



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

CRIMINAL APPLICATION (BA) NO.1025 OF 2024

Subham s/o Arvind Dighe

Vs.

State of Maharashtra, Through Police Station Officer, Yashodara Nagar,
Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. S. Dhenge, Counsel for the applicant.

Mr. N. W. Jawade, APP for non-applicant No.1/State.

Mr. Aditya Pande, appointed Counsel for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 04/12/2024

1. The applicant came to be arrested on 13.09.2024 in connection with Crime No.565/2024 registered with Police Station, Yashodara Nagar, Nagpur for the offences punishable under Sections 64(1) of the Bharatiya Nyaya Sanhita, 2023. As per the accusation against the present applicant on the basis of report lodged by the victim aged about 19 years that she got acquaintance with the present applicant as she was doing catering work along with the co-accused and the present applicant. Out of the acquaintance, they were communicating with each other. It is alleged other co-accused Khushbu has taken her in the hotel wherein she was subjected for the sexual assault by the present applicant and thereafter on multiple occasions she was subjected for the sexual assault. The present applicant has also

obtained the video of the said act and threatened her that he would make the said video viral. On the basis of the said report, police have registered the crime against the present applicant and the other co-accused.

2. Heard learned Counsel for the applicant who submitted that as far as the relationship between the victim and the present applicant is concerned, which was consensual in nature as it was disclosed to the parents, therefore this false report is filed against the present applicant. He placed reliance on the WhatsApp Chat and submitted that from WhatsApp it reveals that there was a consensual relationship between them. Now the investigation is already completed and charge-sheet is filed, further incarceration of the present applicant is not required. In view of that, he be released on bail.

3. Learned APP for the State and learned appointed Counsel for the non-applicant No.2 – victim strongly opposed the said application and submitted that not only the present applicant has subjected her for sexual assault but he has also obtained her obscene photographs as well as the video and also threatened her that he would make it viral. It is further submitted that the co-accused has taken her on various occasions in the lodge and hotel wherein the present applicant has subjected her for

the sexual assault. Thus, considering the nature of the offence, if the applicant/accused released on bail, he would tamper with the prosecution evidence. It is further submitted that the applicant has already made an effort to tamper the prosecution evidence by visiting her house holding her hand. In view of that application deserves to be rejected.

4. After hearing both sides and on perusal of investigation papers, it reveals that the victim got acquaintance with the present applicant and they were doing the catering work together. The victim has further stated that the applicant is her Instagram friend and due to the friendship, they were communicating with each other. As per her allegations, she was called by the present applicant in M.R. Hotel and thereafter, in OYO Hotel and wherein she was subjected for the sexual assault. As far as this incident is concerned, the Investigating Officer has also collected the extract of the guest's register in the hotel which also substantiates the contention that the present applicant and the victim have visited the said hotel. The statement of the hotel Manager is also recorded from which it nowhere reveals that the victim has any time has shown any displeasure or disclosed that she was brought by using the force by the present applicant. She has also written a chit wherein it is mentioned that it was the co-accused who has instigated her to have a friendship with the present applicant and threatened her and therefore,

she went along with the present applicant and present applicant has subjected her for the sexual assault. But the WhatsApp Chat on which the learned Counsel for the present applicant relied upon speaks differently which shows that there was a relationship between the present applicant and the victim which was consensual in nature. Whether the consent was obtained by the present applicant by using force or by pressuring or by blackmailing her is a matter of evidence. At this stage, considering the entire nature of the evidence and considering the fact that now the 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 following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Subham s/o Arvind Dighe** shall be released on bail in connection with Crime No.565/2024 registered with Police Station, Yashodara Nagar, Nagpur for the offences punishable under Sections 64(1) of the Bharatiya Nyaya Sanhita, 2023, on executing 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 vicinity of Kalamna and within the jurisdiction of Kalamna Police Station, till culmination of the trial.

(iv) The applicant shall not communicate, contact the victim in any manner either physically or through electronic media as well as to the other witnesses who are acquainted with the facts of the case.

(v) The applicant shall attend the proceeding before the Sessions Court without seeking any exemption unless there are exceptional circumstances.

(vi) The contravention of any of the conditions would lead to the cancellation of bail.

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

6. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)