



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

CRIMINAL APPLICATION (BA) NO. 863 OF 2023

Abid Khan s/o Shahadat Khan V/s 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. T.U. Tathod, counsel h/f Mr. P.M. Khan, counsel for the applicant.
Mrs. H.N.Prabhau, APP for the non-applicant/State.
Mr. A.R.Daronde, counsel h/f Ms. Mohini A. Sharma, counsel (appointed)
for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/03/2024.

1. The applicant came to be arrested 13/10/2022, in connection with Crime No. 372/2022 registered with Police Station Shendurjana Ghat, Tq. Warud, District Amravati for the offence punishable under Sections 363, 376(2)(n), 376(3), 365, 343, 448 and 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of the statement of the victim on an allegation that on 08/10/2022, at about 4.00 a.m., when she along with her mother woke up for Namaz, at that time, she heard the noise at the gate, and therefore, she went near the gate and she was taken away by a person at Bhopal on his motorcycle. At that time, the face of the said person was covered.

3. After reaching at Bhopal, the said person removed the cover from his face and it revealed to her that it is the

present applicant, who has taken her at Bhopal. After recording her statement, the crime was registered under Section 376 of the Indian Penal Code, 1860. Prior to that, the father of the victim girl lodged the report alleging that on 07/10/2022, when he woke up at about 4.30 a.m., he saw that his daughter is not in the house and therefore, he searched for her but could not trace her. On the basis of said report, the police have registered the offence against the unknown person under Section 363 of the Indian Penal Code, 1860.

4. The learned counsel for the applicant submitted that there was a love affair between the victim and the present applicant and out of love affair, she went along with him, they stayed at Bhopal as husband and wife. The statement of the landlord also substantiate the said contention. In view of that, applicant be released on bail as the investigation is already completed.

5. The learned APP strongly opposed the said application on the ground that the victim is only 15 years of age, her consent is not relevant. Moreover, the statement of the victim shows that she was forcefully taken by the present applicant. If applicant is released on bail, he would tamper with the prosecution evidence, and prays for rejection of the application.

6. The learned counsel for the victim also reiterated the said contention and submitted that there is apprehension

of tampering the witnesses and prays for rejection of the application.

7. Having heard learned counsel for the applicant, learned counsel for the victim and learned APP for the State, perused the investigation papers. From the recitals of the First Information Report, when the informant wake up at 4.30 a.m. he found that victim is not in the house and therefore, he searched for her but he could not tress her. The statement of the victim shows that at about 4.00 a.m. when she woke up along with her mother, at that time, she heard the noise at the gate and therefore, she went near the gate and somebody has taken her and subsequently, she came to know that it is the present applicant who brought her at the Bhopal. The statement of the landlord, wherein the victim and the accused are residing shows that, the applicant and the victim were residing as husband and wife and applicant used to attend the Court in the morning and returned at home in the evening. Thus considering the said statement, it reveals that the victim was staying along with the accused and has not made any complaint.

8. Moreover, as far as the contention of the learned APP is concerned, consent of the victim is not relevant, is also taken into consideration. At this stage, the consent of the victim cannot be taken into consideration, but considering now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. The statement of the landlord shows that the victim was residing along with the present applicant and not made a

complaint regarding forcible sexual assault to anybody. The application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] In connection with Crime No. 372/2022 registered with Police Station Shendurjana Ghat, Tq. Warud, District Amravati for the offence punishable under Sections 363, 376(2)(n), 376(3), 365, 343, 448 and 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, the applicant – **Abid Khan s/o Shahadat Khan** shall be released on bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- d] The applicant shall not enter into the vicinity of the Shendurjana Ghat, till culmination of the trial.
- e] The applicant shall attend the Court proceedings regularly without seeking any exemption unless there are exceptional circumstances.
- f] The fees of the appointed counsel be quantified as per the Rules.

[**URMILA JOSHI-PHALKE, J.**]