present applicant, and the present applicant was pushing her from her house. Thereafter, she made an inquiry with the victim, and the victim disclosed to her that

when she was playing outside the house, the applicant called her inside the house, closed the door, and subjected her for sexual assault by placing the figure in her urinary part. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the statement of the complainant under Section 164 of Cr.P.C. itself sufficiently shows what is the reason to lodge the report. He submitted that, as far as the allegation regarding figuring is concerned, it is not substantiated by the medical examination. He submitted that even the husband of the complainant has not believed the words of the complainant. Now, the investigation is already completed and charge-sheet is filed. Considering the nature of the evidence, further incarceration of the present applicant is not required, and therefore, the applicant should be released on bail.

4. The learned APP and learned counsel for the victim strongly opposed the said application and submitted that the eight-year-old victim girl was subjected for sexual assault and the alleged offence was committed by the present applicant and is grievous in nature. They further submitted that injuries are not a sine-qua-non to attract the provisions under Section 376 or under the provisions of the POCSO Act. At this stage, the statement of the victim sufficiently shows the involvement of the present applicant in the alleged offence. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned APP for the State, perused the investigation papers, from which it reveals that the complainant has witnessed the victim coming out of the house, and thereafter, she made an inquiry, and the victim disclosed that she was subjected for the sexual assault by the present applicant. As far as the medical examination is concerned, neither the injury on the hymen nor the injury on the urethra or the anus was seen. There is no evidence of any infection, swelling, or bruise on the labia majora or labia minora reveals from the medical papers. As far as the statement of the complainant is concerned, which shows that she lodged the report on 20/10/2023, the applicant teased her by moving from the place with a smile on his face, and thereafter she approached the police station. As far as the involvement of the present applicant is concerned, it is a matter of evidence. At this stage, considering now, the investigation is completed and charge-sheet is filed, and as far as sexual assault is concerned, in the light of the statement of the complainant not substantiated by any other material. In view of that, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order;

ORDER

- a] The applicant- ***Sheikh Mustak @ Raju Sheikh Rasid*** shall be released on bail, in connection with Crime No. 525/2023 registered with

police station Sak kardara, Nagpur for the offence punishable under Section 354(A), 376 of the Indian Penal Code, 1860 and Sections 4, 6, 8, 12 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.

- b] The applicant shall not enter the jurisdiction of Sak kardara police station till the culmination of the trial.
- c] The applicant shall produce his address with the address proof wherein he is intending to stay after releasing him on bail, and shall furnish his cellphone number(s) to the investigating officer.
- d] The applicant shall not in any manner induce, threat or promise any witnesses either physically or through electronic media.
- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] On contravention of any of the conditions, the liberty granted to the present applicant deserves to be canceled.

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

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]