

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

CRIMINAL WRIT PETITION NO. 399 OF 2022

Prakash s/o Chokhobaji Taksande, aged
 about 69 years, Occupation : Retired,
 R/o Plot no. 73, Kanphade Nagar,
 Wardha Road, Nagpur.

... PETITIONER

VERSUS

1. The State of Maharashtra, through
 Police Station Officer, Police Station,
 Dhantoli, Nagpur.
2. XYZ (Victim), in Crime No.
 185/2017 registered with Police
 Station Dhantoli, Nagpur.

... RESPONDENTS

Shri R.M. Daga, Advocate for the petitioner.
 Shri H.D. Dubey, A.P.P for respondent no. 1.
 Shri P.D. Sharma, Advocate for respondent no.2.

CORAM : VINAY JOSHI, J.
DATED. : 15.09.2022.

ORAL JUDGMENT :

RULE. Rule made returnable forthwith. Heard finally by
 consent of learned Counsel appearing for the parties.

2. The petitioner is an accused no.2 in Sessions Case No. 509 of 2017 for the offence punishable under Sections 376(2)(n), 354-C, 387, 504, 506-B, 323 read with Section 34 of the Indian Penal Code and Section 66(e) of the Information Technology Act. The petitioner has applied for discharge under Section 227 of the Code of Criminal Procedure, however the learned Trial Court declined to discharge the petitioner vide order dated 23.11.2021, which is impugned herein.

3. It is the petitioner's contention that there is no sufficient material to proceed against him, however the Trial Court seriously erred in rejecting to discharge him. It is submitted that the principal allegations are against the accused no. 1, who is the son of the petitioner whilst the only allegation against him is about extortion, which is quite vague. According to the petitioner, the informant has not stated day, date or approximate period of occurrence therefore, her statement cannot be believed. Moreover, it is argued that the petitioner himself has lodged a police report against the informant prior to the lodgement of First Information Report, and therefore, he has been falsely implicated out of vengeance. It is also submitted that the offence punishable under Section 387 of the Indian Penal Code, would not attract as there is no delivery of property.

4. *Per contra*, learned Counsel Shri P.D. Sharma appearing for respondent no.2 – informant has strenuously resisted the petition by contending that the police papers are sufficient to *prima facie* indicate involvement of the petitioner in the crime. According to him, the informant has made a specific statement relating to role of the petitioner, and thus, there is sufficient material to put him on trial. He has disputed the submission that to constitute the offence punishable under Section 387 of the Indian Penal Code, delivery of property is an essential ingredient. To support the submission, he relied on the some decisions.

5. At the inception, it is necessary to go through the facts of the case. At the instance of the report lodged by the informant-lady (victim) aged 29 years, the Police have registered the crime vide C.R. No.185 of 2017 on 25.07.2017 for the offences as aforesaid mentioned. It is the case of the victim that she had old acquaintance with the son of the petitioner namely Mayur. She stated that first time, somewhere in the month of June 2013, co-accused Mayur called her at his residence and had forcible sexual relations. Time to time these acts were repeated. The victim stated that Mayur had video graphed her and therefore, she was insisting him to return the Video Clips.

6. Co-accused Mayur shifted to Bengaluru for the purpose of his job. The victim stated that in the month of August, 2013 co-accused Mayur called her at Bengaluru under the pretext of returning the Video Clips, however again sexually exploited her. It is her contention that she stayed at Bengaluru till May 2015 and then, returned to Nagpur. In the Month of March 2017, she again visited to the house of co-accused Mayur at Wardha Road, Nagpur seeking return of video clips. However, again he had sexually exploited her but did not return the video clips.

7. So far as the petitioner is concern, it is the victim's case that thereafter she went to the house of the petitioner, met the petitioner and his wife. She alleged that, the petitioner humiliated her and raised a demand of Rs.2 lakhs for return of video clips as well as threatened to kill her entire family. Precisely, the role assigned to the petitioner is restricted to the last isolated instance wherein the petitioner has allegedly raised a monetary demand and threatened to kill.

