



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

CRIMINAL APPLICATION (BA) NO. 970 OF 2024

Mohd. Jaid Mohd. Aarif **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. R.H.Rawlani, counsel for applicant.

Mr. Nitin Autkar, APP for non-applicant/State.

Ms. Aastha Sharma, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/12/2024.

1. The applicant came to be arrested on 01/04/2024 in connection with crime No. 252/2024 registered with Police Station Jaripatka, Nagpur for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 8 of the Prevention of Children from Sexual Offences Act.

2. The crime is registered on the basis of a report lodged by the victim girl on an allegation that she was living with her father and she got acquaintance with the present applicant, they used to have quarrels between his friend Junera and Jaid. The said Junera asked her to call Jaid, and thereafter, the victim used to send messages to him on the phone. There was an acquaintance between them, and out of that acquaintance also, they were communicating not only through the WhatsApp chat but also through the Instagram. It is alleged that on

19/12/2022, at around 11:30 p.m., she received the message of the applicant, and he called her at Tirpude Hospital. The victim's mother came to know about her relationship with the present applicant therefore, she snatched her mobile phone. It was alleged that the present applicant asked her to sit on his motorbike and took her and subjected her for the sexual assault. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that from the recitals of the FIR and the statement of the victim itself, it reveals that there was a consensual physical relationship between the victim and the present applicant. He submitted that admittedly the victim was below 18 years of age at the time of incident, however, considering that out of a love affair, the physical relationship was developed between them and now the investigation is completed and charge sheet is filed, further incarceration of the present applicant is not required.

4. Learned APP and learned counsel for the victim strongly opposed the said application on the ground that a minor victim girl was subjected for sexual assault by the present applicant, and her consent is not relevant. In view of that, the application deserves to be rejected.

5. After hearing both sides on perusal of investigation papers, especially the statement of the victim and the medical report, as far as the nature of the

relationship between the victim and the present applicant is concerned, which shows that there was acquaintance and the said acquaintance resulted in their friendship and thereafter, the love affair. Out of love affair, there was a physical relationship between them. Admittedly, the consent of the victim is not relevant, but they have to consider that the relationship was developed out of a love affair. The sexual assault cases where the physical relationship between the victim and the accused are out of love affair are to be treated differently. It is not the case wherein the applicant has subjected the victim for sexual assault out of lust, and now investigation is already completed charge-sheet is filed, and further incarceration of the present applicant is not required. 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- Mohd. Jaid Mohd Aarif, shall be released on bail, in connection with crime No. 252/2024 registered with Police Station Jaripatka, Nagpur for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860 and Sections 4 and 8 of the Prevention of Children from Sexual Offences Act, on executing P.R. Bond of Rs. 25,000/- with one solvent surety in the like amount.

- c] The applicant shall not induce, thereat or promise any witnesses who are acquainted with the facts of the present case.
- d] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- e] The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]