



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

Criminal Application (BA) No.240/2025

[Syed Bablu @ Maula V State of Maharashtra]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. J.S. Wankhede, Advocate for applicant.
Mrs. S. Kolhe, APP for State.
Ms. Neerja Choubey, Advocate for NA no.2.

Coram : Urmila Joshi-Phalke, J.
Date : 28-04-2025.

Heard.

2. The applicant came to be arrested on 18-03-2024 in connection with crime no.0097/2024 initially registered under Section 363 of the IPC and subsequently converted under Sections 366A, 376(2) (n) (j), 376(3), 506 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act.

3. The crime is registered on the basis of report lodged by the father of the victim girl on an allegation that his daughter aged about 12 years and 2 months got missing from the house when he had been to the work as sugarcane labour along with the victim and his other family members. He searched for her but, he could not traced her and the present applicant who was also a sugarcane labour was missing. Therefore, he suspected that he has kidnapped her. On the basis of the said report, the Police have registered the crime. During investigation the statement of the victim was recorded as well as the documents as to her age were also collected and it revealed that she is aged about 14 years. From the statement of the victim it revealed that she was subjected for the forcible sexual assault and therefore the offence under Section 376 was also

registered.

4. Heard learned Counsel for the applicant who submitted that the victim was of understanding age and she herself went along with the accused. As far as the sexual assault is concerned, the medical certificate nowhere substantiates the said contention. Now the investigation is completed, chargesheet is filed, further incarceration of the present applicant is not necessary. He also placed reliance on Vijay Chand Dubey vs State of Maharashtra and another, reported in 2025 SCC OnLine Bom 329.

5. Learned APP and the learned Counsel for the victim strongly opposed for the same and submitted that minor victim girl was subjected for the forceful sexual assault by taking her along with under the misconception of the fact and thereby subjected for the forceful sexual assault. Considering that her consent is not relevant and a minor victim girl was subjected for the forceful sexual assault, the application deserves to be rejected.

6. After hearing both the sides and on perusal of the investigation papers it reveals that it is not a case of love affair and the statement of the victim nowhere reveals that out of love affair she went along with the present applicant. It shows that the present applicant has taken her by promising that she has to work a lot and they will go to the another place and they will stay together and thereby taken her and subjected her for the forcible sexual assault. Thus, it is apparent that the applicant has taken her under the misconception of facts and subjected her for the forceful sexual assault. Considering the age of the victim, her consent is not relevant. The *prima facie* case is made out against the present applicant. In view of that the application deserves to be rejected.

Accordingly, I proceed to pass the following order.

7. The application is rejected.
8. The fees of the appointed Counsel be quantified as per the rules.

(Urmila Joshi-Phalke, J.)