



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

CRIMINAL APPLICATION (BA) NO. 780 OF 2024

Sunil Vitthal Wadhai (In Jail) 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. VM. Vishwarupe, counsel for applicant.
Ms. Kavita Bhondge, APP for non-applicant/ State.
Mr. Y.P. Bage, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 16/10/2024.

1. The applicant came to be arrested on 18/09/2023 in connection with Crime No. 336/2023 registered with Police Station Chimur District Chandrapur for the offence punishable under Section 376(2)(1), 506 of the Indian Penal Code, 1860.

2. The crime is registered on the basis of a report lodged by the mother of the victim on an allegation that the victim, her daughter, is aged about 19 years and suffering from unsoundness of mind i.e. mental retardation. As she likes the small children, therefore she used to visit the house of the present applicant. On 18/09/2023 also, she had been to the house of the present applicant at that time, she was subjected for the sexual assault by the present applicant. After the incident, the victim came out weeping, and on inquiry, she disclosed the said incident. On the basis of said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the alleged incident has taken place from 10/08/2023 to 15/08/2023, whereas the report is lodged on 18/09/2023, i.e. after one month. So, there is inordinate delay in lodging the FIR. He further submitted that the statements of the witnesses are also not consistent, as far as the involvement of the present applicant is concerned. Now the investigation is completed and charge-sheet is already filed, there is no medical evidence to substantiate the allegation. Thus, considering all these aspects, the applicant be released on bail.

4. In support of his contention, he placed reliance on the order passed by this Court in the case of ***Prabhakar s/o Ramchandra Sarode Vs The State of Maharashtra (through P.S.O. Mauda) [2014 SCC OnLine Bom 3901]***

5. Learned APP strongly opposed the said application on the ground that the victim is a mentally retarded girl subjected for forceful sexual assault. The statement of the victim recorded by the investigating officer as well as recorded under Section 164 of Cr.P.C. are consistent, and there is no ground for false implication. She submitted that as far as the medical examination is concerned, which shows that she was examined after one month. She further submitted that, considering the manner in which the alleged incident has taken place, the application deserves to be rejected.

6. After hearing learned counsel for the applicant and learned APP for State, perused the investigation papers, from

which it reveals that the victim, who is a mentally retarded girl, was allegedly subjected for sexual assault. Her statement recorded by the investigating officer as well as Section 164 of Cr.PC. are consistent, and the statements of the witnesses also support the case of the victim, as the said incident was immediately disclosed to the parents by the victim. As far as the medical examination is concerned, which shows that hymen was shown to be absent and position of tears was shown as 3 and 9 o'clock position. Therefore, the allegation is substantiated by medical examination.

7. Moreover, considering the fact that a mentally retarded girl was sexually assaulted by the present applicant, and the delay in lodging the FIR is also explained by the informant in the first information report. Thus, considering the prima-facie case, 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.]