8. While considering the discharge application, undoubtedly, the Court has to see the available material to the limited extent to find out whether a *prima facie* case to proceed further, has been made out. The Court is not expected to mechanically frame the charge, but at this

stage the Court enjoins limited powers to scrutinize the prosecution case to decide whether it is a fit case to put the accused on trial.

9. In the case of *Union of India Vs. Prafulla Kumar Samal and another, 1979 CRI. L.J.154*, the Hon'ble Apex Court has held that while considering the question of framing of the charge under Section 227 of the Code of Criminal Procedure, the Court must consider whether or not a *prima facie* case against the accused has been made out and if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion does not create grave suspicion against the accused, he will be fully within his duty to discharge the accused. The Supreme Court in the case of *Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja and others, AIR 1990 SC 1962*, observed that, at the stage of framing the charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the

case.

10. In the light of above principle, I have gone through the charge-sheet as well as carefully considered the submissions made by the rival parties. Undisputedly, the principal allegations of rape are against the petitioner's son namely Mayur. The victim who is grownup lady aged 29 years, stated a long story ranging from the year 2013 to 2017 during which she was sexually exploited by the co-accused Mayur under threate of making her video clips viral. It emerges that the victim lady also stayed at Bengaluru with co-accused Mayur for considerable period. Though the learned Counsel Shri Daga appearing for the petitioner submitted that it was purely a case of consensual relations, however for the purpose of this petition of father of main accused the said aspect is irrelevant.

11. Concededly, no role was ascribed to the petitioner (father) till the last incident after March 2017, meaning thereby prior to that the petitioner-father was not in a picture. The victim stated that in the month of March 2017, she met co-accused Mayur for demanding video clips, however he denied, but sexually exploited her. The victim stated that thereafter, she went to meet the parents of co-accused i.e. the

petitioner and his wife, when the petitioner raised monetary demand for return of Video Clips. Pertinent to note that the victim has not stated even approximate month of occurrence, though she specifically stated month and year of earlier instances relating to co-accused. The case has also to be tested from the angle of probability on *prima facie* basis. The learned Counsel for the petitioner has pointed out that prior to the lodgement of FIR, the petitioner had filed the report dated 19.08.2017 with the Police alleging that the victim lady was insisting petitioner's son for marriage. He alleged that the victim was pressurizing for marriage and also threatened to commit suicide. The copy of the said report has been tendered on record from the side of victim herself. According to the petitioner, as a counter blast to the said report, the petitioner has been falsely dragged in the case of sexual exploitation, principally lodged against his son. The victim has not stated in specific terms as to when or in which month she met the petitioner, particularly when there was a monetary demand as well as life threat.

12. Learned Counsel Shri Sharma took me through two statements of witnesses dated 07.09.2017 who stated that, on 15.08.2017, they saw that the victim had been to the house of the

petitioner where there was quarrel. Both have stated that they found that the victim lady was shouting loudly at relevant time. These statements nowhere conveys about the monetary demand rather it supports the petitioner's police report, which says that the victim used to pressurize for marriage and threatened them.

13. Considering the over all circumstances, it reveals that the victim who was in long standing relationship with the son of the petitioner has stated about the repeated instances of sexual abuse by co-accused for which he is on trial. However, the petitioner is the father of the co-accused against whom concededly no other role is ascertained besides the isolated last incident. In absence of specification on the canvass of prior report by the petitioner, the vague allegations are improbable. There are no grounds to presume that the petitioner has committed alleged offence. Facing the criminal prosecution is a serious affair. If untenable prosecution are allowed to continue it will cause injustice.

14. In view of the above, the petition is allowed. The impugned order dated 23.11.2021 to the extent of rejecting the petitioner's discharge application, is hereby quashed and set aside. The petitioner is

discharged from Sessions Trial No. 509 of 2017.

15. The petition stands disposed of in above terms.

(VINAY JOSHI, J.)

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