



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

CRIMINAL APPLICATION (BA) No.1154 OF 2024

(Mustaqeem Ahmed Mushtaque Ahmed Vs. State of Maharashtra, through PSO, P.S.
Akot City, Taq. Akot, Distt. Akola 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.
Mrs. Harshada Prabhu, APP for non-applicant No.1.
Mr. Vinay Sharma, Advocate for non-applicant No.2 (Appointed).

CORAM : URMILA JOSHI-PHALKE, J.

DATE : 20th MARCH, 2025.

1. The applicant came to be arrested on 24.9.2024 in connection with Crime No.408/2024, registered with Police Station Akot, District Akola, for the offence punishable under Sections 64(1), 64(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard learned counsel for the applicant, who submitted that the applicant is arraigned as an accused on the basis of report lodged by informant, who is the mother of the victim on an allegation that on 16.8.2024 her daughter who is aged about 16 to 17 years omitting continuously and, therefore, she inquired with her and daughter disclosed to her that as she has consumed poison and thereafter victim was taken to the hospital wherein it revealed that she is pregnant. Though she

inquired with the victim girl but she has not disclosed anything and, therefore, she lodged the report. Subsequently, on 27.8.2024 her statement is recorded wherein she has stated that her daughter disclosed to her that present applicant, who was visiting her house has subjected her for forceful sexual assault which resulted into her pregnancy and, therefore, she consumed poison and thereafter the applicant is arraigned as an accused.

3. Learned counsel Mr. S.V. Sirpurkar for the applicant pointed out that as per the said statement on 16.8.2024 itself the involvement of the present applicant was revealed to the informant but she has not stated while lodging the report and after thought after 10 days the statement was recorded. As far as the involvement of the present applicant is concerned there is no other material on record. He submitted that even accepting that there was continuously communication between the victim and the present applicant. This fact reveals another aspect of the story that the victim was continuously in contact with the present applicant. Then, the inference cannot be drawn that the applicant has subjected her for forceful sexual assault. Now, the investigation is already completed, charge-sheet is already filed, further incarceration of the present applicant is not required. In view of that, the application deserves to be rejected.

4. Learned A.P.P. for the non-applicant No.1 and learned counsel Mr. Vinay Sharma for the non-applicant

No.2 submitted that as per the statement of the informant after she visited the Police Station the fact was disclosed to by the victim to her and, therefore, there was no mention about disclosure by the victim. They further submitted that considering the fact that victim was below 18 years of age, her consent is not relevant and the age of the applicant is 36 years at the time of incident. By taking disadvantage of loneliness of the victim at her house he had subjected her for sexual assault which resulted into her pregnancy and, therefore, deceased has committed suicide. Considering all these facts, the application deserves to be rejected.

5. After hearing both sides and on perusal of the investigation papers it reveals that initially the informant has not disclosed anything regarding disclosure by victim to her as to the involvement of the present applicant in the alleged incident. Even accepting the submission of the learned A.P.P. and learned counsel for the complainant that informant came to know about the said incident, after she returned home from the Police Station, but thereafter she has not approached to the Police Station and made her grievances as far as the accused is concerned. The statement is recorded after 10 days of the incident and there is no explanation to that effect. As far as other material is concerned, at this stage nothing is on record to show that the forceful sexual assault by the present applicant. Now, the investigation is already completed, charge-sheet is already filed. DNA report yet

to be received. However, it is difficult to ascertain when the said DNA report would be available for perusal. If any contrary appears in the DNA report prosecution is always at liberty to move this Court.

6. At this stage, considering the nature of the evidence, the applicant has made out a case for grant of bail. In view of that, I proceed to pass following order :

ORDER

(i) Application is allowed.

(ii) The applicant – Mustaqeem Ahmed s/o. Mushtaque Ahmed shall be released on bail in connection with Crime No.408/2024, registered with Police Station Akot, District Akola, for the offence punishable under Sections 64(1), 64(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 on executing P.R. Bond in the sum of Rs.25,000/- with one surety in the like amount.

(iii) The applicant shall not enter into the vicinity of Nandipeth, Akot, District Akola till culmination of the trial.

(iv) The applicant shall not induce, threat or promise any witnesses, who are acquainted with the facts of the case.

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

(vi) The application is disposed of.

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

(Urmila Joshi-Phalke, J.)

Wadode