

FARAD CONTINUATION SHEET

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

Criminal Application (ba) No. 480 of 2016

Sunil s/o Shankar Jumde

v.

The State of Maharashtra

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

Court's or Judge's orders

Mr. R.M. Daga Advocate for the applicant.
Mrs. M. Naik, APP, for the respondent/State.

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Coram : S.B. Shukre, J.

Date : 26th JULY, 2016.

Heard learned counsel for the applicant and learned APP for the State.

This application is strongly opposed by the learned APP contending that the F.I.R. is clear and prima facie implicates this applicant for the offences registered against him, which are the ones punishable under Section 354 of Indian Penal Code, under Section 8 of Protection of Children from Sexual Offences Act and under Section 3(1)(11) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Learned APP submits that the medical report supports the prosecution story.

In reply to the argument of learned counsel for the applicant that no test identification parade was held, learned APP submits that it was held in which the victim-girl identified this applicant.

So far as the ground of absence of test identification parade taken by the applicant is concerned, no reply to the same

has been given by the prosecution. Learned counsel for the applicant has shown to me copy of the charge-sheet, which has been supplied to the applicant by the learned trial Court. The charge-sheet does not contain any document showing holding of test identification parade, or the result of identification parade. But, copy of the charge-sheet available with the learned APP does show holding of identification parade on 29.1.2016. It also contains a letter addressed to the Police Inspector, Ramnagar, Chandrapur, by the Executive Magistrate, Chandrapur, dated 29.1.2016 confirming this fact. So, the position is that identification parade has been held. The copy of the letter dated 29.1.2016 and memorandum of identification parade have not been furnished to the applicant. Even the reply of the prosecution does not speak anything about the ground so specifically taken by the applicant. This all would cause serious prejudice to the defence of the applicant, and the benefit of which must go to the applicant.

On merits of the case, so far as this bail application is concerned, I find that the alleged incident has taken place in the presence of one Sanjay Soyam, but the statement of Sanjay Soyam does not show that he saw this applicant inappropriately touching the victim-girl. On the contrary, his statement shows that he had held the victim-girl affectionately for a brief moment and nothing more. The allegation made against the applicant is confined to his inappropriately touching and fondling the victim-girl and it has not been alleged that there was any penetrative sexual assault. The medical report, to which my attention has been invited by the learned APP, shows the position to be something different, though not exactly in relation to this applicant. It is not necessary at this stage to discuss the impact

of medical report on this case, as it would be premature to make any such comment. Suffice it to say that this medical report creates a prima facie doubt about the age of the victim-girl.

The investigation is over, as the charge-sheet has been filed long back. With the nature of prima facie evidence that is available and also non-furnishing of copy of identification parade to the applicant, I would be inclined to allow this application. Hence, the order.

The application is allowed. It is directed that the applicant be released on bail on his furnishing a P.R. Bond of Rs.20,000/- together with one solvent surety in like sum on conditions that :

- (i) the applicant shall regularly attend the dates fixed by the Court and shall co-operate the trial Court in expeditious disposal of the case against him;
- (ii) the applicant shall not contact or attempt to contact any of the prosecution witnesses; and
- (iii) the applicant shall not tamper with the prosecution witnesses in any manner.

Judge

/TA/

Certificate

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