



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

CRIMINAL APPLICATION (BA) NO.848 OF 2024

Mohan Wasudeo Kute

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Khamgaon City, District Buldhana 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. H. V. Dhage, Counsel for the applicant.
Mr. K. R. Lule, APP for non-applicant No.1/State.
Mr. R. P. Ladekar, Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/09/2024

1. The applicant came to be arrested on 12.08.2024 in connection with Crime No.203/2024 registered under Section 363, 366, 109 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of report lodged by maternal uncle of the victim on an allegation that on 13.04.2024 he has dropped the victim in a school to appear for the examination, on that day, the victim did not return back, therefore, he searched for her, but he could not traced her, therefore, he lodged missing report. It is further alleged that it revealed to him while searching the victim that present applicant by promising her, kidnapped her and took along with her from the

lawful guardianship. On the basis of the said report police have registered the crime against the present applicant. During investigation, the Investigating Officer has recorded the statement of the victim and after completion of the investigation, the charge-sheet is submitted against the present applicant.

3. Learned Counsel for the applicant submitted that there was a love affair between the victim and the present applicant and out of a love affair she joined the company of the present applicant. He submitted that at the relevant time victim was aged about 17 years 8 months i.e. on the verge of attaining the majority, thereafter, they performed the marriage. The victim stayed along with the present applicant in a rented premises. She never made a complaint regarding any harassment or sexual assault by the present applicant. Now considering they already performed the marriage out of a love affair and the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required.

4. Learned APP strongly opposed the said application on the ground that from the statements of the various witnesses it reveals that minor victim girl was kidnapped by the present applicant and performed the marriage with her. Though investigation is completed and charge-sheet is filed

there is apprehension of tampering with the witnesses. In view of that, the application deserves to be rejected.

5. Learned Counsel appearing for the victim submitted that now victim has already performed the marriage with the applicant/accused therefore, she has no objection to release the present applicant on bail.

6. After hearing both the sides and after perusal of the investigation papers it reveals from the statement of the victim that it was victim who insisted the present applicant to take her along with him and thereafter, they stayed at Nashik in a rented room and thereafter, they performed the marriage at Trimbakeshwar. Admittedly, the victim was aged about 17 years and 8 months at the time of incident i.e. on the verge of attaining the majority. Now it is well settled that when the cases of sexual assault or sexual harassment which arising out of the love affairs are to be treated differently. In the present case, it appears that out of a love affair victim joined the company of the present applicant, performed the marriage with him and now staying along with him. It is not the case wherein the out of lust the victim was taken by the present applicant to subject her either for sexual assault or the sexual harassment, but it is out of a love affair and attraction towards each other they come together

and started living life together. Considering these aspects and considering the fact that the investigation is completed, charge-sheet is filed and 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 **Mohan Wasudeo Kute** shall be released on bail in connection with Crime No.203/2024 registered with Police Station, Khamgaon City, District Buldhana for the offences punishable under Sections 363, 366 and 109 of the Indian Penal Code and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, on executing PR Bond of Rs.25000/- 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.

7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)