



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

CRIMINAL APPLICATION (BA) NO. 779 OF 2024

SONU @ SOHAN BABURAO INGLE VS STATE OF MAHARASHTRA AND ANTOHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Gajanan D. Kale, counsel for applicant.

Ms. Shamshi Haider, APP non-applicant/State.

Mr. Anirudh Ananthakrishnan, counsel (appointed), for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 02/12/2024.

1. The applicant came to be arrested on 06/05/2023 in connection with Crime No. 276/2023 for the offences punishable under Sections 363, 354-D of the Indian Penal Code, 1860 (IPC), and Section 11, 12 the Protection of Children from Sexual Offences (POCSO) Act, initially and subsequently Sections 376, 376(2) (3) of the Indian Penal Code, 1860, and Sections 3, 4 of POCSO Act

2. The crime is registered on the basis of a report lodged by the father of the victim on an allegation that on 29/4/2023, he, along with his wife, three daughters, and his son, had been to the market, and the victim was alone in the house. Thereafter, when he returned home, he could not find his daughter, and therefore, he searched for her, but the victim was not traced. On the basis of the said report, police have registered the crime against the unknown person under Section 363 of IPC. During the investigation, the victim

was traced and her statement was recorded. It reveals from the statement that there was a love affair between her and the present applicant, and out of that love affair, she was subjected for forceful sexual assault by the present applicant. She was referred for the medical examination. Before the medical officer, she narrated the incident of the sexual assault, and therefore, the crime was registered by using the provisions under the POSCO Act.

3. Learned counsel for the applicant submitted that as far as the statement of the victim is concerned, which is an inconsistent statement. Initially, she has denied that there is any sexual assault on her. She also declined to have a medical examination, and subsequently, after meeting with the parents, under their pressure, she has narrated a false history to the medical officer. He submitted that as far as further incarceration of the present applicant is concerned, which is not required, as the investigation is completed and the charge sheet is filed, the applicant is behind bar since one and half year. Considering all these aspects, he be released on bail.

4. Learned APP and learned counsel for the victim strongly opposed the said application and submitted that the victim is only a 12-year and 8 months girl who has been subjected for sexual assault by the present applicant. Though the victim has stated that she was having a love affair with the applicant, considering her tender age, that aspect cannot be accepted. They both have submitted that

considering the nature of the allegation levelled against the present applicant, who is a grown-up man, his prayer for grant of bail deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that the victim girl is only 12 years and 8 months. A statement, if taken into consideration, which shows that there was a love affair between her and the present applicant, and out of the love affair, there was a physical relationship. The medical examination also supports the same fact, as hymen was found torn in a two o'clock position, which sufficiently shows that she was subjected for the sexual assault. Considering the tender age of the victim, admittedly her consent cannot be taken into consideration; even her contention that she was having a love affair with the present applicant cannot be accepted at this stage. Considering the tender age girl was subjected for sexual assault by the present applicant, at this stage, no case is made out for grant of bail. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

- a] Criminal application is **rejected**.
- b] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]