



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

CRIMINAL APPLICATION (BA) NO.1094 OF 2024

Dipakkumar Nandlal Chaurka and another
Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Dhanora, District Gadchiroli 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. M. A. Deo, Counsel for the applicants.
Mr. Nitin Autkar, APP for non-applicant No.1/State.
Ms. Radha M. Mishra, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 13/12/2024

1. The applicants came to be arrested on 01/06/2021, in connection with crime No.39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code, 1860 and Sections 6, 8, 10, 12 of the Protection of Children from Sexual Offences Act.

2. The crime is registered on the basis of a report lodged by the victim on an allegation that on 29/05/2021, there was some pre-marriage function in the village at the house of one Fulchand Tappo on 28/05/2021 and the victim had been there around 7.00 p.m. along with her sister and friends. Around 8.30 p.m., when she was talking outside with her maternal cousin, at the relevant time, four accused

persons came towards her and inquired with her. The victim did not give any reply, and the said accused gagged her mouth on one hand, caught her hand by his other hand and the other three accused lift the victim by holding her hands and legs and took her along with them and thereafter subjected her for the forceful sexual assault. On the basis of the said report, police have registered the crime against the applicants.

3. Heard learned Counsel for the applicants who submitted that the other co-accused are already released on bail by this Court as trial is not commenced though applicant and other co-accused are behind bar from 01.06.2021. He stated that as far as the merit of the matter is concerned, the Test identification parade (T.I.) was held after 17 days and it is also not held as per the norms. He further submitted that the applicant was alleged to be suspected and prior to the T.I. parade, the photographs of the suspected persons are shown to the victim and thereafter, she has identified the present applicant on the basis of the said photographs. Thus, he submitted that, even considering the merit of the case, the entire case is involved around the T.I. parade, and the said T.I. parade is a weak type of evidence. Moreover, there is an inordinate delay in conducting the trial. In support of his contention, he placed reliance the decision of the Hon'ble Apex Court in the case of **Sheikh Javed**

Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh in Criminal Appeal no. 2790 of 2024 decided on 18th July, 2024 and Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another in Criminal Appeal No. 2787 of 2024 decided on 3rd July, 2024.

4. Learned APP and learned Counsel for victim strongly opposed the said application and submitted that considering the nature of the offence, which is serious one, the victim girl was subjected for sexual assault by the four persons, the application deserves to be rejected.

5. After hearing the learned Counsel for the applicants and learned APP for the State as well as the appointed Counsel of the non-applicant No.2 - victim. Perused the investigation papers. As far as the allegations are concerned, which shows that the victim was subjected for sexual assault by the present applicant and the another co-accused and during the investigation, the T.I. parade was held. The statement of the witnesses shows that prior to the T.I. parade, they were shown the photographs of the suspected, and thereafter, the T.I. parade was held. At this stage, it would not be appropriate to comment on the nature of the evidence, which is collected and as far as the relevancy and admissibility of the T.I. parade which is suffering from infirmities or not. But considering there is an inordinate delay,

the other co-accused is already released on bail, in view of the observations of the Hon'ble Apex Court in the cases of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh** referred (supra) and **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another** referred (supra), wherein the Hon'ble Apex Court has held that if the State or any prosecuting agency, including the court concerned, has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution, then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.

6. In view of the said observations of the Hon'ble Apex Court, the applicant has made out a case for grant of bail. Accordingly, I proceed to pass the following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **No.(1) Dipakkumar Nandlal Chaurka** and **No.(2) Bhojraj Rajkumar Rawte** shall be released on bail, in connection with crime No.39/2021 registered with Police Station Dhanora, District Gadchiroli for the offences punishable under Sections 323, 363, 376(D), 376(DA) of the Indian Penal Code, 1860 and Sections 6, 8, 10, 12 of the

Protection of Children from Sexual Offences Act, on executing a P.R. Bond of Rs.50,000/- each with one solvent surety in the like amount.

(iii) The applicants shall not enter into the vicinity of village Sindesur Taluka Dhanora, Dist. Gadchiroli, till culmination of the trial.

(iv) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case, either physically or through electronic media.

(v) The applicants shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

(vi) On contravention of any of the conditions imposed by this Court, the bail granted to the present applicants deserves to be cancelled.

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

8. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)