



**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL REVISION APPLICATION NO. 11 OF 2024.**

Mr. Sagar Samant, S/o. Rama Govind Samant, 40 years of age, Govt. Servant, R/o. H. No. 82, Bhatwadi, Nanoda, Bicholim – Goa;Applicant.

versus

1. State of Goa, Through Police Inspector, Women Police Station, Panaji – Goa.
2. Ld. Public Prosecutor, Hon'ble High Court of Bombay, at Porvorim, Goa.
3. Mast. XYZ(Victim name withheld), Rio. Kudne, Sanquelim, Bicholim, Goa;Respondents.

Mr Kautuk Raikar, Advocate for the applicant.

Mr Somnath Karpe, Addl. Public Prosecutor for respondent nos. 1 and 2.

Mr Sahil Sardessai, Advocate for respondent no. 3.

CORAM:

BHARAT P. DESHPANDE, J.

DATE:

24th June 2024

ORAL JUDGMENT.:

1. Heard Admit.

2. This matter is taken up for final disposal at the admission stage itself with the consent of the parties.
3. Present Revision application is filed by original accused no. 4 thereby challenging the order passed by the learned Children Court dated 3.1.2024. By this order application filed by the applicant/accused no. 4 for discharge stands rejected and at the same time learned Children Court directed that charge be framed against the present applicant for the offence mentioned in the chargesheet.
4. Mr Raikar, learned counsel for the applicant submits that first of all name of the applicant is not figuring in the complaint dated 1.12.2022. The entire complaint filed is only against original accused nos. 1 and 2. After registering the FIR, the statement of the victim was recorded by the Investigating Agency on 1.12.2022. In this statement the victim did not disclose any material or even the name of the accused no.4/applicant. Such statement refers to allegations against accused nos. 1 and 2 only.
5. Mr Raikar submits that thereafter statement under Section 164 of Cr.P.C. was recorded of the victim on 14.12.2022. In this statement and at the end of it, victim refers to some incident which took place somewhere in September 2021 when he was called by Soham/accused no.3.
6. Victim then referred to Soham calling someone who came at

Bicholim bus stand. Said person who came at Bicholim bus stand was mentioned as Rohit. Thereafter it is alleged that said Rohit and Soham took him to some forest place and committed offence of child sexual abuse.

7. Thereafter prosecution recorded a supplementary statement of the victim on 22.12.2022 wherein the victim stated that person by name Rohit is also known as Sagar. Mr Raikar would submit that apart from name of the person mentioned by the victim and that too Rohit at two places and thereafter during the supplementary statement as Rohit alias Sagar, there are no other details for involvement of the said accused. He submits that there is no other statement of any witness to show that such person by name Rohit is also known as Sagar. The Investigating Agency failed to carry out any test identification parade to confirm that the applicant who was known as Sagar is the same person as mentioned by the victim.

8. As against this Mr Karpe would submit that the learned Children Court has considered this aspect and found that there is sufficient material to frame charges against the applicant. He submits that victim nowhere denied about his capacity to identify the accused during the trial. He submits that identification during the trial is also permissible since the victim is a boy who was threatened at the relevant time and further there are allegations that he was paid money for the purpose of sexual

satisfaction of the accused persons.

9. Mr Sardessai learned counsel appearing for the victim while supporting the submission of Mr Raikar would submit that identification is not proper and there is no material collected by the Investigating Agency against the applicant.

10. Rival contentions fall for consideration.

11. It is true that the purpose of the test identification parade is only to help the Investigating Agency in identifying the accused and to rule out the possibility of involvement of any other person. However, such an aspect is of much importance when the name of the accused is not figuring in the FIR and also in the statement recorded under Section 161 of Cr.P.C. In the present matter, it is admitted fact that FIR is completely silent with regards to any involvement of other persons except accused nos.1 and 2. There is no whisper at all with regard to any person by name Rohit or Sagar of having any involvement in such offence.

12. It is admitted fact that while recording the statement of the victim under Section 164 of Cr.P.C. and that too on 14.12.2022, there is some statement with regards to the incident somewhere in September 2021. It refers to person by name Soham who is accused no.3 in the proceedings before the trial Court. Victim claimed that Soham called him and met him

at the Bicholim Bus Stand. Thereafter Soham was answering a phone call and at that time he called someone at Bicholim bus stand, and then one person came on two wheeler whose name is Rohit. Thereafter Rohit and Soham took the victim to nearby forest and committed sexual assault.

13. Except the statement of this victim stating that the fourth person was Rohit, no description of such person is disclosed.

14. Suddenly supplementary statement was recorded of the victim on 22.12.2022 wherein explanation was called from the victim who claimed that person by name Rohit which he has referred in his 164 statement is also known as Sagar. At this stage also except mentioning Sagar alias Rohit no description of such person was disclosed. Admittedly the name of the Sagar alias Rohit was not figuring in FIR. Therefore, in order to identify the said accused by name Sagar alias Rohit as referred by the victim, a test identification parade was must.

15. Apart from this, there is absolutely no other material procured by the Investigating Agency to connect the present applicant with the fourth person allegedly referred by the victim as Sagar alias Rohit.

16. Test identification parade was therefore, of much importance as held in the case of ***Amrik Singh Vs State of Punjab***¹.

¹ 2022 Live Law SC582

17. The contention of the learned Addl. Public Prosecutor that during the trial it would be possible for the victim to identify the accused, cannot be considered at this stage for the simple reason that it is duty of the Court under Section 227/228 of Cr.P.C. to first of all consider whether there is any strong suspicion available against the accused to frame charge. In this case except the statement of the victim and that too in a supplementary statement dated 22.12.2022 refers to Rohit alias Sagar, there is absolutely no material to connect the present applicant to the said offence. The other description including the age, height, colour of said Sagar alias Rohit is not disclosed. Thus, the observations of the learned Children Court with regards to prima facie material for framing charge clearly appears to be perverse and not supported by material placed on record.

18. In such circumstances, asking the accused/applicant herein to undergo full fledged trial would be certainly detrimental to his liberty as well as the question of involvement.

19. For the above reasons, the impugned order passed by the learned Children counsel requires interference.

20. Impugned order dated 3.1.2024 below Exh.16 is hereby quashed and set aside. Application filed by the applicant/accused no. 4 for discharge stands allowed.

21. Proceedings stand disposed of in above terms.

BHARAT P. DESHPANDE, J.