

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

Criminal Application [BA] No.326 of 2018

Mahesh Kundanlal Bawne

vs.

State of Maharashtra, through P.S.O. Adyal, District Bhandara

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

Court's or Judge's Orders

*Shri R.R. Vyas, Advocate for the Applicant.
 Shri P.S. Tembhare, A.P.P. for the Non-Applicant-State.*

CORAM : S.B. SHUKRE, J.
DATE : 24th APRIL, 2018.

Heard the learned Counsel for the applicant and the learned A.P.P. for the State.

Perused the reply of the prosecution and the case diary.

This application has been opposed on three grounds viz. (i) there is a strong *prima facie* case against this applicant; (ii) there is a presumption under Section 29 of the Protection of Children from Sexual Offences Act of the applicant being guilty and (iii) the possibility of the applicant absconding and making himself unavailable for investigation and trial.

So far as the *prima facie* case is concerned, I am of the view that this is not a case which looks to be so simple so as to reach the conclusion that the prosecution has established its *prima facie* case against this applicant. It is seen that though the age of the prosecutrix at the time of the incident was about 15 years and 4 months, the conduct of the prosecutrix *prima facie* shows something else. She admits that after the alleged acts of forcible sexual intercourse

with her, this applicant and the co-accused purchased a mobile phone for her, which was accepted by her and this applicant also withdrew amount of Rs.1,500/- from A.T.M., which he handed over to his co-accused, which was in turn was delivered to the prosecutrix. In other words, after the alleged acts of forcible sexual intercourse, the prosecutrix accepted monetary benefits in the nature of mobile phone and amount of Rs.1,500/- from this applicant and the co-accused.

The matter does not stop here and it goes further. The prosecutrix after reaching home, did not immediately disclose anything to her parents. She admits that when she woke up in the next day in the morning that she narrated the incident to her father.

It appears that major part of the investigation is over as the medical examination of the prosecutrix as well as both the accused has been done and the statements of most of the witnesses have been recorded. This applicant is in jail since 31/01/2018. The applicant is an electrical contractor and has roots in the society. There are no criminal antecedents to this applicant.

In the facts and circumstances discussed above, I am of the view that this is a fit case for grant of bail.

The application is allowed and it is directed that the applicant be released on bail on his furnishing a P.R. Bond of Rs.50,000/- together with one solvent surety in the like sum on the following conditions :

- i. The applicant shall not reside at Bhandara and shall reside at a place, which is situated at least 5 kms. away from Bhandara and also

shall not enter the limits of Bhandara except on the dates fixed by the trial Court in the trial of the case against the applicant and that too between 09:00 a.m. and 07:00 p.m. of the dates, till conclusion of the trial.

- ii. The applicant shall furnish his new residential address along with telephone/mobile numbers to the Investigating Officer as well as to the Court within seven days from the date of his release on bail.
- iii. The applicant shall co-operate with the trial Court in expeditious disposal of the case
- iv. The applicant shall not tamper with the prosecution witnesses in any manner.

The application is disposed of as such.

JUDGE

**sandesh*