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

CRIMINAL APPLICATION (BA) NO.912 OF 2017

Abdul Matin s/o Abdul Wahab
..vs..
State of Mah., thr. PSO PS Karanja (R), District Washim

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

Shri A.S. Kilor, Counsel for the applicant.
Shri R.S. Nayak, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.
DATED : SEPTEMBER 27, 2017.

1. Heard learned counsel Shri A.S. Kilor for the applicant and learned Additional Public Prosecutor Shri R.S. Nayak for the State so also perused the reply filed on behalf of the State.

2. The applicant is arrested in connection with Crime No.22 of 2017 registered with Police Station Karanja (Rural) for the offences punishable under Section 376(2)(v)(f)(i) of the Indian Penal Code and under Sections 3, 4, and 5(c)(f)(i) and Section 6 of the Protection of Children from Sexual Offences Act, 2012.

3. The submission of learned counsel Shri A.S. Kilor for the applicant is that the applicant is arrested on 28.2.2017 and from the said day he is languishing in jail. He further submits that there is a delay in lodging the first information

report. He further submits that the medical report, as available along with the final report, is not indicating of any penetrative sexual assault. He, therefore, submits that the application be allowed.

4. Per contra, the application is vehemently opposed by learned Additional Public Prosecutor Shri R.S. Nayak for the State. He submits that merely because the charge-sheet is filed, that by itself is not sufficient to release the applicant on bail. It is also his submission that looking to the relation between the present applicant and the victim girl, if the applicant is released on bail, possibility of applicant pressuring the prosecution witnesses and the victim girl cannot be ruled. Therefore, he prays that the application be rejected.

5. This Court is of the firm view that merely because the charge-sheet is filed, that by itself cannot be the ground for releasing accused on bail. While considering the application for bail filed on behalf of a person, the Court has to consider the nature of accusations, its seriousness, and also the fact that if the applicant is released on bail, there is a chance of pressuring the prosecution witnesses.

6. In the light of these considerations, the consideration of filing of the final report has to be evaluated.

7. In the present case, the present applicant, at the relevant time, was working as a teacher in a Zilla Parishad

Middle School.

8. The first information report is lodged by one Ayesha Parveen Anisoddin, who is mother of the victim girl. The age of the victim girl is 9 years only. At the relevant time, i.e. on 27.2.2017, the victim was taking her education in 4th Std. in a school whereat the applicant is a teacher.

9. On the said day, the headmaster of the school made a phone call to the husband of the first informant whereby it was informed by the headmaster that the victim is not keeping good health. Therefore, the father of the victim had been to the school and he brought the victim to the house. After reaching to the house, the victim started weeping. Therefore, enquiries were made with her by the first informant. That time, it was disclosed to her that her teacher was on leave and she is not going to sit in a class room whereat the present applicant is conducing the class. On that, naturally the first informant has asked as to why she is not ready to sit in the class room conducted by the present applicant. That time, it was disclosed to the first informant by the victim that on 18.2.2017, in the morning at the time of midday meal, the present applicant took the victim in the washroom and there, after gagging her mouth, removed her clothes and tried to insert his private part into private part of the victim. Not only that, it was further disclosed by the victim that the victim should disclosed this act on the

part of the applicant to anybody. Else, she will have to face with dire consequences.

10. Submission of learned counsel Shri A.S. Kilor for the applicant, in respect of delay, in my view, cannot be considered at this stage since the victim disclosed the fact to the mother, the first informant on 27.2.2017 and on 28.2.2017 the report was lodged by the mother. Now, merely because the victim, who was taking education in 4th Std. aged about 9 years, failed to disclose the atrocious act on her by the applicant for 9 days, malice cannot be attributed. At this stage, one should not forget the fact that the applicant is a teacher and is, therefore, having his own clout on thinking process of the victim, a student. Further, it is always open for the prosecution to supplement good reasons for delay during the course of the Trial.

11. The nature of accusations against the present applicant is very grave in nature. The parents with a confidence send their wards in school with a hope that their wards will be getting good education in the society. It is not expected from a teacher, like the present applicant, to take disadvantage of the situation and commit a heinous offence on helpless girls.

12. The present applicant is 39 years of age. The applicant must be a married person and the victim is like his daughter. Insofar as negative report of the medical examination

is concerned even it is also open for the prosecution to examine the doctor who has clinically examined the victim, who alone will be able to state about the said aspect during the course of the evidence.

13. In view of the aforesaid, in my view, the present applicant is not entitled for any discretion and leniency from this Court. Resultantly, I reject this application.

JUDGE

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