



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

CRIMINAL APPLICATION (BA) NO.1106 OF 2024

(Kailash s/o Gulabrao Gaikwad Vs. The 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.P. Sonwane, Advocate for the applicant.
Mr. K.R. Lule, A.P.P. for the State.
Mr. N.D. Dawda, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- DECEMBER 14, 2024.

Heard.

2. By this application, the applicant is seeking bail as he came to be arrested on 21/08/2024 in connection with Crime No.380/2024 registered with police station Mehkar, District Buldhana for the offence punishable under Sections 376, 376(2)(l), 452, 354, 354-A, 354-B, 354-C, 506 and 509 read with Section 34 of the Indian Penal Code and Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012.

3. The crime is registered on the basis of report lodged by the mother of the victim girl on an allegation that the present applicant unauthorizedly entered in her house and asked for the sexual favours and also threatened her. It is stated in the FIR that, as there is discord between her and her husband, she was residing with her parents along with her daughter. On

06/12/2023, the present applicant entered in her house and asked her for sexual favour, which she denied. On 07/06/2024, at about 10.00 to 11.00 a.m., the present applicant unauthorizedly entered in her house and attempted to sexually assault the victim girl, who is 8 years of age. It is alleged that the present applicant has disrobed himself as well as disrobed her daughter in her presence and put her on the bed and subjected for the sexual assault. On the basis of the said report, the police have registered the crime against the present applicant and the other co-accused.

4. Learned Counsel for the applicant submitted that there is previous enmity and various criminal complaints are also filed against each other. As far as the allegations are levelled against the present applicant is concerned, which is baseless and not supported by the medical evidence. It is submitted that, now the investigation is completed and the charge-sheet is already filed. Further incarceration of the applicant is not required. In view of that, he be released on bail.

5. Learned APP and learned Counsel for the victim strongly opposed the application and submitted that considering the statement of the victim and the mother of the victim *prima facie* reveals the case against the present applicant. Present applicant out of previous enmity attempted to sexually assault the victim girl,

who is only 8 years of age. It is submitted that considering the statement of the victim, who has specifically stated the act of the present applicant, which clearly shows that there was an attempt of sexual assault to the victim girl, who is 8 years of age, and therefore, the application deserves to be rejected.

6. After hearing both the sides and on perusal of the investigation papers, it reveals that the applicant alleged to be subjected the small victim girl aged about 8 years for sexual assault. Considering the statement of the victim, admittedly, there is no allegation of penetrative sexual assault, but it is submitted by the learned APP that he has manipulated the private part against the private part of the victim girl so as to cause the penetration and thereby committed the offence punishable under Section 4 of the POCSO Act. Considering the act stated by the victim it reveals that it was an attempt to sexually assault the victim and as there is no penetration, and therefore, the medical evidence is silent about the same. Considering the definition given under Section 3 of the POCSO Act, even a manipulation of any part by the accused against the private part of the victim, is sufficient to attract the provisions under Section 3 of the POCSO Act.

7. At this stage there is no reason for the Court to disbelieve the statement of the victim and the mother of the victim. Thus, *prima facie* case is made out against the

applicant. In view of that the application deserves to be rejected.

8. Hence, the application is rejected accordingly.

9. The fees of the appointed Counsel be paid as per Rules.

(URMILA JOSHI-PHALKE, J.)

**Divya*