

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

Criminal Application [BA] No.101 of 2015

(Dilip Chandanprasad Gupta

vs.

The State of Maharashtra, through P.S.O. Kamptee, District Nagpur)

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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. S.K. Ullah, Advocate for the Applicant.

Mr. A.H. Laddhad, A.P.P. for the Non-Applicants/State.

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 11, 2015.

Heard the learned Counsel for the applicant.

The applicant is before this Court seeking his enlargement on bail in connection with Crime No.107/2014, registered at Kamptee Police Station, District Nagpur for the offence punishable under Sections 304 and 504 of the Indian Penal Code read with Sections 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012.

This is one of the case, where the victim is ravished and exploited none else but by her own father i.e. the applicant. The report was lodged on 30/04/2014. The victim states that she is a student and studying in 12th Class and the applicant runs a small cart of food articles. On occasions, the applicant used to indulge in an act of indecent sexual advances and on resistance used to beat the victim. The victim then refers to certain

instances occurred in the month of January, 2014 and February, 2014 of the sexual exploitation. She then states that on 30/04/2014, when her mother left the house, the applicant wanted to exploit the victim and the victim gave a slap to him by applying force. The applicant then committed rape on her. On return of her mother, she disclosed the fact to her mother. The mother was shocked and gave a call to her brother. Thereafter, the victim, her mother and her maternal uncle approached the police authority and lodged the report.

The learned Counsel for the applicant vehemently submits that a false story is crated against the applicant. He submits that the allegations of exploitation are found untrue on the backdrop of the medical evidence collected by the investigating agency. He, by inviting my attention to the certificate issued by the Medical Officer on 01/05/2014 of which the copy is placed on record, submits that the report is silent on the aspect of commission of an offence under Section 376 of the Indian Penal Code. The learned Counsel, therefore, submits that the applicant be enlarged on bail.

Mr. Laddhad, the learned A.P.P. opposes the application.

I have gone through the material placed on record. The report lodged at the instance of the victim though refers to certain instances of the offence under Section 376 of the Indian

penal Code, it also refers the indecent behaviour and the advances of the applicant. These advances include exhibition of pornographic material to the victim and an obscene act on the face of the report.

The learned A.P.P. though made submission that as the medical report is silent on the aspect of any alleged act of penetration, the report, wherein reference of the acts of the applicants are made, is clearly sufficient enough to attract the provisions of the Protection of Children from Sexual Offences Act. It will be useful to refer the provisions of the Act viz. Section 7, which deals with the term 'Sexual Assault', which reads thus :

*7. **Sexual assault** – Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.*

Thus, the material collected by the investigating agency in the form of report, the other material and the statements of mother of the victim, matrimonial uncle of the victim and also the supplementary statement of the victim herself show the involvement of the applicant in the serious act.

The applicant is the father of the victim and as such the apprehension of the State that the applicant may pressurize the witnesses including the victim is justified.

Considering the material placed on record, in my opinion, this is not a fit case to enlarge the applicant on bail. Hence, the application is rejected.

JUDGE

**sdw*