



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

CRIMINAL APPLICATION (BA) NO.987 OF 2023
(Satish s/o Sudam Jumde 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. S.V. Sirpurkar, Advocate for the applicant.
Mr. N.H. Joshi, APP for the non-applicant/State.
Ms S. Phaltankar, Advocate for non-applicant No.2

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

By this application, the applicant is seeking bail in connection with Crime No.368/2023 registered with Police Station, Risod, District Washim for the offences punishable under Sections 354, 354-A, 354-B, 354-D, 341, 506 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012. Later on Section 376 of the Indian Penal Code is added.

2. The applicant is arrested on 06/06/2023 and since then he is behind bar.

3. Learned Counsel for the applicant submitted that the accusation against the present applicant is on the basis of report lodged by the victim who is 15 years and 4 months. As per her allegation, the applicant who is residing in her neighbourhood and she is studying in a 10th standard. She alleged that though the applicant is a married person with an ill-intention he always used to

stare at her and also expressed that he likes her. When she resisted the act, he abused her and also threatened her. On 03/06/2023 said applicant came to her grandmother's house and on the pretext of showing her to the bridegroom took her along with him by obtaining the permission of her grandmother. As she was scared of the present applicant, she took her brother along with her. The applicant took her in one house and with intention to subject her for sexual assault attempted to disrobe her. She made hue and cry, therefore, he left her and he also threatened her not to disclose the incident, otherwise he will kill her brother. On the basis of report police have registered the crime against the present applicant. On the next day i.e. on 05/06/2023 her supplementary statement was recorded wherein she alleged that the present applicant disrobe her and subjected her for sexual assault by means of penetration. Learned Counsel for the applicant submitted that initially the informant has not made any allegation about the sexual assault on her. The allegation is not supported by the medical report as hymen is shown to be intact. The statement is recorded on the next day wherein she has alleged about the sexual assault. The statement of her brother is also recorded which also shows that she has not disclosed the said incident immediately to him also. He submitted that considering the nature of the statement and initially there was no allegation about the sexual assault, it clearly shows the false implication of the present applicant in the

alleged offence. Even assuming the allegation as it is 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 strongly opposed the application on the ground that the victim is minor of 15 years and 4 months. Though initially she has not stated about sexual assault but she has explained that she was threatened by the present applicant and that can be a reason for not disclosing the said fact before the police. Considering the *prima facie* case, the application deserves to be rejected.

5. Learned Counsel for non-applicant No.2 has also endorsed the same contention and submitted that *prima facie* case is made out against the present applicant and application deserves to be rejected.

6. Having heard learned Counsel for the parties. Admittedly, initially the informant has not made any allegation except the attempt of disrobing her. On the next day she has made allegation regarding the sexual assault on her. The medical report does not support the said allegation as the hymen was found to be intact. There is no dispute as to the legal position that injuries are not a *sine qua non* for attracting the provisions under Section 376 of the Indian Penal Code but considering the fact that though the victim approached to the police on 05/06/2023 i.e. after 3 days of the incident and not

narrated about the incident of sexual assault or not and narrates on 06/06/2023. The allegation is not supported by the medical evidence. She has also not disclosed the incident to her brother though her brother was along with her creates a doubt about the prosecution case. At this stage, it would not be appropriate to comment on the veracity of the statement of the victim but considering the statements and the investigation carried out by the Investigating officer, the investigation is completed and charge-sheet is filed, no purpose will be served by keeping the present applicant behind bar. Hence, the applicant deserves to be released on bail by imposing certain conditions. Accordingly, I proceed to pass the following order :

(i) The application is allowed.

(ii) The applicant - Satish s/o Sudam Jumde in connection with Crime No.368/2023 registered with Police Station, Risod, District Washim for the offences punishable under Sections 354, 354-A, 354-B, 354-D, 341, 506 and 376 of the Indian Penal Code and Sections 4, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on furnishing PR. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the village Mothegaon, Taluka Risod, District Washim till the culmination of the trial.

(iv) The applicant shall attend the Risod police station once in a month i.e. first day of every month till culmination of the trial.

(v) The applicant shall furnish his cell phone number and address with the address proof.

(vi) 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.

7. The application is disposed of.

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

(URMILA JOSHI-PHALKE, J.)