



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

CRIMINAL APPLICATION (BA) NO. 835 OF 2024

Sunil Shivaji Gavhane 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. S.V. Sirpurkar, counsel for applicant.

Mr. K.R. Lule, APP for non-applicant/State.

Mr. Hiranman K. More, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 17/10/2024.

1. Applicant came to be arrested on 12/08/2024, in connection with crime No. 283/2024 registered with Police Station Shirpur, District Washim for the offence punishable under Section 376, 452 and 506 of the Indian Penal Code, 1860 and Sections 4, 6 of the Protection of Children from Sexual Offences (POSCO) Act.

2. The crime is registered on the basis of a report lodged by the victim girl, on an allegation that the applicant is her relative and used to visit her house, as he was doing the work of Bachat-Gat. As he was visiting her house and asked her for a mobile number, she has given her mobile number to him. He has also expressed that he wants to perform the marriage with her. She further alleged that he has threatened her that, if she has not communicated with him, he would defame her in society. On 29/11/2023, when she was alone in the house, he subjected her for forceful sexual assault, and thereafter, on

multiple occasions, she was subjected for the sexual assault, which resulted into her pregnancy. First time, on 20/06/2024, as she was having abdominal pain, and therefore she was taken into the hospital in the village, and it revealed that she is pregnant thereafter, the FIR is lodged. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the victim is on the verge of attaining the age of majority, as she was 17 years of age at the time of the incident. Now, investigation is completed and charge-sheet is filed, as far as the DNA report is concerned, the relationship between the victim and the present applicant is out of love affair. He submitted that, considering the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required and he be released on bail.

4. Learned APP and learned counsel for the victim strongly opposed the said application, on the ground that a minor victim girl was subjected for forceful sexual assault against her consent. Her consent is not relevant, and victim force to carry the motherhood and force to deliver a child. Considering the act of the present applicant, he is the relative of the victim, if he released on bail, he would tamper with the prosecution evidence, and therefore, the application deserves to be rejected.

5. After hearing learned counsel for the applicant, learned APP for the State as well as learned counsel for the victim, perused the recitals of the FIR. From which it reveals that, on the promise of marriage, the victim appears to be subjected for sexual assault. As far as the threatening by the applicant is concerned, admittedly till 28/06/2024, i.e. from 29/11/2023 to 20/06/2024, she has not disclosed the said incident, though she is residing along with her parents. There is no dispute as to the fact that, due to the physical relationship between the applicant and the victim, she carried the pregnancy and delivered a child. As far as the involvement of the present applicant in the alleged incident is concerned, it reveals from the investigation papers, but considering now investigation is already 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 by imposing certain conditions. Accordingly, I proceed to pass the following order;

- a] The application is allowed.
- b] The applicant – Sunil Shivaji Gavhane shall be released on bail, in connection with crime No. 283/2024 registered with Police Station Shirpur, District Washim, for the offence punishable under Sections 376, 452 and 506 of the Indian Penal Code, 1860 and Sections 4, 6 of the Protection of Children from Sexual

Offences (POSCO) Act, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not enter into the vicinity of Shenggaon Rajure Tah. Risod, District Washim till the culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses either physically or by way of electronic media.
- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] Contravention of any of the conditions imposed by this Court would lead to the cancellation of bail.
- g] The appointed counsel is discharged.

[URMILA JOSHI-PHALKE, J.]