



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

CRIMINAL APPLICATION (BA) NO. 1017/2023

Narad s/o Ganpat Wanjari Vs The 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. S.P.Deshpande, counsel for the applicant.

Mr. A.G.Mate, APP for the non-applicant/State.

Mr. G.I.Dipwani, counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 31/01/2024.

1. The applicant came to be arrested on 26/05/2023, in connection with Crime No.179/2023, registered with Police Station Lakhni, District Bhandara for the offences punishable under Sections 376(2)(n), 376(2)(j), 376(2)(l), 506 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by the Aunt of the victim, on an allegation that the victim is her niece and mentally retarded person. The victim is residing along with her father as her mother is not alive. On 23/05/2023 at about 6.30 p.m., she received the information from the victim that, the victim is having abdominal pain and therefore, the victim was taken to the hospital, it revealed that the victim was

pregnant of 20 to 22 weeks. On inquiry with the victim, the victim has disclosed that the present applicant has subjected her for sexual assault, on the basis of said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the present applicant is aged about 70 years and he is falsely implicated in the alleged offence. Except the disclosure by the victim that there is no other material to connect the present applicant with the alleged offence. Now the investigation is completed and the charge-sheet is filed. The sole statement of the victim is not sufficient to attract the charges against the present applicant. Considering the age of the present applicant and now the investigation is completed and charge-sheet is filed, further incarceration is not required and he be released on bail.

4. The learned APP strongly opposed the present application on the ground that the victim is a minor girl, suffering from mental retardedness and was pregnant. Due to the abdominal pain, the fact was disclosed to the other relatives, and therefore, the FIR is lodged. Considering the fact that a mentally retarded girl is subjected for sexual assault by taking disadvantage on her disability, and prima-facie material against the present applicant, hence the application deserves to be rejected.

5. Learned counsel for respondent No.2 endorsed the same contention and submitted that if the

applicant/accused is released on bail, he will tamper with the prosecution evidence.

6. After hearing the rival submissions of the parties, perused the FIR. Admittedly, the FIR is lodged by the Aunt of the victim. The fact was brought to the notice of the relatives of the victim as the victim complained about abdominal pain, and therefore, she was taken to the hospital and it revealed that she was pregnant for 20 to 22 weeks. Thereafter, the inquiry was made with the victim and she disclosed that the present applicant was subjected her for sexual assault. The statement of the victim was also recorded before the Magistrate under Section 164 of the Cr.P.C. wherein also, she has narrated about the sexual assault by the present applicant. She has specifically stated that she has not disclosed the incident to anybody, as she was threatened and she is aware that she is carrying the pregnancy, after the said incident.

7. Thus, prima-facie material collected during the investigation, shows that the involvement of the present applicant with the alleged offence. The allegation is further substantiated by the medical report. The DNA report is yet to be received.

8. In view of that, considering the prima-facie case made out against the present applicant and the gravity of the offence which shows that the applicant by taking dis-advantage of a mentally retarded girl and her disability, the applicant has sexually assaulted her. The application

deserves to be rejected. Accordingly, I proceed to pass the following order:

The criminal application is **rejected**.

[URMILA JOSHI-PHALKE, J.]