



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

CRIMINAL APPLICATION (BA) NO.964 OF 2023
(Sanjay Vitthal Pande 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. R.S. Sundaram, Advocate a/w Mr. A. Gawande, Advocate for the applicant.
Mr. N. Autkar, APP for the State.
Mr. A. Ananthakrishnan, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- MARCH 14, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 11/04/2023 in connection with Crime No.142/2023 registered with Police Station Sakkardara, Nagpur, District Nagpur for the offence punishable under Sections 376(AB), 376(2)(f)(n)(l) and 506 of the Indian Penal Code and Sections 4, 6, and 21 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of report lodged by the mother of the victim on an allegation that her daughter victim is 12 years and six months old and was studying in 6th standard in the year 2023 in Sharda Mahila Vidyalaya, Om Nagar, Nagpur. It is alleged that in the month of January and February 2023, victim complained to her mother that she is having abdominal pain as well as pains while discharging the urine but she

ignored the same as the victim may have suffered some infection. On 05/04/2023, her daughter came home after appearing for her last paper and at about 1:30 p.m. she disclosed that she has subjected for sexual assault by the present applicant on 10/12/2022 at about 10.00 a.m. in the science laboratory of her school. As per the disclosure by the victim, present applicant hold her hand, promised her that he will perform the marriage with her and took her in the laboratory and subjected her for sexual assault. On that she examined the genitals of the victim wherein she observed the redness. On the basis of said report, police have registered the crime against the present applicant. During investigation, the statement of the victim is also recorded as well as the statements of the other students who are studying with the victim. The Investigating Officer has also collected the extract of muster of the teachers as well as attendance sheets of the students. The statements of the teachers are also recorded. The victim was referred for the medical examination and after completion of the investigation, the charge-sheet was filed against the present applicant.

3. Learned Counsel for the applicant vehemently submitted that if the Court peruses the extract of the muster, on 10/12/2022 the applicant was on casual leave. Thus, the initiation of the incident which is narrated by the victim itself is falsified by the said document. He further submitted that considering the allegation that the victim was subjected for sexual assault in a laboratory

which is having ingress and egress and that is also daytime during the school timing, the story itself is improbable and unacceptable. If there would have been any forceful sexual assault on a victim on a table, she definitely would have sustained the injuries on her genitals. He also invited my attention towards the various statements of the co-students and submitted that these statements nowhere shows that it was the present applicant who hold her hand and took her in the laboratory. Thus, from the recitals of the FIR and the other statements it reveals that only with the false allegation this crime is registered against the present applicant. Now, the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the application by submitting that a 12 years girl was subjected for sexual assault by the present applicant who is a Teacher. Learned Additional Public Prosecutor also pointed out from the medical report that medical report supports the allegations as on examination of fourchette white discharge and the observation that it admits two fingers hymen torn is sufficient to show that she was subjected for sexual assault. He also invited my attention towards the attendance sheet of the victim which shows that she has attended the school throughout during this period. The statement of the co-students are also recorded

to whom also victim has disclosed the said incident. He submitted that considering pious relationship between the present applicant and the victim and victim who is only 12 years old was subjected for sexual assault, a heinous crime is committed by the present applicant. Learned APP also submitted that the victim is a patient of 'Mild Intellectual Disability' and the disability certificate is on record. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for the parties. On perusal of the investigation papers, it reveals that the report is lodged by the mother of the victim who has alleged that on first time i.e. on 05/04/2023 the victim has disclosed the said incident to her. During investigation, the spot panchnama of the spot of incident is also drawn which shows that the alleged spot of incident is 15 x 30 feet dimension room. The alleged spot of incident is a wooden table. It further reveals that there are three windows to the said laboratory and having ingress and outgress. The recitals of the panchnama further shows there are several articles kept in the said laboratory including the music instruments. As far as the spot panchnama is concerned, nothing abnormal was witnessed by the panchas while drawing the spot panchnama. During Investigation, the statement of the victim is also recorded in which she has narrated the alleged incident to the Investigating Officer. On perusal of the statement of the victim, she alleged that the present applicant used to call her in the laboratory on various

occasions and he used to disrobe her and subjected her for sexual assault. As far as the date of incident is concerned which is mentioned in the FIR is not narrated by her. She has also not narrated the period from which she was subjected for sexual assault by the present applicant.

