



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

CRIMINAL APPLICATION (BA) NO. 908 OF 2024

Premsagar s/o Ramsaran Mishra 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

Ms. Ruby Pal, counsel for applicant.

Mr. N.B.Jawade, APP for non-applicant/State

Ms. Shreya Bhagat, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/11/2024.

1. The applicant came to be arrested on 28/03/2024 in connection with Crime No. 374/2024 registered with Police Station Mouda Gramin, District Nagpur for the offence punishable under Sections 376, 376(2)(f)(j)(n), 376(3), 354(a) and 506 of the Indian Penal Code, 1860 read with Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The applicant is the father of the victim, who allegedly subjected the victim for forceful sexual assault. On the basis of the report, police have registered the crime against the present applicant.

3. Heard learned counsel for the applicant, who submitted that there was a discord between the matrimonial relations between the applicant and his wife, and by taking advantage of the minor daughter, she has implicated the present applicant falsely in the alleged

offence. He has invited my attention towards the statement of the victim recorded under Sections 161 as well as 164 of the Cr.P.C., as well as the mother of the victim, and disclosed that this statement sufficiently shows that the alleged incident has taken place in the year 2021. The FIR is lodged after three years of the incident, and there is a reason to falsely implicate the present applicant. The statement of the mother has stated on 25/03/2024, the applicant has assaulted her and obtained all the documents relating to the house, and therefore, this false report is lodged.

4. Learned APP and learned counsel for the victim strongly opposed the said application and submitted that no reason came forward before the Court to show that the applicant is implicated falsely. It is further submitted that no mother put the character of her own daughter at her stake because of the matrimonial dispute between husband and wife. They submitted that the applicant is the father of the victim, if he is released on bail, there is every likelihood of tampering of the witnesses. In view of that, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that admittedly the victim has lodged the report after three years of the incident, but it is also well settled that mere delay in lodging the report is not always fatal to the prosecution. The statement of the victim recorded under Sections 161 and 164 of the Cr.P.C.

sufficiently shows the involvement of the present applicant in the alleged offence. She has narrated similar history before the medical officer. The medical officer has examined her, and during the medical examination, it was shown that there were old healed tears at the hymen.

6. Considering the statement of the victim, mother and the NC report filed by the mother, previous to the incident, which sufficiently shows that there was a discord between the husband and wife. There is nothing on record to show that due to the said reason, the applicant is implicated falsely in the alleged offence. At this stage, there is no reason to suspect or doubt the prosecution story. Considering the apprehension raised by the learned APP that the applicant, being the father, is released on bail, he may tamper with the prosecution evidence. In view of that, the application deserves to be rejected. Accordingly, I proceed to pass the following order.

- a] The criminal application is **rejected**.
- b] The fees of the appointed counsel be quantified as per Rule.

[URMILA JOSHI-PHALKE, J.]