



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

CRIMINAL APPLICATION (BA) NO. 791 OF 2024

Sheikh Faizan Sheikh Yunus @ Sonu

Vs.

State of Maharashtra, Through Police Station Officer, Police Station, Akot,
District Akola and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S. V. Sirpurkar, Counsel for the applicant.

Mr. Harshal Futane, APP for non-applicant /State.

Mr. Yash Venkatraman, Counsel for non-applicant No.2/victim.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 06/09/2024

1. The applicant came to be arrested on 17.05.2024 in connection with Crime No.187/2024 registered with Police Station Akot, District Akola for the offences punishable under Sections 376, 354, 354-A, 452 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of report lodged by victim girl aged about 16 years and 2 months alleging that she got acquaintance with the present applicant and they were communicating with each other and friendship was developed between them which resulted into a love affair. It is further alleged that the present applicant subjected her for sexual assault on 27.03.2024 by promising her for

marriage and thereafter on multiple occasions there was a physical relationship between them. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel Mr. Sirpurkar for the applicant submitted that there was a love affair but as the victim was below 18 years of age, the marriage was not performed and the applicant asked the parents of the victim, let her attain the age of majority thereafter, he will perform the marriage, but due to misunderstanding this FIR came to be lodged. Now they have decided to marry each other and even accepting the allegation as it is, out of a love affair, there was a physical relationship therefore, no offence is made out against the present applicant, in view of that he be released on bail.

4. Learned APP strongly opposed the said application on the ground that though there was a love affair, but the consent of the victim was not relevant. The investigation though completed, there is apprehension of tampering with the witnesses, in view of that, the application deserves to be rejected.

5. Learned Counsel for the victim also supported the contention of learned Counsel for the applicant to the extent that they have decided to marry each other.

6. After hearing the learned Counsel for the applicant and learned APP for the State, perused the investigation papers from which it reveals that the victim who is 16 years girl fallen in love with the present applicant. They were communicating with each other and out of the love affair, there was a physical relationship between them. It reveals from her statement that when they were together the incident was witnessed by the mother of the victim and thereafter, there was an insistence to perform the marriage but the applicant has denied to perform the marriage and therefore, the FIR came to be lodged. Now, the investigation is completed and charge-sheet is already filed. Considering the statement of the victim it reveals that there was a physical relationship between the victim and the present applicant, out of a love affair. It is now time and again stated by this Court and by the Apex Court also that as far as the physical relationship out of a love affair are concerned, which are to be treated differently. It is not the case wherein the applicant has subjected the victim for sexual assault out of lust, but two teenagers who fallen in love with each other had a physical relationship out of the attraction. Now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required, in view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is allowed.

(ii) The applicant **Sheikh Faizan Sheikh Yunus @ Sonu** shall be released on bail in connection with Crime No.187/2024 registered with Police Station, Akot, District Akola for the offences punishable under Sections 376, 354, 354-A, 452 of the Indian Penal Code and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(iv) The applicant shall attend the proceeding before the learned Special Court without seeking any exemption unless there are exceptional circumstances.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)