



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

CRIMINAL APPLICATION (BA) NO. 880 OF 2024

Kumanlal s/o Santaram Kothwar 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. M.A. Deo, counsel for applicant.

Mr. H.D. Dubey, APP for non-applicant/State.

Ms. Ragini Swamy, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 21/10/2024.

1. The applicant came to be arrested on 01/06/2021, in connection with crime No. 39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code, 1860 and Sections 6, 8, 10, 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of a report lodged by the victim on an allegation that on 29/05/2021, there was some pre-marriage function in the village at the house of one Fulchand Tappo on 28/05/2021 and the victim had been there around 7.00 p.m. along with her sister and friends. Around 8.30 p.m., when she was talking outside with her maternal cousin, at the relevant time, four accused persons were towards them, and one co-accused had asked her as to where she was going. The victim did not give any reply, and the said accused gagged her mouth on one hand, caught her hand by his other hand and the other three

accused lift the victim by holding her hands and legs and took the victim there. At that time, the cousin Pankaj Ekka tried to rescue the victim from accused, however, one of the accused caught his neck and pushed him back and slapped him. Thereafter, the accused took the victim to a secluded place near one well and slept her over rough surface. One of the accused had gagged her mouth and second accused was holding her legs and the third accused was holding her hands and when, the victim tried to resist, she was slapped on her face and cheeks by the other and dragged her on rough surface due to which the victim got injury on her back.

3. It is further alleged that she was taken to the isolated place and subjected for forceful sexual assault by all the accused persons. On the basis of her report, police have registered the crime against the applicant and the other three unknown persons. During the investigation, the involvement of the present applicant was revealed. He was also put to the T.I. parade, and during the T.I. parade, the victim has identified him. After completion of the investigation, the investigation officer has submitted the charge against the present applicant.

4. Learned counsel for the applicant submitted that, as far as the involvement of the applicant is concerned, it is entirely based on the identification parade, which was conducted after 18 days of the said incident, and prior to that, the photographs of the suspected persons are shown to

the victim. Thus, she has identified the present applicant on the basis of the said photographs. Thus, he submitted that, even considering the merit of the case, the entire case is involved around the T.I. parade, and the said T.I. parade is a weak type of evidence. The other ground raised by him is that there is inordinate delay in conducting the trial. He submitted that since 01/06/2021, the applicant is behind bars and there is no progress in the trial. In fact, the Court is vacant, and the applicant is languishing in jail. Even if the case is transferred to another Court, then there are also 59 witnesses are cited by the prosecution, and it would take time to dispose of the trial. The applicant cannot be kept behind bars for an indefinite period.

5. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal no. 2790 of 2024 decided on 18th July, 2024 and Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another in Criminal Appeal No. 2787 of 2024 decided on 3rd July, 2024.

6. Learned APP and learned counsel for victim strongly opposed the said application and submitted that considering the nature of the offence, which is serious one, as the small minor victim girl was subjected for sexual assault by the four persons. During the investigation, her statement is recorded. She was referred for medical examination, which substantiates the allegation. The applicants are also

identified during the identification parade. Whether the identification parade is suffering from any infirmity is a matter of evidence. At this stage, considering the nature of offence, the application deserves to be rejected.

7. After hearing learned counsel for the applicant and learned APP for the State as well as counsel of the victim. Perused the investigation papers. As far as the allegations are concerned, which shows that victim was subjected for sexual assault by the co-accused and three unknown persons. During the investigation, the T.I. parade was held. The statement of the witnesses shows that prior to the T.I. parade, they were shown the photographs of the suspected, and thereafter, the T.I. parade was held. At this stage, it would not be appropriate to comment on the nature of the investigation, as it is a matter of investigation and it is the matter of trial, whether the T.I. parade is suffering any infirmities or not. But considering there is inordinate delay in trial, as the applicant is behind bars since 01/06/2021.

8. The observations of the Hon'ble Apex Court in the cases of *Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh* referred (supra) and *Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another* referred (supra), wherein the Hon'ble Apex Court has held 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. Here in the present case also, the applicant is behind bars since 01/06/2021 from the roznama, it reveals that the trial has not commenced initially, as the accused was not produced, and subsequently the court is vacant. No efforts are taken to transfer the said case to the other Court, though the accused is behind bars. Even accepting the contention that the trial can be transferred to another court, the time will require to dispose of the trial. Thus, there is no dispute as to the fact that the right of the present applicant of a speedy trial in view of Article 21 of the Constitution is affected. In view of that, the applicant has made out a case for grant of bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] The applicant- ***Kumanlal Santram Kothwar***, shall be released on bail, in connection with crime No. 39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code, 1860 and Sections 6, 8, 10, 12 of the Protection of Children from Sexual Offences Act, on executing

- a PR. Bond of Rs. 50,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of village Sindesur Tah. Dhanora, Dist. Gadchiroli till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, either physically or through electronic media.
- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] On contravention of any of the conditions imposed by this court, the bail granted to the present applicant deserves to be canceled.
- g] The fees of the appointed counsel be quantified as per Rule.

The criminal application is disposed of.

[URMILA JOSHI-PHALKE, J.]