

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

CRIMINAL APPLICATION (ABA) NO. 222 OF 2015.

(NITIN BABANRAO SHENDE..VS..THE STATE OF MAH. THR. PSO PS. WADGAON ROAD, YAVATMAL)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.

DATED : MAY 12, 2015.

Heard Mr. R.M.Daga the learned advocate for the applicant and Mr. S.M.Ukey, the learned Additional Public Prosecutor for the non-applicant.

2. This is an application under Section 438 of the Code of Criminal Procedure seeking pre-arrest bail for the offence punishable under Section 376(d)(j) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012, registered vide Crime No.534 of 2014.

3. The case of the prosecution is succinctly recorded by the learned Additional Sessions Judge in paragraph No.2 of the order passed on 8th April, 2015 rejecting the application filed by the applicant before him, which reads as follows :

“2. The facts of the prosecution case are that, the victim is aged about 16 years and taking education in 10th standard at Amravati. She is resident of village Borgaon (Dharmale). She used to go to Amravati by S.T. Bus on every day for attending her school. On 21.11.2014 one of the accused namely Pankaj Gawai forcibly made her to sit on motorcycle at Panchawati Chowk Amravati and took her to the room of another accused namely Dhiran Gaikwad

and the accused persons forcibly made her to drink Bear and they committed rape on her. The victim also felt giddiness and thereafter she was again taken on motorcycle by the accused Pankaj Gawai to Rathi Nagar Amravati and there also two persons committed rape on her. Thereafter in the night at 11.00 p.m. the accused Pankaj Gawai took her to Nandgaon Peth Highway in the field of Vishal Deshmukh and there Vishal Deshmukh committed raper on the minor victim. On 22-11-2014 when she woke-up at about 5.00 a.m. the accused Pankaj Gawai had already left that place and on 23-11-2014 she appeared for Scholarship examination in the school at Rajapeth, Amravati and came back to her house at 2.00 p.m. and on 24-11-2014 when she went to Amravati by S.T. Bus the accused Pankaj Gawai and applicant Nitin Shende came near her on motorcycle and forcibly took her on motorcycle to Yavatmal and forced her to drink Bear in the forest and accused Pankaj Gawai and applicant Nitin Shende committed rape and thereafter they reached her at the S.T. Bus stand, Yavatmal.”

4. Mr. Daga, the learned advocate for the applicant has submitted that Pankaj Gawai-co-accused came to be arrested and he is ordered to be released on bail by the Sessions Court, Yavatmal by order dated 3rd March, 2015. It is submitted that the investigation is complete and the chargesheet has been filed. It is stated in the application filed by the applicant, on oath, that the applicant is not involved in any bad antecedents earlier. The learned advocate for the applicant has pointed out from paragraph 10 of the application that other 4 accused, in addition to Pankaj Gawai, have also been released on bail. These facts are not disputed by the learned Additional Public Prosecutor.

5. Mr. Ukey the learned Addl. P.P. has opposed the application substantively on the ground that the clothes of the applicant are yet to be seized and as the applicant is absconding he could not be sent for medical examination. It is further submitted that it is the case of gang rape and if the applicant is directed to be released on pre-arrest bail then it would hamper the investigation.

6. Considering the facts of the case, specifically that the chargesheet has been filed and other five co-accused have been released on bail and the incident reported is of November, 2014, following order is passed :

i. The applicant be released on bail on his depositing cash security in the sum of rupees twenty five thousand with one solvent surety in the like amount, to be furnished by resident of village Nandgaon Peth, District : Amravati, in the event of his arrest in Crime No. 534 of 2014 of Wadgaon Road Police Station, Yavatmal for the offences punishable under Sections 376(d)(j) of the Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offences Act, 2012.

ii. It is further directed that the applicant shall report at Police Station, Wadgaon Road, Yavatmal once every alternate day till the end of May, 2015.

iii. Needless to say that the applicant shall cooperate with the Investigating Officer.

iv. From 1st June, 2015 onwards the applicant shall report at Police Station, Wadgaon Road, Yavatmal once in every 15 days.

v. The applicant shall not leave Amravati district without giving prior intimation to the Investigating Officer.

The application is allowed accordingly.

JUDGE

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