



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.546 OF 2023

Amit S/o Sanjay Jadhav,
Age-23 years, Occu:Driver,
R/o-Nilgiri Scoiety, Bhavasar Chowk,
Nanded, Taluka and District-Nanded

...APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Station Officer,
Police Station Basamba,
District-Hingoli,

2) X. Y. Z

...RESPONDENTS

...
Mr. Gajanan G. Kadam Advocate for Applicant.
Mr. A.R. Kale, A.P.P. for Respondent No.1.
Ms. Namita Thole Advocate for Respondent No.2 (**Appointed**)
...

**CORAM: SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATE : 27th MARCH, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Application has been filed under Section 482 of the Code of Criminal Procedure, for quashing the proceedings in Special Child Case No. 11 of 2022, pending before the learned

Special Judge under the POCSO Act / Additional Sessions Judge, Hingoli, arising out of the the First Information Report (for short "the FIR") vide Crime No. 1 of 2022 registered with Police Station Basamba, District Hingoli on 1st January 2022 for the offence punishable under Sections 363, 366-A, 376(2)(i),(j), (n), 376(3), 354, 354-D, 506 read with Section 34 of the Indian Penal Code, Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act").

2. Heard learned Advocate Mr. Kadam for the applicant, learned APP Mr. Kale for respondent No.1 and learned Advocate Ms. Namita Thole, appointed to represent the cause of respondent No.2. In order to cut short, it can be stated that the learned Advocates appearing for respective parties have argued in support of their contentions.

3. Present applicant has been posed as accused No.3 in the charge-sheet. Respondent No.2 is the father of the victim, who had lodged the FIR initially under Section 363 of the Indian Penal Code only against original accused No.1 – Vaibhav Sudhar Malgunde. It is stated in the FIR that said Vaibhav was working as a driver on the tractor belonging to the informant since last

about four years prior to the date of FIR. The relations between the informant's family and family of Vaibhav were cordial and homely. On 31st December 2021 the informant and his brother met Vaibhav in Hingoli, whereupon the informant asked him as to how he was in Hingoli. Vaibhav told that he was proceeding to the village of his maternal uncle. Thereafter informant received phone call from his wife stating that since 1.30 p.m., their daughter (victim), who was then aged 14 years and 6 months, was missing. Informant asked her to search for the girl in the village. But afterwards the informant again received call stating that the girl was missing and cash of Rs.5,20,000/- was also missing. He again contacted Vaibhav, who told that he was in Hingoli but when the informant reached the house, the family members told that Vaibhav was in the village itself. Therefore, the informant raised suspicion over Vaibhav in stating that Vaibhav had kidnapped the victim under some circumstance.

4. During the course of the investigation, supplementary statement has been recorded which was after the girl was found and upon making inquiry with her. The victim had stated that due to the pressure from Vaibhav, she went along with him. In the statement of the victim, it is stated that Vaibhav had taken

her to Kanhergaonnaka on the motorcycle of his friend and thereafter they went in the white car to Pune. It appears that from 31st December 2021 to 10th January 2022 the girl was with Vaibhav at Pune. Now, it is the prosecution story that the present applicant was the driver of the said white car.

5. We are considering the evidence on record to connect the present applicant with the crime. There is no identification parade held to identify the present applicant being the driver of the said white car. The prosecution intends to say that the present applicant, original accused No.3, had helped original accused No.1 Vaibhav to kidnap the girl. However, there is no concrete evidence at all. Only the girl could have identified the applicant. As stated above, there is no identification parade. Only on the basis of statement of co-accused Vaibhav, the present applicant cannot be booked as co-accused. There is a statement of one witness Abhay Madhukar Karhe, who has stated that on 30th December 2021, he had received phone call from Vaibhav and Vaibhav asked him, as to whether there is any vehicle known to him which can take him to Pune for work. Said Abhay says that his father is working as a private driver. Present applicant's father is in police department and he is having a swift

car which he gives on rent and therefore, said Abhay knows the applicant. After phone call from Vaibhav, Abhay gave the mobile number of the present applicant and suggested that Vaibhav can take the car of the present applicant on rent. Even if we take the statement of this witness as it is, it would reveal that the applicant might have taken the girl and accused No.1 in his car. But we cannot presume that present applicant had in any way helped or he had the common intention with Vaibhav to kidnap the girl and therefore, it would be an abuse of process of law to ask the applicant to face the trial. Hence, we pass following order:-

ORDER

(I) The Application stands allowed.

(II) The proceedings in Special Child Case No. 11 of 2022, pending before the learned Special Judge under the POCSO Act / Additional Sessions Judge, Hingoli, arising out of the the First Information Report vide Crime No. 1 of 2022 registered with Police Station Basamba, District Hingoli on 1st January 2022, for the offence punishable under Sections 363, 366-A, 376(2)(i),(j), (n), 376(3), 354, 354-D, 506 read with Section 34 of the Indian Penal Code, Sections 4, 6, 8 and 12 of the

Protection of Children from Sexual Offences Act, 2012, stands quashed and set aside as against applicant - Amit S/o Sanjay Jadhav.

(III) The fees of learned Advocate Ms. Namita Thole, appointed to represent respondent No.2, has been quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by the Secretary, High Court Legal Services Sub-Committee, Aurangabad.

[ROHIT W. JOSHI]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25