



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

CRIMINAL APPLICATION (BA) NO. 218 OF 2024

ANKUSH S/O SHYAM KOTHAR

Vrs.

STATE OF MAHARASHTRA

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C. G. Barapatre, Advocate for applicant.

Shri Anup Badar, A. P. P. for respondent-sole.

CORAM: URMILA JOSHI-PHALKE, J.

DATE : 21/03/2024.

1. The applicant came to be arrested on 02/10/2023 in connection with Crime No.215/2023 registered under Sections 376(D), 376, 452, 363, 323, 504 and 506-B of the Indian Penal Code.

2. The accusation against the present applicant is on the basis of report lodged by the victim on an allegation that on 02/10/2023 at about 12.00 to 12.20 a.m., she heard the noise of knocking door. At that time, the applicant and other co-accused entered into her house by breaking open the door and assaulted her and her husband. They have also threatened the husband of the complainant with dire consequences and asked him not to follow them. They assaulted her and pulled her at the house of the co-accused and subjected her for sexual assault forcefully. On the basis of said report, police have registered the crime against the present applicant and

other co-accused. During investigation, the victim was referred for the medical examination. The injuries are found on her person as well as on the person of her husband. Her statement under Section 164 of Code of Criminal Procedure was recorded and after completion of investigation, the charge sheet is filed.

3. Learned counsel for the applicant submitted that the applicant is implicated falsely. The story narrated by the prosecution itself is not probable and not acceptable. There is no material to show that the victim was subjected for sexual assault by the present applicant as no injuries are found on her person. He further submitted that the injuries which are external in nature are simple injuries and from the charge sheet, there is no sufficient evidence against the present applicant to connect him with the alleged offence. He further submitted that the Medical Officer has not given any final opinion as to the fact of the forceful sexual assault. Now, investigation is completed and charge sheet is filed. Further incarceration of the present applicant is not required. In view of that, he be released on bail.

4. Learned APP strongly opposed the application on the ground that the serious allegations are levelled against the present applicant as present applicant along with other co-accused subjected the victim for sexual assault and thereby, offence is made out against the present applicant and under Section 376(g) of the Indian Penal Code i.e. gang rape. He further submitted that the

statement of the victim under Sections 161 and 164 of the Cr. P. C. both are consistent and showing the involvement of the present applicant with the alleged offence. Moreover, there are criminal antecedents against the present applicant as similar type of offences are registered against him. In view of that, the application deserves to be rejected.

5. Having heard learned counsel for the applicant and learned APP for the State, perused the investigation papers. It reveals from the allegations levelled in the FIR that the present applicant and other co-accused in the mid-night entered into the house by breaking open the door of the house and subjected the victim for sexual assault. The statement of the victim as well as statement of her husband substantiate the said fact. The spot panchnama also shows that the Entrance of the Wall Compound was seen to be broken while drawing the panchnama. Not only this, the spot panchnama also shows that the main Entrance of the house is also found to be broken and lying at the site in the house. Thus, the fact narrated by the victim that the applicant entered into the house by breaking open the door is substantiated by the spot panchnama. The medical opinion though not given by the Medical Officer as to the sexual assault, but the injuries are found on her person which substantiate the said fact. The marks are found on the chest of the victim as well as contusion and tenderness is found on her thighs. Considering the statement of the victim which is

also substantiated by the statement of her husband and the injuries found on the person of the victim sufficiently substantiate the contention raised by her. Though the investigation is completed, but considering the nature of the offence which is in the nature that she was subjected for sexual assault by the four persons and specific role is attributed to the present applicant. Prima facie case is made out against him. In view of that, application deserves to be rejected. Accordingly, I proceed to pass the following order :-

ORDER

6. The application is rejected.

[URMILA JOSHI-PHALKE, J.]