

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

Criminal Application [BA] No.491 of 2015

(Imran @ Nimbu @ Amir Dulekhan Pathan and others
vs.

The State of Maharashtra, through PSO Dhamangaon Bade, Dist. Buldana)

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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. N.A. Gaikwad, Advocate for the Applicants.
 Mr. A.K. Bangadkar, A.P.P. for the Non-Applicant/State.*

CORAM : V.M. DESHPANDE, J.

DATE : AUGUST 27, 2015.

This is an application for regular bail. The applicants are arrested in connection with Crime No.54/2014, registered with Police Station Dhamangaon Bade, District Buldana for the offences punishable under Sections 376-D, 452, 506 read with Section 34 of the Indian Penal Code and under Section 3(1)(xii) of the Scheduled Casts and Scheduled Tribes (Prevention of Atrocities) Act, 1989 along with Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

Heard Mr. Gaikwad, learned Counsel for the applicant and Mr. Bangadkar, learned A.P.P. for the State.

The F.I.R. is lodged by the Smt. Gumfabai Shinde, the grandmother of the prosecutrix. From the F.I.R., it is clear that when the first informant noticed abnormal behaviour and

body-state of the prosecutrix, she enquired with the prosecutrix about the same and that time it was disclosed to her by the prosecutrix that the present applicants have established continue forceful sexual relationship and due to that, she has become pregnant. From the statement of the prosecutrix, it also shows that the present applicants are responsible for sexual intercourse with her.

According to the prosecution, the age of the prosecutrix is 13 years. For that, the learned A.P.P. is relying upon the certificate issued by the headmaster of a school situated at Dhamangaon Bade. It is to be noted that in the F.I.R., it is stated by the first informant that though the prosecutrix was admitted in the school, she never attended the school.

During the course of investigation, an ossification test of the prosecutrix was undertaken by the Medical Officer. The outcome of radiology test is available at page no.37 of the charge-sheet. It would be useful to refer the opinion of the radiologist in respect of the age, which is reproduced hereunder :

“Radiological age of this patient is 17 to 19 years”.

Thus, in the present case itself, there are two different ages of the prosecutrix. The prosecution will be

ultimately requiring to prove the age of the prosecutrix during the course of the trial. However, *prima facie* what is the age, is not established at this stage.

The investigation is already over. Charge-sheet is already filed and the applicants are behind the bars since 11/11/2014 and 12/11/2014. Looking to the aforesaid evidence collected in respect of age and looking to the statement made in the F.I.R., *prima facie* I am of the view that the applicants have made out the case for releasing the applicants on bail, which leads me to pass the following order.

- ➔ Applicants namely (1) Imran alias Nimbu alias Amir Dulekhan Pathan, (2) Yunus Munshi Qureshi and (3) Ajju alias Azam Sheikh Babu be released on bail on their executing P.R. Bond in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with two solvent sureties each of them in the like amount in connection with Crime No.54/2014, registered with Police Station Dhamangaon Bade, District Buldana, before the trial Court.
- ➔ The applicants shall attend the concerned Police Station once in a fortnight preferably on Monday in between 03:00 p.m. to 05:00 p.m. till the charge is framed by the Court below.

- ➔ After framing of the charge, the applicants shall follow the further conditions, which may be imposed upon them by the trial Court.
- ➔ The applicants shall not in any way try to tamper with the prosecution case by establishing any contact either with the first informant or the prosecutrix.
- ➔ With these, the application is allowed and disposed of.

JUDGE

**sdw*