

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

CRIMINAL APPLICATION (BA) NO.655 OF 2018

(Rajesh s/o Jayvantrao Kadve Vs. The State of Maharashtra thr. PSO PS Jaripatka,
Dist. Nagpur)

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

Court's or Judge's orders.

Shri C.R. Thakur, Advocate for Applicant.
Shri M.K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 26th JULY, 2018.

The applicant is arrested in Crime 157/2018 for offence punishable under section 363 and 376(2)(i) of the Indian Penal Code and section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 and is in custody since 15.02.2018.

2] It would not be appropriate to minutely evaluate the material on record for the purpose of deciding this application. However, the reasons which have weighed with this Court in granting bail must be spelt out briefly.

3] The 161 statement of the child victim and the 164 statement are substantially different and inconsistent. In the statement recorded under section 164 of the Code the child victim does not speak of penetrative assault or rape. Even if the entire statement under section 164 of the Code is taken at face value, at the most the allegations, if proved, may constitute an offence of attempt to rape.

In contradistinction, in the 161 statement the child victim states that she was subjected to penetrative sexual intercourse multiple times. She resisted, but in vain, is the version of the child victim. The medical examination does not show any visible sign of injury which could be attributed to resistance. The hymen is shown to be ruptured, but then does it not clarified whether the tear or rupture is old or fresh.

4] In the teeth of the material on record, further incarceration of the applicant in custody would be a pretrial punishment. The applicant has no criminal antecedents and it is not even the case of the prosecution that he would not be available to face trial or that he would be in a position to tamper with evidence.

5] The application is allowed.

[i] The applicant be released on bail on his furnishing a personal bond of Rs.15,000/- with a solvent surety of the like amount.

[ii] The applicant shall not tamper with the evidence nor shall the applicant directly or indirectly attempt to influence the witnesses in any manner.

JUDGE