



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

CRIMINAL APPLICATION (BA) NO. 1189 OF 2023

Akash S/o Raju Shende and two others

..VS..

State of Maharashtra through P.S.O., Police Station Mul, Dist. Chandrapur 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. A.M. Chandekar, Advocate for applicants.
Mr. A.B. Badar, APP for non-applicant No.1/State.
Mr. N.P. Singhaniya, Advocate(appointed) for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 13th MARCH, 2024

This is an application under Section 439 of the Code of Criminal Procedure for grant of bail. The applicants came to be arrested on 26.09.2023 and 13.11.2023 respectively, in connection with Crime No.356/2023, registered with Police Station Mul, District Chandrapur for the offence punishable under Sections 305, 376, 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Section 9 of the Child Marriage Restraint Act.

2. The accusation against the present applicants is on the basis of the report lodged by the father who alleged that victim is his daughter aged about 17 years and 4 months. There was love affairs between her and the present applicant No.1 and she eloped with applicant

No.1 and performed marriage. On 20.09.2023, her health was not well and, therefore, he met her at that time she disclosed that she is illtreated and harassed by the applicant Nos.2 and 3 and applicant No.1 though she disclosed said incident to him, disclosed to her that he will not stay separately along with her. As she was continuously harassed by the present applicants, she committed suicide. As per the allegations, the deceased has committed suicide as she fed up with continuous harassment at the hands of the present applicants. On the basis of said report, police have registered the crime against the present applicants.

3. The learned Counsel for the applicant submitted that as far as the allegations are concerned regarding the illtreatment which are vague in nature. There is no nexus between the alleged incident and the illtreatment at the hands of present applicants. He also invited my attention towards the Suicide Note and submitted that from the Suicide Note it reveals that she has committed suicide for other reasons. As far as the applicant No.1 is concerned, Suicide Note shows that she appreciated the applicant as a good husband therefore, the contention of the prosecution that she was subjected for harassment by the applicant No.1 is falsified by the said Suicide Note. The Suicide Note which is addressed to the parents also nowhere shows that she was subjected for continuous illtreatment and therefore, she committed suicide. He submitted that except the statement of the neighbour

Pritam Bhadke and the friend of the victim, there is no other material to show that there was continuous illtreatment at the hands of the present applicants. Now, investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required.

4. In support of his contention learned Counsel for the applicant placed reliance on the cases of -

- (i) ***Amalendu Pal @ Jhantu Vs. State of West Bengal***, reported in ***2009 DGLS(SC) 1423***;
- (ii) ***Raviraj Ramchandra Deshpande Vs. State of Maharashtra and another***, reported in ***2016 ALL.M.R. (Cri.) 1420***;
- (iii) ***Dadarao Hausaji Dakore Vs. State of Maharashtra and Others***, reported in ***2017 All.M.R.(Cri) 1538*** and
- (iv) ***Kamlakar Vs. State of Karnataka***, reported in ***2023 DGLS(SC) 1198***.

5. He submitted that to prove the abetment at the hands of the present applicants, prosecution has to make out the essential ingredients which are absent in the present case. Moreover, no purpose will be served by keeping the present applicants behind bar as investigation is already completed and prays for released the applicants on bail.

6. Learned APP and learned appointed Counsel for the non-applicant No.2 strongly opposed the application

on the ground that the applicant No.1 has not only taken the deceased along with him when she was minor, but subjected her for physical relationship and thereby committed an offence under the provisions of the Protection of Children from Sexual Offences Act. He further submitted that the recitals of the statements of the friend of the victim and the neighbours shows that as the deceased was different caste, she was continuously illtreated and as she being fed up with the said illtreatment, she committed suicide. Thus, nexus between the act of suicide and the illtreatment is established from the said statements. There was no alternate before the victim to commit suicide and, therefore, she committed suicide. There is a *prima facie* case against the present applicants. Considering the *prima facie* material against the present applicants and considering the fact that consent of the victim when she joined the company of the applicant No.1 was not relevant. The applicant No.1 has performed marriage in contravention of Section 9 of the Child Marriage Restraint Act. In view of that the application deserves to be rejected.

7. Having heard the learned Counsel for the applicant, learned APP for the State, learned Counsel for the non-applicant No.2 and perused the investigation papers. As far as the contention of the informant which appears from the recitals of the First Information Report (FIR) is concerned, the victim has performed the marriage with the applicant No.1 and she was residing

along with present applicants. It is alleged that applicant Nos.2 and 3 were harassing her as she belongs to different caste. The statements of the neighbours and the friend of the deceased also shows that she has disclosed about the illtreatment at the hands of the applicant Nos.2 and 3 to her friends as well as to the neighbours. From the statements, it reveals that as there was an illtreatment and, therefore, she has committed suicide.

8. The learned Counsel for the applicant vehemently placed reliance on the various judgments wherein it is held that the abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The essential ingredients which are to be meted out in order to bring a case under Section 306 of the Indian Penal Code were also discussed in *Amalendu Pal Alias Jhantu Vs. State of West Bengal* referred in the judgment of *Kamlakar Vs. State of Karnataka* (referred supra) wherein, it is held that this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged

abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 Indian Penal Code is not sustainable.

9. In the light of the above observation if the facts of the present case are concerned, the statements of the neighbours and the friend of the victim is to be taken into consideration in the light of the suicide note. Admittedly, in suicide note, the deceased has not alleged anything against anybody as to the illtreatment is concerned. At this stage, evaluation of the evidence is not required, whatever requires to be seen is the *prima facie* case. From the statements of the witnesses though *prima facie* case appears against the present applicants, but considering now investigation is completed and charge-sheet is filed, further incarceration of the present applicants is not required, therefore, the application deserves to be allowed by imposing certain conditions.

10. In view of that, I proceed to pass following order :

- i) The application is allowed.
- ii) The applicants (1) **Akash S/o. Raju Shende**, (2) **Raju S/o. Baburao Shende** and (3) **Sau. Mirabai W/o. Raju Shende** in connection with Crime

No.356/2023, registered with Police Station Mul, District Chandrapur for the offence punishable under Sections 305, 376, 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Section 9 of the Child Marriage Restraint Act, shall be released on bail on executing PR. bond in the sum of Rs.25,000/- each with one surety in the like amount.

- iii) The applicants shall not enter into the vicinity of Tadala road Mul, Tahsil Mul, District Chandrapur till culmination of the trial.
- iv) The applicants shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.
- v) The applicants shall attend the proceedings before the trial Court without seeking any exemption unless there are exception circumstances.
- vi) Fees of the appointed Counsel for the non-applicant No.2 be quantified as per rule.

(URMILA JOSHI-PHALKE, J.)