



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

CRIMINAL APPLICATION (BA) NO.254 OF 2025

Vishnu s/o Prakash Mehsare

Vs.

State of Maharashtra, through Police Station Officer, Police Station
Malkapur City, District Buldhana 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, Counsel for the applicant.

Mr. C. A. Lokhande, APP for non-applicant No.1/State.

Ms. S. H. Bhatia, appointed Counsel for the non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.

DATED : 29/04/2025

1. The applicant came to be arrested on 04.01.2025 in connection with Crime No.460/2024 registered with Police Station, Malkapur City, District Buldhana for the offence punishable under Sections 74 and 78 of the Bharatiya Nyaya Sanhita, 2023 and under Sections 8 and 12 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'the POCSO Act') and subsequently, on the basis of the statement of the victim, the offence came to be registered under Sections 64(2)(f), 64(2)(m), 351(1), 351(3) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 4, 6 and 8 and 12 of the POCSO Act.

2. The crime is registered on the basis of a report lodged by the victim girl aged about 17 years

and 10 months, on an allegation that the present applicant is her neighbour and she got acquaintance with him and he was communicating with her. He has also attempted to hold her hand in the month of March. In April 2024, he followed her and expressed his feelings. He also took her at Shegaon and she was subjected for forceful sexual assault by the present applicant on multiple occasions. On the basis of the said report, police have registered the crime against the present applicant.

3. Heard learned Counsel for the applicant, who submitted that initially, the applicant was released on ad-interim anticipatory bail, but as he has not disclosed his criminal antecedents, therefore his anticipatory bail was cancelled. Thereafter, the applicant was arrested and now he is behind bar. He submitted that the communication between the victim and the applicant and the WhatsApp chat placed on record sufficiently shows the nature of the relationship between them. He submitted that due to the pressure of the parents, this false FIR is lodged. As far as the further incarceration is concerned, which is not required as the investigation is already completed. He further invited my attention towards the recitals of the FIR and her subsequent statement as well as the statement recorded under Section 164 of the Code of Criminal Procedure, he has shown the inconsistency between the said statements. He also invited my attention towards the medical certificate

which shows that the hymen was shown to be intact. On the basis of the said material, he submitted that the offence *prima facie* is not made out against the present applicant. In view of that, the applicant be released on bail.

4. Learned APP and learned appointed Counsel for the non-applicant No.2 – victim strongly opposed the said application on the ground that the minor victim girl was subjected for the forceful sexual assault by the present applicant, who is 34 years old man. Moreover, her statement sufficiently shows involvement of the present applicant. In view of that, the application deserves to be rejected.

5. After hearing both sides and after perusal of the investigation papers, the inconsistent statements of the victim are on record. Initially, she has also declined to undergo the medical examination. Subsequently, she has undergone the medical examination from which it reveals that the hymen was shown to be intact. Admittedly, the injuries are not *sine qua non* for making an offence under Section 376 of the Indian Penal Code, but considering the inconsistent statements and considering the fact that now the investigation is completed, charge-sheet is filed and further incarceration of the present applicant is not required. In view of that, the application deserves to be

allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The applicant **Vishnu s/o Prakash Mehsare** shall be released on bail in connection with Crime No.460/2024 registered with Police Station Malkapur City, District Buldhana for the offence punishable under Sections 74, 78, 64(2)(f), 64(2)(m), 351(1), 351(3) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, on executing PR Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant shall attend the Nandura Police Station once in a month on 15th of every month, till the culmination of trial.
- (iv) The applicant shall not enter into the Malkapur except attending the proceeding before the Sessions Court.
- (v) The applicant shall furnish his detailed address along with the address proof where he is intending to reside after he is released on bail.
- (vi) The applicant shall not induce, threat or promise any witnesses who are acquainted with the facts of the case.

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

(5)

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7. The application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate