

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

Criminal Application [BA] No.94 of 2015

(Rajkumar Jairam Bethekar
vs.

The State of Maharashtra, through P.S.O. Dharni, District Amravati)

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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.V. Bute, Advocate for the Applicant.
Mr. P.V. Bhoyar, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 17, 2015.

Heard.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.54/2013, registered at Dharni Police Station, District Amravati for the offences punishable under Sections 363, 366, 376, 417, 109 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act.

The learned Counsel for the applicant submits that the applicant, who is earning his livelihood by labour work, is alleged to have been kidnapped a minor girl and exploited her. He invited my attention to the report lodged at the instance of father of the victim. He then submits that on the lodgment of the report, the investigating agency collected the material. The statement of the witnesses were recorded. He submits that the

District Hospital Amravati issued certificate and the certificate refers no injury marks. He then submits that as the victim was not subjected to any scientific test for ascertainment of her age such as ossification test etc., the case of the prosecution that the victim was a minor girl is not supported with any material. The learned Counsel further submits that though the investigating agency collected a bona fide certificate issued by Secondary School from Dharni referring to the date of birth of victim as 10/05/2001, there is every possibility that the recording of the date is an erroneous record for the reason the victim and her parents are the tribal and not literate and as such only on guesswork, the birth date might have been recorded. The learned Counsel for the applicant submits that the statement of the victim was recorded by the investigating agency on more than one occasion and there is a variance in the statements of the victim. The learned Counsel submits that the applicant is arrested on 07/04/2013 and since then he is behind the bars. He then submits that as the applicant is for nearly two years behind the bars and as all the necessary material is collected by the investigating agency, no fruitful purpose would be served by detaining the applicant for further period. He submits that it is not the case that the applicant is carrying any criminal record or having any criminal antecedents to discredit him. The learned Counsel for the applicant, therefore, prays for enlargement of

the applicant on bail.

The learned A.P.P. vehemently opposes the application. The learned A.P.P. submits that the applicant giving false assurances to the victim that he will not marry the girl with whom his engagement is performed insisted upon the victim girl with the help of his father to leave company of her parents and exploited her sexually. I have gone through the material collected by the investigating agency. It reveals from the perusal of the material that the victim was not subjected to any medical test for ascertainment of her age. The statement of the victim is recorded initially on 07/04/2013 and subsequently in presence of the members of the Committee known as “Mahila Dakshata Samiti”. It would be interesting to note that the victim states in her first statement that the applicant giving her assurances of marriage on 30th March, 2013 at about 08:00 p.m., when she entered in the courtyard of the house for drinking water, insisted upon her to flee away with him. She further states that on the next day, the applicant and his father along with her reached a place. At that place, one Kalu and his wife visited the victim. She states that Kalu and his wife informed that her father is searching her house and they further told her that she should accompany them as her father is in search of her. The victim in spite of such assistance and help extended by Kalu and his wife refused to accept it. In the second statement of the victim, she

again reiterated the assurances of marriage by the applicant and leaving her paternal home with the applicant. There is some variance in these two statements on account of the act of sexual exploitation by the applicant. Though it is not expected to assess and weigh the material at this state, the material reflects that the victim, even though had an opportunity to leave the company of the applicant and to go away with one Kalu and his wife, chose not to accept that course. The investigation is now complete and concluded in filing the charge-sheet. The applicant is behind the bars for nearly a period of two years and having no criminal antecedents to discredit him.

The learned Counsel for the applicant, on instructions, submits that the applicant is ready to keep himself away from the place namely Chikhalpat and would reside at Akola.

Considering the material placed on record and in view of the submissions of the learned Counsel for the applicant, in my opinion, the learned Counsel for the applicant has made out a case for enlargement of the applicant on bail. The apprehension of the State can be taken care of by imposing certain conditions on the applicant.

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 sureties in the like amount on the following conditions.

- i. The applicant to attend City Police Station, Akola on every second and forth Sunday of the month from 09:00 a.m. to 12:00 noon and maintain diary of his attendance duly countersigned by the Police Station Officer till commencement of the trial and to enter at Dharni, District Amravati for the purpose of trial only.
- 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 or in case of change.
- iv. The applicant also to submit the name, address and contact number of his relative, who resides at Akola, to the Police Station Officer of City Police Station, Akola and Police Station Dharni, District Amravati.
- v. In case the applicant is moving out of the area of City Police Station, Akola, 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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