

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

CRIMINAL APPLICATION (BA) NO.78/2018

Rajendra Mahadevsa Tongle

..vs..

State of Mah., thr. PSO, Shegaon City PS, Shegaon, District Buldhana

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

Court's or Judge's Order

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Shri A.D. Bhate, Counsel for the applicant.

Shri N.R. Rode, Addl.P.P. for the State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 30, 2018.

1. Heard learned counsel Shri A.D. Bhate for the applicant.

2. This is an application for bail.

3. The applicant is arrested on 27.7.2017 in connection with Crime No.331/2017 registered with Shegaon City Police Station, Shegaon, District Buldhana for the offences punishable under Sections 376(2)(N) and 506 of the Indian Penal Code and Section 4 of the Prevention of Children from Sexual Offences Act, 2012.

4. Learned counsel Shri A.D. Bhate for the applicant submits that the investigation is already over and the charge-sheet is already filed and, therefore, custodial presence of the applicant is not required. Learned counsel further submits that sexual relations

between the applicant and victim were outcome of consent extended by the victim. Learned counsel further submits that DNA Report, in respect of child which the victim has delivered, is yet to be received. Learned counsel submits that since the applicant is in jail since last 7 months, he should be released on bail.

5. Learned counsel Shri A.D. Bhate for the applicant relying on an order of this Court in Criminal Application No.1036/2015 dated 3.8.2015 decided at Bombay which is reported in 2016(2) All MR (Criminal) (Sunil Mahadev Patil ..vs.. The State of Mah.), submits that even though the victim is minor, her consent plays an important role.

6. The charge-sheet shows that the victim is a minor. The First Information Report (F.I.R.) is lodged by the victim herself. The said is dated 27.7.2017. The F.I.R. shows that at the time of commission of the offence, which was about 7 months prior to lodging of the report, the victim was taking education in 9th Std.. It is stated in the report that the present applicant is known to her. His age is 55 years. He is engaged in supplying foods to the patients who are admitted in the Government Hospital at Akola.

7. The F.I.R. further proceeds that about 7 months prior to lodging of the report, the applicant helped mother of the victim for her eye operation in hospital and for that her mother was indoor patient. During that period, her father used to visit at Akola frequently and also her brother was outside village for his work,

resulting into her sole presence in the house. The F.I.R. states that taking this situation at his favour, the applicant used to mis-behave with the victim. The applicant many a time used to provide foods to the victim and used to mis-behave with her.

8. The F.I.R. further states that one day, when the victim had been to the house of the applicant for returning empty tiffin, the applicant committed forcible sex upon her. The F.I.R. further states that that fact was immediately reported by her to her mother and her father. However, since her mother and father were illiterate, they did not pay any heed to her complaint. In addition to that, it is stated in the F.I.R. that her father used to be always under the influence of liquor and, therefore, the complaint made by the victim against the applicant was ignored. It is further stated in the F.I.R. that, thereafter, on many occasions, the applicant has established sexual relations with the victim against her wish, resulting into pregnancy. Ultimately, on 13.7.2017 when the brother of the victim came to the house, this fact was narrated to him and, thereafter, the report was lodged. In the report itself it is stated that since the victim was under fear, the report was not lodged immediately.

9. In this background of the facts, the order in Sunil Mahadev Patil's case (*cited supra*), which was pressed into service by learned counsel Shri A.D. Bhate for the applicant, has to be seen.

10. In the said case, the applicant and the victim therein were students. They were in love with each other. They decided to

marry with each other and, therefore, they eloped. Subsequently, initially, the report was lodged against the applicant therein by the father of victim for kidnapping. After the victim therein was traced out, it was revealed that the applicant therein has committed sexual intercourse with the victim and, therefore, relevant Sections were also added.

11. In the background of the aforesaid, in paragraph No.11 of the said order it was observed by the Honourable Judge, as under:

“Today teenagers are exposed to more sex related issues and lot of material is also available to them to know the sexual relationship between a man and a woman. Because of their impressionable age, girls and boys both may tend to get provoked and there can be a curious and very compelling demand of the body to get into such kind of relationship. Sexual urge differs from person to person and there cannot be any mathematical formula in respect of sexual behavioral pattern of teenagers, as biologically whenever the child turns into puberty, the child starts understanding his or her sexual needs. The nature of response depends on the upbringing, peer pressure, how civilized the environment is etc. Sex requires proper physical and emotional preparation, as it results in many physical and emotional consequences. This is all considered as a sexual maturation. Therefore, some sects with view to regularize sexual behaviour of the

community have acknowledged this biological factor and therefore, the early age marriages are performed in some religions or communities. Taking into consideration this social and biological factors, the law makers have considered the age of 15 as a age of consent when the marriage is performed. Taking into consideration this background, the trial Judge has to pass an order of bail in such cases.”

12. Grant of bail is a discretionary relief. The discretion has to be exercised judiciously in the light of facts of each case. What weighed in the mind of the Honourable Judge was that the victim and the applicant were of the tender age. They were in love with each other. They decided to marry with each other that they established sexual relationship.

13. There is no straight-jacket formula to decide application for bail. Each application for bail has to be decided on its own merits.

14. While granting or rejecting the application for bail, apart from the nature of accusation made against the person who seeks bail, the Courts are bound to consider the seriousness of the offence. Further, impact on the Society cannot be brushed aside lightly if nature of accusations are serious.

15. In the present case, the present applicant is a married person having 55 years of age. The victim is just 16 years of age. Her

date of birth is 2.6.2000. Thus, she was just 16 years of her age that is below the age of consent. Since the law does not recognize consent given by minor, in my view, it is not open for learned counsel Shri A.D. Bhate for the applicant to canvass that sex between the applicant and the victim was outcome of consent.

16. Further, from the F.I.R. it is clear that the parents of the victim are rustic and are uneducated. In addition to that, the father of the victim is habituated to drinks. The F.I.R. itself shows that on very first opportunity that minor girl has disclosed happening at the hands of the applicant to her parents. However, the parents did not pay any heed to the complaint made by her.

17. Thus, the victim was left in not only helpless but also hopeless position to get herself exposed to the atrocities committed on her by the applicant. Further, the applicant has taken disadvantage of the situation inasmuch as the applicant was instrumental in taking the mother of the victim to the hospital for her eye operation and he used to provide foods to her and also to the victim. Thus, it shows that entire family of the victim was under the thumb of the applicant and the applicant, an unscrupulous person, has taken advantage of his dominant position and has committed the serious offence of committing rape on the minor girl. The commission of regular sexual forcible intercourse on the victim forced a minor girl to carry pregnancy and thus a forced motherhood is imposed on her by the applicant.

18. All these facts show that the applicant is not entitled for any discretionary relief from the Court.

19. Hence, the criminal application is rejected and disposed of.

JUDGE

!! BRW !!