



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

CRIMINAL APPLICATION (BA) NO.8 OF 2024

Dhiraj s/o Santosh Boyat

Vs.

State of Maharashtra, Through Police Station Officer, Police Station,
Shegaon (City), District Buldhana and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. C. R. Sharma, Advocate for applicant.
Mr. U. R. Phasate, APP for respondent No.1/State.
Mr. A. G. Hunge, appointed Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 11/03/2024

1. The applicant came to be arrested in connection with Crime No.474/2022 registered with Police Station, Shegaon (City), District Buldhana for the offences punishable under Sections 376, 376-A, 376(2)(n) 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 the uncle of the victim, who alleged that the victim was 18 years of age at the time of her death. Prior to eight days of lodging of the report, she was having fever and therefore, she was treated, but there was no improvement in her health, therefore, she was taken to the Government Hospital. The Medical Officer of

the Government Hospital disclosed that the physical health of the girl is critical and referred to the hospital at Akola. At Akola, Medical Officer disclosed that she is pregnant of 5 – 6 months. On enquiry, it revealed that the present applicant has subjected her for sexual assault, due to which she was pregnant and there was a complication in her pregnancy. During the treatment, the victim succumbed to the death. On the basis of said report, police have registered the crime, against the present applicant.

3. Learned Counsel for the applicant submitted that from the investigation papers and from the statement of the various witnesses it reveals that there was a love affair between the victim and the present applicant. The said fact was not known to the family members and out of the love affair, there was a physical relationship which resulted into her pregnancy. He submitted that though the consent of the victim is not relevant, but considering the fact that there was a love affair between the applicant and the victim and out of that a physical relationship was developed between them.

4. He invited my attention towards the statements of the brother and the sister of the victim, who disclosed that in the absence of their parents one boy with whom the victim was communicating and when her brother disclosed to her that he will disclose the fact to the father, she beat him. He

submitted that from this statement it reveals that it was a consensual act of the victim. Now, 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.

5. Learned APP and the appointed Counsel for the respondent No.2 strongly opposed the application on the ground that when victim was subjected for sexual assault, she was minor therefore, her consent is not relevant. It is further submitted that due to the act of the present applicant, her health was deteriorated and she succumbed to the death. Though the investigation is completed, but considering the fact that the present applicant is responsible for her death. Hence, the bail application deserves to be rejected.

6. Learned APP further invited my attention towards the DNA report which shows that present applicant is the biological father of the fetus and with this submission, prays for rejection the of application.

7. Having heard the learned Counsel for the applicant and learned APP for the State as well as learned appointed Counsel for the respondent No.2, perused the investigation papers. From the recitals of the FIR, it reveals that on the basis of information gathered by the uncle from the family members of the victim, he has lodged the report against the

present applicant. During the investigation, the statements of brother and sister of the victim are recorded, who are the child witnesses. From their statements, it reveal that whenever they used to go to school, the victim was communicated with the present applicant. It also reveals that once brother of the victim disclosed to her that he will disclose this fact to the father, at that time she beat him. Thus, from the said statement, it reveals that victim was communicating with the accused and the accused was visiting at her house in absence of the parents and the sexual relationship was developed between them. Admittedly, the death of the deceased is caused, as she could not carry out the pregnancy and there was a complication in her pregnancy. However, considering the fact that now the investigation is completed and charge-sheet is filed, further incarceration of the present applicant is not required. The application deserves to be allowed. Accordingly, I proceed to pass following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant **Dhiraj s/o Santosh Boyat** be released on bail in connection with Crime No.474/2022 registered with Police Station, Shegaon (City), District Buldhana for the offences punishable under Sections 376, 376-A, 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of

Children From Sexual Offences Act, 2012, on executing PR bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of village Indira Nagar, Shegaon, District Buldhana, till the culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

(v) The applicant shall attend the proceeding before the Sessions Court regularly without seeking any exemption unless there are exceptional circumstances.

8. The fees of the appointed Counsel for the respondent No.2 be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)