6. The Investigating Officer has also recorded the statement of various co-students. As far as these statements are concerned from which it revealed that in the month of December, 2022 there was an annual function of the school and at that time, the victim has disclosed to the co-students that she is subjected for the harassment at the hands of the present applicant. If the disclosure statement which is made to the other students is concerned it reveals that she has only disclosed to them that the present applicant used to physically touched her. As far as sexual assault is concerned, there is no such disclosure to the friends by the victim.

7. The statements of the teachers is also recorded. If the statement of Vishal Harish Goswami is read, it shows that on 06/02/2023 when the Headmaster has called the meeting at that time, present applicant was absent and he was on casual leave for half day. The Headmaster disclosed to them that the victim has made a complaint against the present applicant to the extent that he has touched her badly, and therefore, said meeting was called. The statement of the other teachers have also

substantiated the said contention that the meeting was called as there was a complaint on 06/02/2023 itself on the complaint made by the victim on 04/02/2023 that present applicant has touched her with the bad intention. As far as the allegations for sexual assault is concerned, none of the teacher or the students narrated that the victim has made complaint regarding the sexual assault. First time, said complaint was made to the mother on 05/04/2023. The medical report shows that hymen was torn and there was a white discharge and fourchette was admitting two fingers, so the allegation is substantiated by the medical evidence but as far as the disclosure by the victim to the co-students and the teacher is concerned which shows that initially there was only complaint to the extent of bad touch by the present applicant. The allegation made by the victim that the applicant used to take her to the laboratory is also not substantiated by the statement of co-students. At this stage, the evaluation of the evidence is not required and I do not want to comment on the nature of the evidence but surprisingly the Investigating Officer has not recorded the statement of the Principal of the School to whom the complaint was made by the victim. Even assuming that there was a complaint regarding the behaviour of the present applicant but it is only to the extent of bad touch by the present applicant to the victim. Now, the investigation is completed and charge-sheet is filed. Considering the fact that as per the recitals of the FIR, the first incident of

sexual assault was taken place on 10/12/2022 and the document which is produced on record shows that on 10/12/2022 the applicant was on casual leave, the victim has not narrated date on which first time she subjected for sexual assault. Moreover, the statements also nowhere show that it was the applicant who used to took her to the laboratory is also not substantiated by the co-students and considering the investigation is already completed, charge-sheet is already filed, the application of the present applicant deserves to be allowed.

8. Though there is a *prima facie* substance in the allegation but considering now investigation is completed and in the light of the fact that the allegation is that the applicant is subjected for sexual assault on 10/02/2022 and the documents shows that on that day, the applicant was on a casual leave. The application of the present applicant deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant – Sanjay Vitthal Pande in connection with Crime No.142/2023 registered with Police Station Sakkardara, Nagpur, District Nagpur for the offence punishable under Sections 376(AB), 376(2)(f)(n)(l) and 506 of the Indian Penal Code read with Sections 4, 6, and 21 of the

Protection of Children from Sexual Offences Act, 2012, be released on bail on executing a PR.Bond in the sum of Rs.25,000/- with one solvent surety, in the like amount.

(iii) The applicant shall attend the concerned police station as and when required for the investigation purpose and shall cooperate with the investigating agency.

(iv) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(v) The applicant shall not enter into the vicinity of Om Nagar, police station Sakardara, Nagpur till the culmination of the trial.

(vi) The applicant shall attend the court proceedings regularly without seeking any exemption unless there are exceptional circumstances.

9. The application is disposed of.

10. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)