



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

CRIMINAL APPLICATION (ABA) NO. 580 OF 2024

Saurabh Purshottam Murkute 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. A.S. Mardikar, Senior Counsel with Mr. D.P. Singh counsel for the applicant.

Mr. N.B. Jawade, APP for non-applicant/State.

Mr. M.N. Ali, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 26/08/2024.

1. Apprehending the arrest at the hands of police, in connection with Crime No. 399/2024 registered with Police Station, Civil Lines, District Akola for the offences punishable under Sections 64, 64(2) (m), 137(2) of Bhartiya Nyaya Sanhita, 2023 and Section 3,4 of the Protection of Children from Sexual Offences Act, 2012, the applicant approached this Court for grant of pre-arrest bail.

2. The applicant is apprehending the arrest at the hands of police, as the crime is registered on the basis of a report lodged by the mother of the victim girl, who alleged that her daughter, aged about 17 years and studying in 12th Standard, she was also attending NEET classes. It is alleged that she, along with family members, was invited by the Vice President of Swami Vivekanand English School, but she could not attend the said function, and therefore, she, along with her daughter, visited the house of said Vice President.

At the relevant time, the victim girl was also along with her at the house of said Vice President, she got acquaintance with the present applicant. It is alleged that on 14/07/2024, when the victim was proceeding to attend the NEET class, the present applicant has shown her the knife and forced her to sit in his car and abducted her. Thereafter, he put some cotton cloth ball in her mouth and subjected her for sexual assault. On the basis of said report, police have registered the crime against the present applicant. During the investigation, the investigation officer has recorded the relevant statements, including the statement of the victim. The medical certificate was also collected, and on the basis of the same, the crime was registered against the present applicant.

3. Heard learned Senior Counsel for the applicant, who submitted that contention of the informant in the FIR that the first time the victim met with the applicant is falsified by the Instagram Chat between them. The Instagram Chat shows that there was an acquaintance between them since long, and they were liking each other and communicating with each other prior to the incident and also after the incident. Thus, this fact itself is sufficient to falsify the version of the prosecution that she was forcefully taken by the present applicant and was subjected for sexual assault. On the contrary, it shows that there was acquaintance between both of them, they were communicating with each other, they were spending time with each other, and there was a love affair between them. It

is apparent that the said love affair is opposed by the family members, and therefore, this false FIR is lodged.

4. He submitted that, in the light of the said Instagram chat, the entire prosecution case appears to be a false one. As far as the custodial interrogation is concerned, which is not required. The mobile phone of the present applicant is already seized. Thus, custodial interrogation of the present applicant in the light of the above said fact is not required, and in view of that, he be protected by granting anticipatory bail.

5. Learned APP and learned counsel for the informant strongly opposed the said application on the ground that, considering the minor girl was subjected for sexual assault by the present applicant, her consent is not at all relevant. He further submitted that, merely because there is Instagram Chat, it is not sufficient to infer that there was a love affair between the victim and the present applicant, but the fact remains that the present applicant has abducted the victim and subjected her for forceful sexual assault. The medical certificate substantiates the said contention, though the mobile phone of the present applicant is seized, his custodial interrogation is required. In view of that, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for the State, perused the entire investigation papers, from which it reveals that it alleged that first acquaintance with the present applicant occurred prior to

14/07/2024 when the informant, along with the victim and her husband, visited the house of the father of the present applicant. It is alleged that, on 14/07/2024, when the victim was proceeding for her tuition class, the applicant approached to her and abducted her by showing the knife. The statement of the victim is also recorded, who reiterated the said contention and submitted that she was taken by the present applicant by using force. Her medical certificate is also collected during the investigation. The history narrated before the Medical Officer shows that the first time, she got acquaintance with the present applicant prior to 14/07/2024 when she visited the house of the present applicant, and thereafter, on 14/07/2024, she was abducted. Her statement also substantiated the said fact. The medical certificate shows that there is no any sign of external injury over the body or external genitals. The hymen is also found intact, but the possibility of sexual assault cannot be ruled out.

7. Moreover, during the investigation, the investigating officer has collected the Instagram Chat between the victim and the present applicant, from which it reveals that there was very well acquaintance between the victim and the present applicant, prior to the incident. From the said chat, it nowhere reveals that, either there was any force by the present applicant to communicate with her. On the contrary from the chats, it reveals that the victim was happily communicating with the present applicant, and they are sharing many aspects including their marriage aspects.

8. After the incident also, there was an Instagram chat between the present applicant and the victim. Thus, it shows that, out of the well-established acquaintance, a love relationship developed between the present applicant and the victim, and out of that, the possibility that the victim went along with the accused/applicant cannot be ruled out. Thus, considering the entire Instagram Chat, there is substance in the contention of learned Senior Counsel that, out of the acquaintance, there was a communication, and as far as the allegation made in the FIR that, the first time they met prior to 14/07/2024, appears to be doubtful, though the investigation is in progress. Considering that from the Instagram Chat, no displeasure appears to be there on the part of the victim, as far as the relationship is concerned, or it nowhere reflects that she was forced to have some relationship with the present applicant. The contention of the present applicant deserves to be accepted as to the love affair between them. As far as the investigation part is concerned, the statement of the victim is already recorded. The medical examination of the victim is also carried out, the mobile phone of the applicant is already seized. In view of that, the application deserves to be allowed.

9. Moreover, it is well settled that when there is an allegation of sexual assault, sexual relationship, or love affairs, these types of cases are to be treated differently. It is not the case, wherein it is alleged that out of the lust, the applicant has subjected the victim for the sexual assault. On the contrary, victim who is 17 years of age, and the

applicant, who is 25 years of age, appear to be in a love relationship, and out of that, there was an acquaintance. As far as the sexual relationship is concerned, the material collected during the investigation is insufficient to come to the conclusion regarding the sexual assault. Considering all these aspects, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] In the event of arrest, in connection with Crime No. 399/2024 registered with Police Station, Civil Lines, District Akola for the offences punishable under Sections 64, 64(2) (m), 137(2) of Bhartiya Nyaya Sanhita, 2023 and Section 3,4 of the Protection of Children from Sexual Offences Act, 2012, the applicant – Saurabh Purshottam Murkute, shall be released on anticipatory bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- b] The applicant shall not induce, threat or promise, or in any manner communicate or contact with the victim, and shall not induce or tamper with the prosecution witness.
- c] The applicant shall not enter into the Akola City as well as Akot, wherein the victim is residing, till the culmination of the trial.

- d] The applicant shall furnish his detailed address, wherein he intends to stay after he is released on anticipatory bail, along with address proof.
- e] The applicant shall not enter into the vicinity of Akola except attending the police station once in a week on Sunday between 10.00 a.m. to 01.00 p.m. till his medical examination is carried out.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]