



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

CRIMINAL APPLICATION (BA) NO. 882 OF 2024

Md. Ali Md. Sirajuddin Ansari

Vs.

State of Maharashtra, Through Police Station, Wathoda, Nagpur 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. N. R. Gandhi, Counsel for the applicant.

Mr. A. B. Badar, APP for non-applicant No.1/State.

Ms. Shreya H. Bhagat, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 19 /10/2024

1. The applicant came to be arrested on 10.03.2024 in connection with Crime No.96/2024 registered with Police Station, Wathoda, Nagpur for the offences punishable under Section 376(2)(I) of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by the bother-in-law of the victim on an allegation that on 09.03.2024 when he was in his mother-in-law's house, he received a phone call of one Akshay Godgate who disclosed that from the house at a distance of 100 meters in the bushes, his sister-in-law and the present applicant were seen by him and the present applicant was sitting on her person in a half-naked condition. He immediately, rushed to the spot of the incident and witnessed the

present applicant was not having clothes on his person and the saree of the victim was also pulled. On making an inquiry, it revealed to him that, the present applicant has subjected her for sexual assault, who is a mentally retarded woman aged about 38 years. On the basis of the said report, the police have registered the crime against the present applicant.

3. After registration of the crime, the victim was referred for the medical examination. Her medical certificate was obtained as well as the applicant was referred for the medical examination. After completion of the investigation, the charge-sheet was filed against the present applicant.

4. Heard learned Counsel for the applicant who submitted that the informant is the relative of the victim and the interested witness. He invited my attention towards the history narrated by the present applicant before the Medical Officer and submitted that prior to the incident the present applicant was assaulted by the relative of the victim and therefore, he approached to the Police Station and to give a counterblast to the said, this false FIR is lodged against him. He submitted that now the investigation is already completed and the charge-sheet is already filed, further incarceration of the present is not required. In view of that he be released on bail.

5. Learned APP and learned appointed Counsel for the victim strongly opposed the said application on the ground that victim who is a mentally retarded woman is subjected for the forceful sexual assault by the present applicant by taking disadvantage of his mental illness. He invited my attention towards the medical certificate of the applicant which shows that applicant has sustained the injuries in the said incident. He also invited my attention towards the statement of the victim and submitted that the statement of the victim is recorded with the help of the Medical Officer which also shows the involvement of the present applicant. In view of that the application deserves to be rejected.

6. After hearing the learned Counsel for the applicant, learned APP for the State and learned appointed Counsel for the victim, perused the investigation papers it reveals that the victim is suffering from mental disorder like bipolar disorder currently mania. The informant is the eye witness of the incident who has seen the present applicant sitting on the person of the victim and i.e. also in a disrobe condition. The victim was also partly disrobed at the relevant time. The medical examination of the victim is also carried out which supports the case of the prosecution as well as the injuries are also found on the person of the present applicant. Considering the material collected during the investigation shows the involvement of the present applicant.

Considering the fact that a mentally retarded girl was subjected for sexual assault by the present applicant, a *prima facie* is made out. In view of that, the application deserves to be rejected. Accordingly, the application is rejected.

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

(URMILA JOSHI-PHALKE, J.)