



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

CRIMINAL APPLICATION (BA) NO. 1131 OF 2023

Shubhash Hira Bethekar V/s 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. T.N.Ramkrushna, counsel for applicant.
Mr. N.B. Jawade, APP for non-applicant/State.
Mr. Onkar R. Deshpande, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/03/2024.

1. The applicant came to be arrested on 02/11/2020, in connection with Crime No. 574/2020 registered with Dharni Police Station for the offence punishable under Sections 376, 376(2)(f), 376(a)(b) of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual offences Act, 2012.

2. The crime is registered on the basis of the report lodged by the grandmother of the victim, the victim is five year old girl. It is alleged that on 01/11/2020 at about 5 p.m., she was taking care of her grandchildren. Her son and daughter-in-law had been to the agricultural field, at the relevant time, one girl informed her that the victim was taken by the present applicant in the hut. She immediately rushed towards the hut and saw that the victim was sleeping and was crying, the accused was standing there. The victim disclosed to her that when she was playing, the accused promised her that he would give her

some foodstuff and subjected her for sexual assault. On the basis of the said report, the police have registered the crime against the present applicant.

3. Learned counsel for the applicant submitted that the applicant is implicated on the basis of false allegation. In fact, it is not the case of the penetrative sexual assault. He submitted that now the investigation is completed and charge-sheet is filed. As far as further incarnation of the present applicant is concerned, which is not required. In view of that, the applicant be released on bail.

4. Learned APP and learned appointed counsel for the non-applicant No.2 strongly opposed the application on the ground that, the small girl of five years was subjected for sexual assault in a very heinous manner. The hymen of victim was found broken. Considering the nature of the crime and the prima-facie case is made out against the present applicant, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. It reveals from the recitals of the FIR that the informant herself had seen the victim in the hut and the victim was crying, as well as the presence of the applicant was also noted by her. There is immediate disclosure by the victim to her grandmother. The statement of the victim is also recorded, during the investigation, wherein she has narrated the incident. The medical

examination of the victim is carried out, wherein it reveals that the hymen was broken. Thus, the medical evidence shows the manner, in which the victim was subjected for sexual assault. As far as the contention of the learned counsel of the applicant that no case is made out to show that there was a penetration.

The definition of penetrative sexual assault itself shows that, a person is said to commit “penetrative sexual assault” if -

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person commits the offence of sexual assault.

6. Thus, from the definition itself, it is clear that complete penetration is not required to constitute the offence. The insertion of the body part into the vagina of the victim to some extent, is sufficient to constitute the offence.

7. Considering the medical report, the case of penetrative sexual assault, prima-facie made out against the present applicant. Considering the victim is only five years small girl, who was subjected for sexual assault at the hands of the present applicant, who is aged about 26 years old. The nature of the offence is heinous one therefore, the application deserves to be rejected. Accordingly, I proceed to pass the following order:

- a] The criminal application is **rejected**.
- b] The fees of the appointed counsel be quantified as per the Rules.

[URMILA JOSHI-PHALKE, J.]