

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

Criminal Application [BA] No.899 of 2014

(Ganesh Namdeo Gaikwad vs. State of Maharashtra, through P.S.O. Wani, Distt. Yavatmal)

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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

CORAM : PRASANNA B. VARALE, J.

DATE : FEBRUARY 02, 2015.

Heard Mr. R.D. Bhuibhar, the learned Counsel for
 the applicant.

By the present application, the applicant is seeking
 his enlargement on bail in connection with Crime No.210/2014,
 registered at Wani Police Station, District Yavatmal for the
 offences punishable under Sections 376(2)(I) , 452 and 506 of
 the Indian Penal Code read with Section 6 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 victim
 and the material collected by the investigating agency, submits
 that the allegations against the applicant of the sexual violence
 towards the victim are of 24/07/2014, the incident was
 allegedly reported by the victim to her mother on 08/08/2014
 and the report was lodged after 2 days i.e. on 10/08/2014. The
 learned Counsel further submits that the inordinate delay and

ill-founded explanation itself raises an element of suspicion over the whole incident. He further submits that the victim alleges physical violence against the applicant of applying force and dragging the victim from one room to another room. The learned Counsel, by inviting my attention to the medical evidence collected by the investigating agency, submits that the medical evidence fails to support the allegation of dragging or force applied to the victim. He then also by inviting my attention to the statement recorded by the witnesses submits that the so called eye witnesses state about the incident of the quarrel picked up between the mother of the victim and the applicant on 08/08/2014 itself on the allegation of exploitation. He submits that thereafter for a period of two days, the mother of the victim kept silence and then approached the police station with the victim to lodge the report. The learned Counsel also submits that in view of the material collected by the investigating agency, there is hardly no chance of success of the prosecution for proving its case against the applicant. He then submits that the applicant is behind the bars since 10/08/2014. He further submits that the applicant is a young boy of 24 years and earning his livelihood by doing labour work. He further submits that as the investigation is concluded in filing the charge-sheet, no fruitful purpose would be served by keeping the applicant behind the bars for an indefinite period.

Mr. S.M. Ghodeswar, the learned A.P.P. opposes the application submitting that there is sufficient material in the form of statement of witnesses. He further submits that the applicant gave threats to the victim and as such there was a delay in lodgement of the report.

On the rival submission of the learned Counsel appearing for the applicant as well as the learned A.P.P. and on perusal of the material, viz. the statement of the witnesses, who in chorus states the quarrel of mother of the victim and the applicant and the medical evidence, which shows that there are no suggestive indication of any force applied to the victim and also the chemical analysis report recently received by the Investigating Officer of non-finding of blood or semen on the articles forwarded to the Chemical Analyzer, in my opinion, the learned Counsel for the applicant has made out a case. The investigation is complete and charge-sheet is filed. The apprehension of the State can be taken care of by directing the applicant to stay away from village Pohana, Tahsil Wani, District Yavatmal.

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 Wani Police Station 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 except his attendance on these days, the applicant shall not enter village Pohana, Tahsil Wani, District Yavatmal.
- 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.

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 in above referred terms.

Hamdast is granted.

JUDGE