



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

CRIMINAL APPLICATION (BA) No.447 OF 2024

(Anup s/o. Ramesh Sawale Vs. State of Maharashtra, through PS Mangrulpir, Distt.
Washim 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. S.V. Sirpurkar, Advocate for applicant.
Mr. K.R. Lule, APP for respondent No.1.
Ms. Radha M. Mishra, Advocate for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATE : 19th OCTOBER, 2024.

1. The applicant came to be arrested on 3.4.2022 in connection with Crime No.232/2022, registered with Police Station Mangrulpir, District Washim, for the offence punishable under Section 376-DA of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012.

2. The crime is registered on the basis of the report lodged by the mother of the victim girl on an allegation that her daughter aged about 17 years had been to attend the marriage. At the relevant time she received a phone call of her nephew, who disclosed that her daughter is subjected for sexual assault by the present applicant. On the basis of the said report Police have registered the crime against the present applicant. Initial two applications are disposed of by showing disinclination. I have also shown my disinclination by passing order on 10.10.2024. At the relevant time learned counsel for

the applicant seeks time to make appropriate statement. Subsequently, he filed Pursis on record and brought before the Court that victim is in habit of filing complaint under Section 376 and produced on record the order passed by this Court in connection with Crime No.57/2024, which was registered at the instance of informant against other accused, namely, Pawan Ashok Gaikwad. As new material is brought on record by the learned counsel for the applicant he was heard at length.

3. Learned counsel for the applicant submitted that the victim and her mother are in habit of lodging first report against the present applicant, as far as F.I.R. is concerned alleged incident has taken place 9.3.2022 and the F.I.R. is lodged on 21.3.2022. The delay is not properly explained by the victim. He submitted that the allegations are also not substantiated by the medical evidence. Now the investigation is already completed and charge-sheet is already filed. The applicant is behind bars since last two and half years. There is no progress in the trial. Thus, the right of the present applicant of a speedy trial is affected. In view of that, he be released on bail.

4. Learned A.P.P. for the respondent No.1 and learned counsel for the respondent No.2/Victim strongly opposed the application and submitted that statement of the victim is substantiated by the statements of other witnesses. The minor victim girl was subjected for the sexual assault. As far as the earlier F.I.R. is concerned, there is no dispute that the earlier F.I.R. was registered at the behest of the mother of the victim wherein she has also alleged that the accused therein was subjected her daughter for the sexual assault. But this is not sufficient to infer that she is in habit of filing the false complaint.

As far as the delay is concerned, it is submitted by the learned A.P.P. and learned counsel for the victim that now charge is already framed and trial is already commenced. In view of that, the application deserves to be rejected.

5. After hearing learned counsel for the applicant and learned A.P.P. for the State perused the investigation papers. Admittedly, the investigation is already completed, charge-sheet is already filed. While rejecting the earlier application liberty was granted to the present applicant to prefer an application, if trial is not commenced within one year. As far as status of the trial is concerned only charge is framed and trial is not yet commenced as no witness is examined. Coming to the merits of the case it reveals that F.I.R. is lodged by the mother of the victim on an allegation that when her daughter has attended the marriage and she was attending Haldi programme, at that time as she was thirsty, she went outside the house, at the relevant time present applicant dragged her and subjected her for sexual assault. The statement of the victim is also recorded. Her medical examination was carried out after 10 to 15 days. No injuries are found on her person. The genital examination is also silent as to the sexual assault on the victim girl. As far as the statement of victim girl is concerned at this stage there is no reason to disbelieve the said statement. Admittedly, the trial is not commenced, though there is specific directions of the Court and liberty was already granted to the present applicant to move this Court if there is no progress in trial within next year. Roznama shows that charges are framed, but none of the witness is examined. Admittedly, the applicant is behind bars since last two and half years. Recently, the Hon'ble Apex Court has dealt

with this issue and in the case of **Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari Vs. State of Uttar Pradesh**, judgment in Criminal Appeal 2790 of 2024, decided on 18th July, 2024 and **Javed Gulam Nabi Shaikh Vs. State of Maharashtra and another**, judgment in Criminal Appeal 2787 of 2024, decided on 3rd July, 2024, wherein it is observed that, 'If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.'

6. Here in the present case also there is no progress in the trial. Considering the observation of the Hon'ble Apex Court though the involvement of the present applicant is revealed but as the right of the speedy trial is affected the applicant has made out a case for grant of bail. In view of that, I proceed to pass following order :

ORDER

- (i) The Criminal Application is allowed.
- (ii) The applicant – Anup s/o. Ramesh Sawale shall be released on bail in connection with Crime No.232/2022, registered with Police Station Mangrulpir, District Washim, for the offence punishable under Section 376-DA of the Indian Penal Code and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 on executing PR Bond in the sum of Rs.50,000/- with one solvent surety in the like amount.

(iii) The applicant shall not enter into the vicinity of village Mangrulpir except attending the proceeding before the Special Court till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses including the victim either physically or by electronic mode.

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

(vi) The fees of the appointed counsel be quantified as per rules.

7. The application is disposed of.

(Urmila Joshi-Phalke, J.)