

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR****CRIMINAL APPLICATION (BA) NO.748/2017**

Kailash s/o Gegraj Meshram ..vs.. State of Maharashtra through PSO P.S. Tirora, Tq.
Tirora, Dist. Gondia

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

Court's or Judge's orders.

Mr. P. P. Kotwal, Advocate for applicant.
Mrs.K.R. Deshpande, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : AUGUST 22, 2017

This is an application under Section 439 of the Code of Criminal Procedure for grant of bail. The applicant is arrested in connection with Crime No.109/2017 registered with Police Station, Tiroda, Dist. Gondia for the offence punishable under Section 376 (2) (f) (i) (n) of the Indian Penal Code along with Section 4 and 6 of the Prevention of Children From Sexual Offences Act. Mr. Kotwal, the learned counsel for the applicant would submit that the investigating officer has already completed the investigation and charge-sheet is also filed on record. Therefore, in his submission, the custodial presence of the present applicant is not necessary. He further submitted that interest of the prosecution can be taken care of by directing the applicant not to enter the village whereat the victim is residing.

The application is vehemently opposed by the learned A.P.P. She pointed out that the date of birth of the victim is 24.01.2001. She also submitted from the instructions of the investigating officer that the due to the forceful sexual relations those were established by the

present applicant with the victim, the victim delivered a girl child and that girl child was done away by the mother of the victim by throwing the said child in Vainganga river and for that the mother of the victim is arrested and is in jail.

There cannot be any straight-jacket formula that merely because the charge-sheet is filed that would give entitlement to the applicant/accused who is facing serious accusation to get himself released on bail. Filing of the charge-sheet can at the most be one of the factor while considering the application for bail in the light of the nature of the accusations made against the said applicant.

In the present case, it is not in dispute that the present applicant is a close relative of the victim. It is also not in dispute that the present applicant is a married person and is having 2 children from his marriage. At this stage, the prosecution has successfully pointed out to the Court in respect of the age of the prosecutrix.

The submission of the learned counsel for the applicant that there is a delay of one year in lodging the FIR can be taken care of at an appropriate stage of the trial. It is always open for the prosecution to lead appropriate evidence satisfying the court for lodging the FIR at a belated stage. Merely because there is a delay in lodging the report that by itself is not sufficient for the Court to jump to the conclusion about the truthfulness or otherwise of the prosecution case.

In the present case, it is an admitted position that the victim delivered a female child due to the forceful sexual assault by the applicant on the victim. It has also emerged

on record that in order to save the family from social outcry, the mother of the victim was required to take an extreme step of throwing that unfortunate newly born girl child in Vainganga river whose body was recovered after about 20 days and mother of the prosecutrix is in jail.

While considering the bail application of the present applicant, these aspects cannot be ignored by the Court since the Court cannot only be a mute spectator and cannot turn blind eye to what is happening in the society.

The applicant being a close relative has taken undue advantage of his relations vis-a-vis the victim. Therefore it would not be possible at this stage to release the applicant on bail since there is every possibility looking to the thick and close relations between the parties to pressurize and influence the mind of the victim especially when the mother of the victim/prosecutrix is in jail facing prosecution for committing an offence punishable under Section 302 of the IPC.

The aforesaid discussion leads me to pass the following order.

ORDER

Criminal Application No.748/2017 is rejected.

JUDGE