



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

CRIMINAL APPLICATION (BA) NO. 793/2023

Sudhakar Pundalikrao Kalmegh V/s State of Maharashtra

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

Court's or Judge's Order

Mr. M.VRai, counsel for the applicant.

Mrs. M.A.Barbde, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 31/01/2024.

1. The applicant came to be arrested on 12/10/2021, in connection with Crime No. 905/2022 registered with Police Station Pulgaon, Tq. Deoli, District Wardha for the offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860. Since the date of arrest, the applicant is behind bar.

2. The accusation against the present applicant is on the basis of a report lodged by the victim, on an allegation that on 01/09/2022 at 11.30 a.m. to 12.00 p.m., she had been to the agricultural field of the present applicant to do the labour work. When the victim had been near the well to bring the drinking water, the present applicant forcibly took her to a cattle shed and demanded sexual favour from her. On her denial, he threatened her and subjected her for forcible sexual intercourse, on the basis of said report the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the applicant is suffering from heart disease. He was also referred to the various hospitals and advised for Angiography. The medical report shows that the condition of the applicant is deteriorating and needs medical assistance immediately.

4. He submitted that as far as the merit of the matter is concerned, the FIR was lodged after 40 days of the incident. Now, the evidence of the victim is already recorded, therefore, there is no reason for the investigating agency to apprehend the applicant/accused. If the applicant/accused is released on bail, he will not tamper with the prosecution evidence. He further submitted that the trial is already commenced and the applicant is ready to abide all the conditions. He will not enter into the village where the prosecution witnesses are residing.

5. He further submitted that considering the physical condition of the present applicant which is deteriorating, and immediate medical assistance is required. Moreover, now investigation is completed and charge-sheet is filed. The trial is commenced and the evidence of the victim is already recorded, further incarceration of the present applicant is not required, and prays for releasing him on bail.

6. Learned APP strongly opposed the present application on the ground that the allegation levelled by the victim is substantiated by the medical evidence. If the

applicant is released on bail, he will tamper with the prosecution evidence. Earlier, this Court had shown the disinclination to grant bail and therefore, the application was withdrawn. There is no change in circumstance. In view of that, the application deserves to be rejected.

7. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. As far as the ground raised by the applicant that he is suffering from heart disease, and is supported by the report of the medical officer of Wardha District Prison, shows that the applicant Sudhakar Pundalikrao Kalmegh is suffering from Ischemic Heart Disease with Anterior Wall Myocardial Infarction with Hypertension with Left ventricular Ejection fraction, and the applicant was advised for Angiography and Wardha District Prison is having facility of the said Angiography, but the son of the applicant is not willing for the said CAG (Cairo-Angiography). The applicant was also referred to the District Hospital, Nagpur wherein also, he was examined and it is confirmed that he is suffering from the heart element.

8. As far as the allegation against the present applicant is concerned, the recitals of the FIR reveal that the victim who is a married lady, allege that she is subjected for sexual assault by the present applicant. On 01/09/2022, after the incident, she has lodged the report after 14 days i.e. on 11/10/2022. Though medical report shows that the victim was medically examined, and during her medical examination it reveals that the hymen was torn. However,

the victim is a married lady which cannot be ignored. There is a change in circumstances. After completion of the investigation, charge is filed and the evidence of the victim is already recorded.

9. Considering the fact that, the applicant is suffering from heart disease and now, the evidence of the victim is already recorded. The apprehension raised by the prosecution is that he will tamper with the prosecution evidence is no more in existence. As far as the evidence of the other witnesses is concerned, they are not on the point of the alleged incident. The material witness is that the victim is already examined and the apprehension raised by the prosecution can be taken care of by imposing certain conditions on the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a) The criminal application is **allowed**.
- b) The applicant -**Sudhakar Pundlikrao Kalmegh** is released on bail, in connection with crime No. 905/2022 registered with Police Station Pulgaon, Tq. Deoli, District Wardha for the offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860, on executing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the vicinity of village Yesgaon, Tq. Deoli, Tah. Wardha till the culmination of the trial.
- d) The applicant shall not induce or threat any of the witnesses who are connected with the facts of the case.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]