



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

CRIMINAL APPLICATION (BA) NO.10 OF 2024
(Sham s/o Ukanda Ade Vs. 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.D. Dharaskar, Advocate for the applicant.
Mr. N. Autkar, APP for the State.
Ms Aarti Singh, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- APRIL 25, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 17/06/2023 in connection with Crime No.237/2023 registered with Police Station Yavatmal Rural, District Yavatmal for the offence punishable under Sections 376, 376(2)(i), 376(2)(n), 376(3) and 506 of the Indian Penal Code 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 aunt of the victim on an allegation that her niece victim girl is studying in the 8th standard and aged about 14 years. On 05/06/2023, when her niece was at home complained about the abdominal pain and on verifying the same, it reveals to her that she is pregnant, therefore, she enquired with her and the victim has disclosed that the present applicant has subjected her for sexual assault by threatening her. On the basis of said

report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that as far as allegations are concerned which are false in nature. He submitted that the allegations are not substantiated by any other material as the spot of incident which the police have investigated on the basis of statement of the victim is also not the similar place wherein the alleged incident has taken place. He further submitted that now investigation is completed and charge-sheet is filed. The allegation is not substantiated by medical report as no injuries are found on the person of the victim. In view of that, the applicant be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that 14 years girl was subjected for sexual assault by the present applicant by threatening her. Considering the *prima facie* case, there is every apprehension that if he is released on bail he would tamper with the prosecution evidence. In view of that, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers. On the basis of the statement of aunt of the victim the crime was registered. After registration of the crime, the victim was

referred for the medical examination. During her medical examination, it reveals that she was subjected for sexual assault as hymen tear was found by the Medical Officer. During investigation, it further revealed that she is pregnant and she delivered a male child. The DNA samples are obtained and forwarded to DNA examination. The DNA report is yet to be received. The statement of the victim shows that when she was proceeding towards her agricultural field present applicant who was hiding himself in the nearby agricultural field came in front of her, threatened her and subjected her for forceful sexual assault. As far as the contention of the learned Counsel for the applicant that no injuries are found on the person of the victim is concerned, it is well settled that the injuries are not *sine qua non* for attracting the provisions of Section 376 of the Indian Penal Code. As far as the statement of the victim which is substantiated by the fact that she is pregnant due to the said incident. *Prima facie* case is made out against the present applicant, it revealed that minor girl of 14 years was subjected for sexual assault by threatening her sufficiently shows the involvement of the present applicant. Considering the *prima facie* case, the application deserves to be rejected.

6. Hence, the application is rejected accordingly.

(URMILA JOSHI-PHALKE, J.)