



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

CRIMINAL APPLICATION (BA) NO. 877 OF 2024

Sanket s/o Vithal Hagwane
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Borgaon Manju, 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 with Mr. S. G. Joshi, Counsel for the applicant.
Ms. H. N. Prabhu, APP for non-applicant No.1/State.
Ms. Shreya H. Bhagat, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 19 /10/2024

1. The applicant came to be arrested on 01.02.2022 in connection with Crime No.39/2022 initially registered under Section 363 of the Indian Penal Code and subsequently, under Sections 363, 341, 354-A, 376, 376(2)(n), 376(3), 376(D), 376(DA), 506 read with Section 34 of the Indian Penal Code, under Sections 3(a), 4, 4(2) 5(g), 5(i), 5(l), 5(n), 6, 11(i), 11(iv), 11(v), 12 and 17 of the Protection of Children from Sexual Offences Act and under Section 67(a) and 67(b) of the Information Technology Act.

2. The crime is registered on the basis of report lodged by father of the victim alleging that on 30.01.2022 at about 8.30 p.m. his daughter left the house and did not return back. He tried to search

her, she was not found in spite of the efforts. Thereafter, on 31.01.2022 he was informed that the victim was found at Bhusawal Railway Station, on which he along with his relatives went to the Bhusawal Railway Station wherein the victim was found. The victim narrated the incident that she was subjected for the continuous sexual assault and harassment by all the accused by threatening to make her obscene videos and photographs viral. It reveals from the statement of the victim that the present/accused and the other co-accused are in her close relations. They forced to her to have sexual intercourse with them and also took her obscene photographs and videos in the mobile phone of one of the applicant i.e. present applicant. The said videos and photographs were circulated and sent to the mobiles of the other accused. Thereafter all the accused by threatening her that they would make the said videos viral subjected her for sexual assault. 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 applicant is behind bar since the date of his arrest i.e. from 01.02.2022, after two and half years, even charges are not framed and there is no progress in the trial. He further submitted that though present applicant has filed an application for expedition of the trial, the said application was partially allowed and the letter was issued to the

Forensic Science Laboratory, Amravati for expediting the forensic analysis on 27.01.2023. However, prayer of the present applicant for expedite disposal of the case was not considered and that prayer was rejected.

4. Learned Counsel for the applicant Mr. Sirpurkar submitted that as far as the merit of the matter is concerned, from the CA reports it reveals that no obscene videos are found in the mobile phone of the applicant and therefore, the allegation is baseless. He submitted that the applicant is behind bar since the date of his arrest and therefore, he filed an application to expedite the trial. But learned trial Court has not expedited the trial, on the contrary, his request to expedite the trial was rejected. He submitted that this order affects the rights of the present applicant of the speedy trial which is enshrined under Article 21 of the Constitution of India. In view of that, the applicant has made out a case for grant of bail.

5. Learned APP and learned Counsel for the non-applicant No.2 - victim strongly opposed the said application and submitted that considering the merit of the case, there is a *prima facie* material against the present applicant, as the CA report shows that some files of the obscene videos are found on the analysis of the mobile phone of the present applicant and some are found to be deleted. The statement of

the victim and the mobile analysis report sufficiently shows the involvement of the present applicant in the alleged offence. Considering the nature of the offence, the application deserves to be rejected.

6. They both submitted that as far as the right of the speedy trial is concerned, which is the Constitution right, but considering the fact that the Forensic Science Laboratory report were not received, the trial was not proceeded and therefore, application deserves to be rejected. Learned APP further submitted that if the directions are given to the trial Court, the Session Trial can be disposed of within six months.

7. After hearing both the sides and on perusal of the investigation papers, as far as the allegations are concerned, the statement of the victim which has substantiated by the medical evidence as well as the chemical analysis report shows the involvement of the present applicant in the alleged incident. Another ground raised by the applicant is that the right of his speedy trial is affected as the trial is not commenced, even the charges are not framed. The application filed by the present applicant to expedite the trial in the year 2022 itself i.e. on 03.12.2022. The Sessions Court has rejected the said application on 27.01.2023 as far as the prayer of expedite the trial is concerned. However, the another prayer that the directions are to be issued to the Forensic Science Laboratory for

expediting the forensic analysis report was accepted and directions are given.

8. The Hon'ble Apex Court in the case of **Javed Gulam Nabi Sheikh Vs. State of Maharashtra and another in Criminal Appeal No.2787/2024 decided on 03.07.2024**, wherein it is observed that if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

9. In **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal No. 2790/2024 decided on 18.07.2024**, wherein also the issue regarding the speedy trial was considered by the Court and it is held by the Hon'ble Apex Court that this Court thereafter proceeded to hold that Section 43D(5) of the UAP Act does not oust the ability of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. Long incarceration with the unlikelihood of the trial being completed in the near future is a good ground to grant bail.

10. Here in the present case, the applicant is arrested on 01.02.2022. The applicant has filed an application for expediting the trial on 03.12.2022 itself. The said application was decided by the trial Court on 27.01.2023 and prayer of the applicant for expediting the trial was rejected. The another prayer of the applicant to give a direction to the concerned authority of Forensic Science Laboratory for expediting the forensic analysis report in respect of the mobile itself was allowed and directions were given. Now, till today i.e. till 19.10.2024, even the charges are not framed though the CA reports are received before the trial Court. Thus, in view of the observations of the Hon'ble Apex Court, if the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Admittedly, the crime committed is serious but in view of the observation of the Hon'ble Apex Court and in view of the Article 21 of the Constitution, the applicant cannot be kept behind the bar for indefinite period. Even the cognizance of the application filed by the present applicant for expediting the trial was also not taken by the trial Court. Considering all above these facts the application deserves to be

allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Sanket s/o Vithal Hagwane** shall be released on bail in connection with Crime No.39/2022 registered with Police Station Borgaon Manju, District Akola for the offences punishable under Sections under Sections 363, 341, 354-A, 376, 376(2)(n), 376(3), 376(D), 376(DA), 506 read with Section 34 of the Indian Penal Code, under Sections 3(a), 4, 4(2) 5(g), 5(i), 5(l), 5(n), 6, 11(i), 11(iv), 11(v), 12 and 17 of the Protection of Children from Sexual Offences Act and under Section 67(a) and 67(b) of the Information Technology Act, on executing PR Bond of Rs.50,000/- with one solvent surety in the like amount.
- (iii) The applicant shall not enter into the village Borgaon Manju, District Akola, till culmination of the trial.
- (iv) The applicant shall not in any manner communicate, induce or promise any witnesses including victim either physically or by way of electronic media.
- (v) The applicant shall attend the proceeding before the Special Court without seeking any exemption unless there are exceptional circumstances.
- (vi) The contravention of any of the condition

imposed by this Court, the bail granted to the present applicant deserves to be cancelled.

11. The fees of the appointed Counsel be quantified as per rules.

12. The application is disposed.

(URMILA JOSHI-PHALKE, J.)