



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

CRIMINAL APPLICATION (BA) NO. 1174 OF 2023

Suresh Bhagwanta Bethe 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

Mrs. S.A. Jadhav, counsel for the applicant.
Ms. H.N.Prabhu, APP for the non-applicant/State.
Mr. Sauragh Singha, counsel (appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/03/2024.

1. The applicant came to be arrested on 27/04/2023, in connection with Crime No. 134/2023 registered with Sirajgaon Police Station, Tq. Achalpur, District Amravati for the offences punishable under Section 376DA of the Indian Penal Code, 1860 and Section 4 and 6 of Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of report lodged by the grandmother of the victim, on an allegation that on 25/04/2023 at about 3.30 p.m., the victim aged about 12 years and 10 months was grazing her she-goat, at that time, the present applicant and other two co-accused were caught hold her from the backside, and brought her at the spot of incident and co-accused namely Krishna Bhusum had subjected her for sexual assault. At the relevant time, present applicant and other co-accused were standing at some distance and were observing that if anybody is coming

towards them. On the basis of said report, the police have registered the crime against the present applicant.

3. The learned counsel for the applicant submitted that as far as the present applicant is concerned, the only role attributed to him that he was standing nearby on the spot of the incident. There is no allegation against him that he has either sexually assaulted the victim or abated the co-accused to sexually assault the victim. She submitted that now the investigation is completed and from the statement of the grandmother, it reveals, as soon as she came there, two persons fled away from the spot of the incident. Thus, she was not having any opportunity to see the present applicant or the other co-accused. Considering the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required and prays for releasing the applicant on bail.

4. The learned APP and learned counsel for the victim strongly opposed the application on the ground that, it is the present applicant and other co-accused who caught the victim from the backside and brought her to the spot of incident. Thereafter, the co-accused subjected her for sexual assault and the present applicant was standing nearby observing whether anybody was coming towards them. Thus, the applicant is the abator in the said crime. If the applicant/accused is released on bail, he will tamper with the prosecution evidence and prays for rejection of the application.

5. Having heard learned counsel for the applicant, learned counsel for the non-applicant No.2, and learned APP for the State, perused the investigation papers. The victim is 12 years and 10 months old girl, who was subjected for sexual assault by the co-accused when she had been for grazing her she-goats. The allegation shows that it was the present applicant and the other two accused, who caught her from the backside and brought her in the agricultural field and the co-accused subjected her for sexual assault. The said allegation is substantiated by the medical report as some injuries are found on the person of the victim. The statement of the victim is also recorded and she also disclosed the fact that when she was grazing the cattle, three boys caught hold her from the backside and thereafter, the co-accused subjected her for sexual assault. The statements of other witnesses to whom the disclosure was made also substantiate the said contention. The accused was put for the identification parade and the victim has identified him.

6. Thus, considering the entire allegation against the present applicant, it was the applicant and the other co-accused who caught the victim and brought her in the agricultural field. Thereafter, the co-accused had subjected her for sexual assault, and the present applicant was managing the other affairs and was observing whether anybody was coming towards them. As soon as the grandmother of the victim going at the spot, they fled away from the spot of the incident.

7. In the present crime, the victim is only 12 years and 10 months girl, who was subjected for sexual assault by the co-accused, and the role of the present applicant reveals which shows that he has abated the co-accused to commit such offence. The punishment provided for the abatement is similar to the main offence. Considering the prima-facie against the present applicant, 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.
- c] The observations while rejecting the application is only in respect of the bail application and the trial Court shall not be influenced by the said observation while conducting the trial.

[URMILA JOSHI-PHALKE, J.]