



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

CRIMINAL APPLICATION (BA) NO. 936 OF 2023

Sheikh Salim Sheikh Rahim V/s 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. S.V.Sirpurkar, counsel for applicant.
Mrs. Dhande, APP for non-applicant/State.
Mr. M.V.Rai, counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 15/03/2024.

1. The applicant came to be arrested 01/04/2022, in connection with Crime No. 81/2022 registered with Police Station Tamgaon, District Buldhana for the offence punishable under Sections 376, 376(1), 452, 506 of the Indian Penal Code, 1860 and under Sections 4, 6, 8, 12 of the Protection of Children from Sexual offences Act, 2012 (for short 'the Act of 2012').

2. The applicant is arrested by the Tamgaon Police Station, District Buldhana. On the basis of report lodged by the victim on an allegation that she is 15 years of age and studying in Sahakar Vidya Mandir, Warwat Bakal in the 8th Standard. She is residing along with her mother and sisters. As per her allegation on 10/02/2022 at about 10.30 a.m. her mother and sister left the house to attend Court work at Jalgaon Jamod at about 12.00 noon. She was alone in the house, at that time, the present applicant entered into the house and threatened her that he has deposed in favour of

her mother in Court, and she has to keep the physical relation with her otherwise, he will depose against her mother, and subjected her for sexual assault. She further alleged that while committing the said sexual assault, the applicant also provided her Condom. On the basis of said report, the Police have registered the crime against the present applicant.

3. During the investigation, the investigating officer has recorded the relevant statements of the witnesses and also collected the Birth Certificate and she was referred for medical examination. The history narrated before the medical officer is also similar to her allegation made in the FIR. During the medical examination, it reveals that there was a small healed tear at 5 O'clock position. Therefore, the police have registered the crime under Section 376 of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Act of 2012.

4. The learned counsel for the applicant Mr. S.V. Sirpurkar vehemently submitted that this is a completely false case lodged against the present applicant as the mother of the victim is in the habit of lodging the false complaint against several persons and therefore, the villagers have filed representation before the Superintendent of Police, Buldhana against the mother of the informant. In this complaint, villagers stated that she is in habit of lodging the false complaint against the villagers alleging the physical assault on her, or her daughters, and therefore, the villagers are fed up with the activities of the mother of the victim. He also submitted that as per the prosecution case, the alleged

incident has occurred on 10/02/2022 at about 12.00 noon, whereas the documents which are collected under the Right to Information Act from the schools shows that, at the relevant time, she was present in the school.

5. He further submitted that these documents itself is sufficient to show the false implication of the present applicant in the alleged offence. Now, the investigation is completed and charge-sheet is filed and further incarceration of the present applicant is not required, and prays for releasing the applicant on bail.

6. The learned APP strongly opposed the said application on the ground that the statement of the victim is substantiated by the medical certificate which shows that the victim has sustained the injury on her genitals. She submitted that if the applicant is released on bail, he would tamper with the prosecution evidence. In view of that, she prays for the rejection of the application.

7. The learned counsel, Mr. M.V. Rai for the non-applicant No.2 endorsed the same contention and submitted that the small girl of 15 years was subjected for sexual assault by the present applicant. As far as the allegation regarding the report filed by the mother of the victim against the villagers is concerned, which is a false allegation made by the villagers. He submitted that if the applicant is released on bail, he would tamper with the prosecution evidence and prays for rejection of the application.

8. Having heard learned counsel for the applicant and learned APP for the State as well as counsel for the victim, perused the investigation papers. The crime is registered on the basis of report lodged by the victim who is 15 years of age. During the investigation, the investigating officer has collected her birth certificate which shows that at the time of the incident she was below 18 years of age. The statement of the victim is substantiated by the medical papers which shows that there was a small tear at 5 O'clock position seen by the medical officer. Whether the applicant has subjected her for sexual assault or not and whether the incident occurred on 10/02/2022, is the question. The learned counsel for the applicant Mr. S.V.Sirpurkar, pointed out from the documents which the applicant has obtained under the Right to Information Act and shown that the victim was present in the school on the day of incident i.e. 10/02/2022.

9. He further invited my attention towards the letter issued by the Head Master of Sahakar Vidya Mandir, which shows that the timing of the school on 10/02/2022 was 10.30 to 2.30. Therefore, there is a substance in the contention of the learned counsel for the applicant Mr. S.V. Sirpurkar that, if she was present in the school, at the relevant time an alleged incident has taken place, then the allegation levelled by her appears to be false one. He has also produced on record various FIRs and the representation made by the villagers which shows that the mother of the victim has filed several FIRs against the various villagers alleging that she as well as her daughters are subjected for

sexual assault by one or the other. On perusal of these documents, it shows that one N.C. Report is filed by one Rafik Sheikh and the Crime No. 70/2023 is registered at Tamgaon Police Station, on the basis of the sister of the victim alleging that she is also subjected for sexual assault by one Rashid. The crime No. 73/2023 is also registered on the basis of report lodged by the mother of the victim.

10. Thus, There is a substance in the contention of the learned counsel that several FIRs are lodged against the villagers by the mother of the victim and sister of the victim. There is a representation of the villagers also, alleging that the mother of the victim is in the habit of lodging false complaints of sexual assault on her or her daughters, and she blackmails the villagers. The said representation is made to the Superintendent of Police, Buldhana District.

11. Coming to the present case, the statement of the victim itself shows that she is studying in 8th Standard in Sahakar Vidya Mandir, Warwat Bakal. As per her allegation, the alleged incident has taken place on 10/02/2022 at 12.00 noon when her mother and sister were not at home. The document i.e. the attendance sheet maintained by the school shows that on 10/02/2022, she was present in the school and the letter issued by the Headmaster shows that the timing of the school was 10.30 to 2.30 noon. If this document is taken into consideration, then the presence of the victim at her house on the day of the incident and at the time of the incident is doubtful. At this stage, now the investigation is completed and charge-sheet is filed. These facts, of course,

require to be proved during the trial. Considering the fact that now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. Hence, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a] The criminal application is **allowed**.
- b] In connection with Crime No. 81/2022 registered with Police Station Tamgaon, District Buldhana for the offence punishable under Sections 376, 376(1), 452, 506 of the Indian Penal Code, 1860 and under Section 4, 6, 8, 12 of the Protection of Children from Sexual offences Act, 2012, the applicant – **Sheikh Salim Sheikh Rahim** shall be released on bail, on executing P.R. Bond of Rs. 25,000/- with one solvent surety of the like amount.
- c] The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- d] The applicant shall not enter into the vicinity of the Warwat Bakal, Taluka Sangrampur, District Buldhana, till culmination of the trial.

The application is **disposed of**.

[**URMILA JOSHI-PHALKE, J.**]