



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

CRIMINAL APPLICATION (BA) NO. 1147/2023

Shiva @ Prem Santosh Ambhore Vs 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. K.R. Giripunge, counsel h/f Mr. S.V.Sirpurkar, counsel for the applicant.
Ms. Trupti Udeshi, APP for the non-applicant No.1/State.
Ms. Anuprita S. Mishrikotkar, counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/01/2024.

1. By preferring this application, the applicant is seeking bail, in connection with Crime No.293/2023 registered with Police Station Shegaon City, District Buldhana for the offences punishable under Sections 376(2),(h),(i),(n) of the Indian Penal Code, 1860 and Sections 5,6 and 17 of the Protection of Children from Sexual Offences Act. The applicant came to be arrested on 31/05/2023.

2. The crime is registered on the basis of a report lodged by the victim, aged about 17 years. On an allegation that she was working in a cloth shop wherein she got acquaintance with the present applicant. Thereafter, a friendship was developed between them which resulted into the love affair. She alleged that she was called by the present applicant and subjected her for sexual assault, on the promise of marriage. She further stated that the mother of the present applicant also

promised her that she would perform the marriage of her son with her. However, subsequently, she was assaulted. Due to the said sexual assault, she carried the pregnancy. On the basis of the report, the Police have registered the crime against the present appellant.

3. After registration of the crime, the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure and she was referred for medical examination. After completion of the investigation, the charge-sheet is filed.

4. Mr. S.V.Sirpurkar, learned counsel for the applicant submitted that the informant has furnished the affidavit, stating she has no objection if the applicant is released on bail. Moreover, the alleged incident is occurred out of a love relationship between them. Due to the attraction between the relationship, they have attracted towards each other and the alleged incident has taken place. It is not a false promise and the applicant who was intending to marry with her, and there was a love affair therefore, the alleged incident has taken place. Now, the investigation is completed and charge-sheet is filed, further custodial interrogation of the present applicant is not required. In view of that, the applicant be released on bail.

5. Learned APP strongly opposed the present application on the ground that the consent of the victim is not relevant. The victim was subjected for sexual assault,

on the promise of marriage. If the applicant is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application. She further submitted that now, the victim has delivered a child, and the DNA report is yet to be received, and prays for the rejection of the application.

6. Learned appointed counsel also endorsed the same contention and submitted that though the victim has furnished the affidavit stating no objection to release the applicant on bail, but it cannot be a reason to release the applicant on bail and prays for rejection of the application.

7. Having heard learned counsel for the applicant and learned APP for the State. It is apparent that the applicant who is aged about 18 years and the victim who is aged about 17 years, developed a love relationship between them. Due to their acquaintance, they attracted towards each other, and the physical relationship was developed between them. As far as the false promise is concerned, it should be the intention from inception to deceive the victim which is not apparent from the investigating papers, whatever apparent is that, they got acquaintance with each other which resulted into love affair, and out of love affair, there was a physical relationship. Whether there was free consent or not, is a matter of evidence. At this stage, considering the investigation is completed and charge-sheet is filed and

the nature of relationship which arises out of love affairs which is required to be taken into consideration.

8. Considering the nature of affairs, the application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order:

- a) The applicant – **Shiva @ Prem Santosh Ambhore** is released on bail, in connection with crime No.293/2023 registered with Police Station Shegaon City, District Buldhana for the offences punishable under Sections 376, 376(2),(h),(i),(n) of the Indian Penal Code, 1860 and Sections 5, 6 and 17 of the Protection of Children from Sexual Offences Act, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- b) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the present case.
- c) The fees of the learned appointed counsel be quantified as per the Rules.

The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]