



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

CRIMINAL APPLICATION (ABA) NO. 764 OF 2024

VISHNU PRAKASH MEHSANE

Vrs.

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

Shri M. N. Ali, Advocate for applicant.
Shri N. B. Jawade, A. P. P. for non-applicant No.1.
Shri Z. Z. Haq, Advocate for non-applicant No.2.

CORAM: URMILA JOSHI-PHALKE, J.

DATE : 05/12/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No.460/2024 registered with Police Station, Malkapur City, Dist. Buldhana for the offence punishable under Sections 74 and 78 of Bhartiya Nyaya Sanhita (BNS) and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POSCO Act").

2. Subsequently on the basis of the statement of victim, offence came to be registered under Sections 64(2) (F), 64(2)(M), 351(1) and 351(3) of BNS and Sections 4, 6, 8 and 12 of the POCSO Act.

3. The applicant is apprehending the arrest at the hands of police as a crime is registered on the basis of report lodged by the victim girl, who is aged about 17 years and 10 months. On an allegation that she got acquaintance with the present applicant and present

applicant was following her and against her wish, he was communicating with her. He also attempted to hold her hand in the month of March. In April, 2024, he followed her and expressed his feelings. On the basis of same, initially, crime was registered under Sections 74 and 78 of the BNS and under Sections 8 and 12 of the POSCO Act. Subsequently, Sections 64(2)(F) and 64(2)(M) are added.

4. Heard learned counsel for the applicant who submitted that as far as allegations regarding sexual assault or sexual harassment is concerned, there was a love affair between the victim and present applicant. They have exchanged the WhatsApp chats and the WhatsApp chats are placed on record sufficiently show the nature of relationships between them. He submitted that due to the pressure of the parents, a false FIR was lodged against him as far as custodial interrogation is concerned which is not required. He further submitted that applicant has attended the police station and co-operated with the investigating agency. It is further submitted that considering the nature of relationship between the present applicant and the victim, present applicant be released on anticipatory bail.

5. Learned APP strongly opposed the application and submitted that victim is minor girl whereas present applicant is aged about 34 years old. Therefore, the contention of the applicant that there was a love affair appears to be doubtful. He further submitted that there are criminal antecedents and the applicant has not made

any statement in the application to that extent. After the incident, the applicant has threatened the father of the victim. Regarding the same, NC report is filed. He further submitted that considering the nature of the offence that minor victim girl was subjected to sexual assault by grown up man, there is no statement as to the criminal antecedents in the application. The application deserves to be rejected.

6. Shri Haq, learned counsel for the victim reiterated the said contention and submitted that the criminal antecedents are not only against the present applicant but against his family members also. After the incident also, the father of the victim was subjected for the harassment. He further submitted that considering the age of the victim and the age of the applicant, the story raised by the applicant that there was love affair appears to be doubtful and therefore, application deserves to be rejected.

7. After hearing both sides and on perusal of investigation papers, it reveals that admittedly, applicant has not made a statement in his application as to the criminal antecedents. Thus, the applicant has concealed the facts regarding his criminal antecedents in his application which is not permissible. As far as nature of offence is concerned, admittedly, the WhatsApp chat between the victim and applicant shows that there was some relationship between them and WhatsApp chat exchanged reflects the nature of the relationship.

However, considering that, there are criminal antecedents against the present applicant and subsequent to the incident, there was threatening by the present applicant to the father of the victim. The application deserves to be rejected.

8. The applicant is claiming relief which is discretionary in nature in the nature of anticipatory bail. When Court is considering the application for anticipatory bail, the Court has to consider the nature of the offence as well as the previous and subsequent conduct of the present applicant. It was the duty of the applicant to give details about his criminal antecedents in the application, but same were concealed by the applicant. At the time of granting interim protection, the subsequent conduct of threatening to the father of the victim was not before the Court and therefore, on prima facie, on the basis of recitals of the FIR, he was protected by granting interim anticipatory bail.

9. Considering the investigation papers that there are criminal antecedents which are not disclosed by the present applicant in the application. The subsequent conduct shows that applicant who is having criminal history has threatened the father of the victim. The relationship is also to be seen by the angle that applicant is grown up man whereas the victim is a minor girl. Moreover, he is a married person also. Despite he is a married person, he has developed the relationship with the minor victim girl also requires to be looked into.

10. Considering all these aspects, the applicant has not made out a case to use the discretion in his favour.

11. In view of that, application deserves to be rejected. Accordingly, I proceed to pass the following order:-

ORDER

12] Application is rejected.

[URMILA JOSHI-PHALKE, J.]

Choulwar