



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.967 OF 2024
(Arjun s/o Ambadas Mahure Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. T.M. Zaheer, Advocate for the applicant.
Ms K. Bhondge, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- NOVEMBER 21, 2024.

The applicant came to be arrested on 11/05/2024 in connection with Crime No.277/2024 registered with Police Station Kamptee, District Nagpur for the offence punishable under Sections 376(2)(n) of the Indian penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by the victim girl on an allegation that her birth date is 13/03/2006 and she got acquaintance with the present applicant in the month of December, 2023. She further alleged that the present applicant took her in agricultural field which was situated behind brick-kiln wherein she was working and subjected her for forceful sexual assault. Thereafter on 5 to 6 occasions the alleged incident was repeated which resulted into her pregnancy. On the basis of said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that the statement of the victim which was recorded by

the investigating agency shows that she has alleged against one Niranjana. As far as the present applicant is concerned his name is Arjun. The victim has nowhere stated that the name of the assailant was Arjun. She has narrated the history before the Medical Officer wherein also she has narrated the name of one Niranjana. Therefore, the identity of the present applicant itself is in question. He further submitted that even accepting the allegation as it is, it reveals that the act of the sexual relationship between the victim and the present applicant appears to be consensual one. He submitted that victim was more than 18 years at the time of the incident. She has lodged the report on 07/05/2024 and stated her age as 19 years. As per the prosecution, the alleged incident has taken place in the December, 2023. If that date of incident is taken into consideration admittedly, on the day of incident she was more than 18 years. Now, the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, the applicant be released on bail.

4. learned APP strongly opposed the application on the ground that the minor victim girl was subjected for the sexual assault by the present applicant which resulted into her pregnancy. DNA report is yet to be received. Considering the gravity of the offence, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it

reveals that the investigating agency has collected the mark-sheet of 7th standard of the victim to show the age of the victim. To establish that victim was below 18 years of age the prosecution or the investigating agency has to either collect the birth certificate or the school leaving certificate wherein she was firstly admitted. As far as this document on which prosecution relied upon admittedly, is not sufficient to show the age of the victim girl. However, that aspect can be considered at the time of the trial. From the recitals of statement of the victim it reveals that though she was subjected for the sexual assault on 5 to 6 occasions, she has not made any complaint about the said incident to anybody though she was residing near the brick-kiln along with the other labours.

6. From the statement of the victim which was recorded by the investigating agency as well as recorded under Section 164 of Cr.PC. it is apparent that there was consensual act between them. Whether her consent was relevant or not is a matter of evidence. Considering now the investigation is completed and charge-sheet is filed, further incarceration of the applicant is not required. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order:

(i) The application is allowed.

(ii) The applicant – Arjun s/o Ambadas Mahure in connection with Crime No.277/2024 registered with Police Station

Kamptee, District Nagpur for the offence punishable under Sections 376(2)(n) of the Indian penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on executing a P.R.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall not enter into the vicinity of village Bharatwada, Pawangaon Road, Kalamna, Madhya Pradesh till culmination of the trial.

(iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the present case as well as the victim either personally or by way of electronic media.

(v) The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

7. The contravention of any of the condition imposed by this Court would lead to cancellation of bail.

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)