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

CRIMINAL APPLICATION (BA) NO. 934 OF 2024

KASHINATH S/O EKNATH PAWAR
Vrs.
THE 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

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Shri Sahil Mate, Advocate h/f Shri A. A. Zade, Advocate for applicant.
Shri S. V. Narale, A. P. P. for Non-applicant No.1.
Ms. Ragini Swami, Advocate for non-applicant No.2.

CORAM: URMILA JOSHI-PHALKE, J.
DATE : 05/12/2024.

1. The applicant came to be arrested on 21/10/2021 in connection with Crime No.526/2021 registered under Sections 376, 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 3, 4, 5, 5(j)(2)(l)(n) and 6 of the Protection of Children from Sexual Offences Act, 2012 (For short, “POCSO Act”).

2. Learned counsel for the applicant submitted that the applicant is brother-in-law of the victim and a crime is registered on the basis of report lodged by the victim aged about 17 years wherein she has alleged that in the month of April i.e. on 16-17/04/2021, she had been to the house of her sister, who is residing in her neighbourhood and the applicant is the husband of her sister. Her sister was not well. Therefore, her mother took her to the Hospital at Karanja Lad and she alone was in

the house along with the present applicant. The present applicant is subjected to forceful sexual assault and the said act was repeated by him. Thereafter also which resulted into his pregnancy. He submitted that subsequent to the said FIR, her statement under Section 164 of Code of Criminal Procedure was recorded wherein she has submitted that out of consent, there was physical relationship between them. He submitted that admittedly, she was 17 years old at the time of incident and her consent is not relevant. But considering in what circumstances, relationship which was intimate was developed between the present applicant and the victim who is his sister-in-law is to be taken into consideration. He submitted that investigation is already completed and charge sheet is filed. DNA report shows that present applicant and the victim are concluded to be a biological parents of a baby delivered by the victim. Thus, considering that the further incarceration of the present applicant is not required, he be released on bail by imposing certain conditions.

3. Learned APP and learned appointed counsel strongly opposed the said application and submitted that initial statement of the victim while lodging FIR is to be taken into consideration wherein she has stated that she was subjected for forceful sexual assault. Moreover, as victim was 17 years old at the time of incident, her consent is not relevant and therefore, her statement that there was relationship was developed between them out

of her consent cannot be taken into consideration. It is further submitted that if the applicant is released on bail, there would be psychological pressure on the victim and it would affect the trial. In view of that, application deserves to be rejected.

4. After hearing both sides and on perusal of investigation papers, it reveals that victim who was on the verge of attaining the age of majority and applicant is also young man and husband of her sister. In absence of sister, intimate relationship was developed between them and out of that, there was physical relationship between them, she has delivered a child. Admittedly, applicant and victim are concluded to be the biological parents of victim, but now considering that the investigation is already completed and charge sheet is filed and the nature of relationship and the circumstances under which the alleged incident has taken place, the further incarceration of the applicant is not required. In view of that, application deserves to be allowed by imposing certain conditions. Accordingly, I proceed to pass the following order :-

ORDER

i] Application is allowed.

ii] Applicant – **Kashinath s/o Eknath Pawar** shall be released on bail in connection with Crime No.526/2021 registered under Sections 376, 376(2)(n), 376(2)(f) of the Indian Penal Code, 1860 and Sections 3, 4, 5, 5(j)(2)(l)(n)

and 6 of the Protection of Children from Sexual Offences Act, 2012 on executing PR Bond of Rs.25,000/- with one solvent surety in the like amount.

iii] Applicant shall not enter into the vicinity of Navati Kisannagar, Post Poha, Karanja Lad, Tq. Karanja, Dist. Washim, till the culmination of the trial.

iv] Applicant shall not communicate or induce or pressurize to any witnesses, who are aquatinted with the facts of the case either physically or through electronic media.

v] Applicant shall attend the proceedings before the Special Court without seeking any exemption unless there are exceptional circumstances.

5. Application is disposed of.

6. The fees of the appointed counsel be quantified as per the rules.

[URMILA JOSHI-PHALKE, J.]

Choulwar

Signed by: V.M. Choulwar (VMC)
Designation: PS To Honourable Judge
Date: 06/12/2024 17:38:04