

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

CRI. APPLICATION (BA) NO. 509 OF 2017

(SANTOSH KONDBARAO MANE...VS.. STATE OF MAH. THR. P.S.O. PS ARNI, DISTT. YAVATMAL)

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

Court's or Judge's orders

Shri V.N.Patre, Advocate for applicant.
 Shri Niraj Patil, A.P.P. for Non-applicant.

CORAM : Z.A.HAQ, J.

DATED : JUNE 12, 2017.

Heard.

The applicant is arrested on 15th June, 2016 in crime registered against him for the offences punishable under Sections 376(2)(i) & (j) of the Indian Penal Code, Sections 3(1)(xii), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 4 of the Protection of Children from Sexual Offences Act, 2012 on the accusations that he has committed the crime on a minor girl aged about 7 years.

In the reply filed by the Investigating Agency before this Court, the Investigating Agency has relied on the statement of the victim (minor girl) and the statement of Bharat Deokar, alleged to be an eyewitness of the incident.

The applicant claims to be the labourer. The learned advocate for the applicant has relied on the Residence Certificate issued by Police Patil of village Sukali on 4th August, 2016 (produced on record along with application at page No.119) and has submitted that the applicant is

permanent resident of village Chatari, Tahsil: Umarkhed, District : Yavatmal but for the purposes of employment he had been at village Sukali since last two years. It is stated in the application that the applicant is not involved in any other crime/ offence, that the applicant is married and is having a son and 8 years' old daughter and his wife and children are residing at village Sukali.

The medical report does not show any external/ surface injuries and the only point on which the Investigating Agency relies is the opinion given by Doctor that penetration has taken place in genital area of the victim.

The learned A.P.P. has submitted that the samples of nails of the accused are collected and are sent for chemical analysis and the report is awaited.

The Investigating Agency relies on the statement of the victim recorded by the Sub-Divisional Police Officer, Darwha on 16th June, 2016. There is nothing on record to show that the statement of victim (aged about 7 years) is recorded complying with the requirements of Section 24 of the Protection of Children from Sexual Offences Act, 2012. The applicant is not resident of village Kelvad where the victim is residing with her parents.

The learned advocate for the applicant has argued that a false complaint is lodged and the applicant is made a scapegoat by the parents of the victim only to claim compensation of Rs.1,00,000/- which is receivable by the victims belonging to Scheduled Tribe against whom such offences are committed.

Considering the facts of the case, in my view, the applicant is entitled to be released on bail on conditions imposed by this order.

The applicant having been arrested in Crime No.298 of 2016 registered by the non-applicant, he be released on bail on furnishing P.R. Bond for Rs.Twenty Thousand and two solvent sureties in the like amount.

The Investigating Agency shall get satisfied about the fact that the applicant is permanent resident of village Chatari, Tahsil : Umarkhed, District : Yavatmal and is residing with his wife, son and daughter either at Chatari or at Sukali, as recorded earlier.

The applicant shall be released on bail only after investigating agency is satisfied regarding the residence of the applicant.

The applicant shall attend the proceedings of the trial on every date unless granted exemption by the Sessions Court.

The Investigating Agency is granted liberty to apply for cancellation of bail, if felt necessary after receipt of Chemical Analyzer's report.

The application is **allowed** in the above terms.

JUDGE