



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

CRIMINAL APPLICATION (BA) NO. 1021 OF 2024

Javed s/o Hayat Khan Pathan 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. A.K. Bhandge, counsel for applicant.

Mr. S.V. Narale, APP for non-applicant/State.

Mr. Aditya S. Pande, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 11/12/2024.

1. The applicant came to be arrested on 24/06/2024 in connection with Crime No. 764/2024 registered with Police Station Wardha City, Wardha for the offence punishable under Sections 376(2)(n), 376(d), 354, 354(c), 509, 109 of the Indian Penal Code, 1860 and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to "the POCSO Act).

2. The crime is registered on the basis of a report lodged by the victim, aged about 17 years, on an allegation that she studied upto seventh standard, and she got acquaintance with the co-accused Rahul. There was a love affair between her and the said Rahul. It is further alleged that one Salma Sheikha is residing in front of her house, and she took her for celebrating the birthday of her brother, where she met the present applicant, who subjected her for forceful sexual assault and thereafter,

repeated the said act on four to five occasions. She was also subjected for sexual assault by the other co-accused, Ritesh. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused.

3. Heard learned counsel for the applicant, who submitted that there are inconsistent statements by the victim. He invited my attention towards the subsequent statement, wherein she has not whispered about any sexual assault by the present applicant, and her statement shows that the allegation against the present applicant is only to the extent of physical touch to her private part, and there is no allegation as to the penetrative sexual assault. Her statement under Section 164 was also recorded by the Magistrate, wherein also the entire allegations levelled against the co-accused Rahul. He submitted that the medical report shows that she was pregnant of five weeks, and the pregnancy is already terminated. The chemical analyzer report, as well as DNA reports, are yet to be received, but considering the inconsistent statement of the victim, no prima-facie case is made out. Now the investigation is already completed, and the charge-sheet is already filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP and learned counsel for the victim strongly opposed the said application and submitted that considering the statement of the victim, which was

recorded, wherein she has specifically alleged against the present applicant. It was the present applicant and other co-accused who have subjected her for sexual assault forcefully, and therefore, the offence punishable under Section 376 is made out. Considering the victim is a minor, her consent is not relevant, and the minor victim girl was subjected for sexual assault, not only by the present applicant but also by other co-accused, and considering the gravity of the offence, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers, it reveals that during the investigation it reveals that the victim was pregnant of five weeks, and the said pregnancy was terminated. Admittedly, the DNA report is yet to be received. Medical report shows that there was a sexual assault on the victim, as hymen was shown to be torn. It is an admitted position that the victim has stated during the investigation that there was a love affair between her and the co-accused, Rahul and there was a physical relationship between them. As far as the act of the present applicant is concerned, there are inconsistent statements, and the subsequent statement recorded by the investigating officer shows that allegations are only to the extent of sexual harassment and not the penetrative sexual assault, the investigating officer has filed a charge-sheet against the present applicant under Section 354A and Sections 8 and 12 of the POCSO Act.

6. Considering the inconsistent statements made by the victim as far as the role of the present applicant is concerned, the investigation is completed, and the charge sheet is filed. In subsequent statements, the role of sexual assault was not attributed to the present applicant. Considering all these aspects, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] Application is allowed.
- b] The applicant -***Javed s/o Hayat Khan Pathan***, shall be released on bail, in connection with Crime No. 764/2024 registered with Police Station Wardha City, Wardha for the offence punishable under Sections 376(2)(n), 376(d), 354, 354(c), 509, 109 of the Indian Penal Code, 1860 and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on executing PR. Bond of Rs. 25,000/- with one solvent surety in the like amount.
- c] The applicant shall not enter into the vicinity of Stationfail Wardha till culmination of the trial.
- d] The applicant shall not induce, threat or promise any witnesses, including the victim, either physically or through electronic media.

- e] The applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.
- f] The applicant shall furnish his mobile phone number(s) and address with the address proof along with the names of two relatives along with their address and address proof.
- g] The fees of the appointed counsel be quantified as per Rule.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]