

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

CRIMINAL APPLICATION NO. 16/2015

(Smt. Dhanvanti w/o Ravi Kusram ..vs.. The State of Maharashtra, through PSO P. S. Gittikhandan, Nagpur and ors.)

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

Court's or Judge's orders.

Mrs. Smita Singalkar, Advocate for applicant.
Mr. S. S. Doifode, A.P.P. for non applicant-State.

CORAM : A. B. CHAUDHARI, J.

DATE : FEBRUARY 5, 2016

By the present application, the complainant has put to challenge order dated 27.08.2014 passed by the Special Judge under the POCSO Act granting bail to non applicant no.3- Ramprasad s/o Fagulal Amdare in Crime No.298/2014, registered with Police Station, Gittikhadan, Nagpur.

Learned counsel for the applicant submitted that the offence took place on 23.07.2014 at about 10.30 a.m. when the complainant 'D', whose age on the date of offence was 14 years, was ravished by non applicant no.3-accused in clear cut breach of trust when she had asked for vegetable to him and who is her immediate neighbour. The non applicant-accused was arrested on 29.07.2014 and by the impugned order dated 27.08.2014 he was released

on bail. The trial Judge, prima faie, perused the medical evidence and perhaps got impressed because of the head injury that was sustained by the accused and was admitted in Government Hospital. But then the accused himself stated to the Court that the police did not cause any injury to him nor ill treated him.

Looking to the age of the girl and the stringent provisions of the POCSO Act, in my opinion, the trial Judge went wrong in merely looking to the medical evidence which then otherwise shows possibility of offence of rape. The statement of father of the girl, which was immediately recorded, also shows prima facie evidence against the non applicant-accused.

The age of the non applicant-accused is 45 years and is neighbour of the prosecutrix. It was risky and dangerous to allow him the relief of bail during trial as the witness are bound to be under trepidation. In that view of the matter, the trial Judge should not have granted bail in the wake of substantive evidence on record and particularly when the provisions of the POCSO Act are applicable. The trial Judge did not also take care to ask the non applicant no.3 to be away from the city of Nagpur in order to take care of the prosecution witnesses.

In that view of the matter, the impugned order granting bail will have to be cancelled as the same is not based on the factual and legal position.

In that view of the matter, following order is passed.

ORDER

(i) Criminal Application No.16/2015 is allowed.

(ii) The impugned order dated 27.08.2014 passed by Special Judge under the POCSO Act, Nagpur in Misc. Criminal Application No.1974/2014 is set aside.

(iii) The bail granted to non applicant no.3-Ramprasad s/o Fagulal Amdare stands cancelled.

(iv) Police Station Officer, Gittikhadan shall take non applicant no.3-accused in custody on or before 10.02.2016. Learned A.P.P. to submit compliance report on 11.02.2016.

Authenticated copy of the order may be given to the learned counsel for the parties.

JUDGE