

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

Criminal Application [BA] No.93 of 2015

(Chetan Gunwant Shende
 vs.
 The State of Maharashtra, through P.S.O. Gadchiroli)

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Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

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Court's or Judge's Orders

Mr. M.A. Bapat, Advocate for the Applicant.
 Mr. R.S. Nayak, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 20, 2015.

Heard the learned Counsel for the applicant and the
 learned A.P.P. for the State.

The applicant is before this Court seeking his
 enlargement on bail in connection with Crime No.119/2014,
 registered at Police Station Gadchiroli for the offences
 punishable under Sections 376, 363 and 366-A of the Indian
 Penal Code read with Sections 4, 5, 6 and 7 of the Protection of
 Children from Sexual Offences Act, 2012.

The learned Counsel for the applicant, by inviting
 my attention to the report lodged at the instance of the father of
 the victim, states that it is alleged in the report that on
 12/09/2014 the victim left her home on a pretext of attending
 school and as she did not return on that day, search was
 conducted by the parents and on 14/09/2014 a missing report

was lodged at the Police Station. It is further stated in the report that on the information that the victim is in the house of the applicant, the informant i.e. the father of the victim along with his brother and uncle had been to the house of the applicant and found the victim there. On enquiry, she disclosed that she has love relationship with the applicant and the applicant on giving assurance of marriage called her at Gadchiroli and thereafter the couple proceeded to Armori. This report was lodged alleging that the applicant committed an offence under Section 366-A of the Indian Penal Code. The learned Counsel for the applicant submits that on collection of the investigation material, charge-sheet is filed and the offences attracted against the applicant are under Sections 376, 363 and 366-A of the Indian Penal Code and under Sections 4, 5, 6, and 7 of the Protection of Children from Sexual Offences Act, 2012. The learned Counsel for the applicant submits that report itself clearly reveals that the victim on her own will and wish left her parental home on the call of the applicant. He submits that in the statement of the victim, it clearly reveals that the applicant applied neither any force against the victim nor victim made any grievance immediately to anybody in stead of having opportunity to disclose the same. He then submits that the material collected by the investigating agency in the form of medical certificate clearly shows that the age of the applicant is not less than 16 and not more than 19

years. Thus, the submission of the learned Counsel is, on the pros and cons, the allegations, namely playing mischief against the will of the victim and the victim being a minor girl, are far-fetched is the fact reveals from the material collected by the investigating agency. The learned Counsel then submits that as the material against the applicant is weak in it's nature, the prosecution may hardly establish any case against the applicant and as such keeping the applicant behind the bar for a further period is unjustified.

The learned A.P.P. vehemently opposes the application. The learned A.P.P. submits that the Bonafide Certificate collected by the investigating agency shows that the date of birth of the victim is 30/06/1999 and at the relevant time, i.e. at the time when the mischief was alleged against the applicant, the age of the victim was 15 years. The learned A.P.P. made available the material documents for my perusal including the statement of the victim.

On the backdrop of the report lodged at the instance of the father of the victim, if the statement of the victim is perused, it clearly shows that the applicant and the victim had initially developed acquaintance resulting in the same a love relationship. She in her statement states that on 12/09/2014, the applicant called her at Gadchiroli Bus Stand and for a considerable time when the applicant did not turn up, she left

Gadchiroli for Armori. Then she states that she received a phone call and then from Armori, she went to Gadchiroli. Then the victim states that on 14/09/2014, the applicant took the victim to a place probably a temple and then thereafter from Chandrapur, this couple had been to some place in the State of Andhra Pradesh. In the statement, the victim then states that after considerable period, she came to know that the name of the applicant is not Prashant, but he is one Chetan Gunwant Shende. Thus, the statement of victim itself reveals that the victim was in touch on telephonic conversation with the applicant, the victim on call of the applicant reached Gadchiroli and was with the applicant for a considerable period of four to eight days, made no attempts even to know the identity of the applicant nor made any grievances to anybody. This is also reflected from the statement of the victim that at Armori, a person of acquaintance met victim and made enquiry, but even at this point of time and on the backdrop of the fact that the person having acquaintance with the victim, she raised no grievance to this Deorao Kukudkar also. The perusal of the certificate/report issued by the Medical Officer, General Hospital, Gadchiroli, Radiologist Department of conducting ossification test of the victim shows that the victim appears to be between 16 years to 19 years of the age and then it further states that her age is less than 16 years and not more than 19 years.

Considering all these above referred aspects, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail.

In the result, the application is allowed. The applicant be released on bail on his furnishing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two solvent sureties in the like amount on the following conditions.

- i. The applicant to attend Police Station Gadchiroli on every second and forth Sunday of the month between 09:00 a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till commencement of the trial.
- ii. The applicant shall not tamper with the evidence nor commit any act such as contacting the prosecution witnesses or pressurize them.
- iii. The applicant to submit his residential address and contact numbers, such as phone/mobiles numbers, to the investigating agency.
- iv. In case the applicant is moving out of the area of Police Station Gadchiroli, he shall take permission and inform the concerned Police Station about his visit to other place.

In case of any breach of the conditions by the applicant, the State would be at liberty to move this Court.

Needless to say that these are the observations of the Court while deciding the present bail application and the learned Sessions Judge may not be influenced by these observations while conducting the trial.

The application is disposed of as such.

JUDGE

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