

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

CRIMINAL APPLICATION (BA) NO. 88/2019

Shikandar S/o Sonsingh Chavan
..VS..
State of Maharashtra

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

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for the applicant
Shri S.A. Ashirgade, Addl. PP for the non-applicant

CORAM : Z.A.HAQ, J.
DATED : 22/02/2019

Heard.

The applicant is arrested on 21/04/2018 in connection with Crime No. 76/2018 registered by the non-applicant for the offences punishable under Sections 376 (2) (i) of the Indian Penal Code read with Sections 3, 4 and 5 (k) of the Protection of Children from Sexual Offences Act, 2012 (for short “the Act of 2012”). Earlier, the applicant had filed Criminal Application (BA) No. 908/2018 which was disposed on 08/10/2018 by passing the following order:-

*“After arguing for sometime, the learned advocate for the applicant, on instructions, seeks permission to withdraw the application. It is **disposed** as withdrawn.*

However, the Sessions Court is directed to expedite the trial.”

Now the present application is filed under Section 439 of the Code of Criminal Procedure praying that the non-applicant be directed to release the applicant on bail. According to the applicant, as per Section 35 (1) of the Act of 2012, evidence of the child (victim) has to be recorded within 30 days of the Special Court taking cognizance of the offence and if there is delay, then reasons for the delay should be recorded by the Special Court. It is further pointed out that as per Section 35 (2) of the Act of 2012, the Special Court has to complete the trial, as far as possible, within period of 1 year from the date of taking cognizance of the offence. The learned advocate for the applicant has pointed out that while disposing the Criminal Application (BA) No. 908/2018, this Court had directed the Special Court to expedite the trial. It is submitted that still the trial has not commenced. According to the learned advocate for the applicant and the learned Addl. PP, there is a link Court at Mangrulpur and the trials are not being conducted because of the non-availability of regular full time Presiding Officer.

In the above background, the learned advocate for the applicant submitted that entitlement of the applicant for grant of bail may be considered on merits of the matter. According to the applicant, the medical evidence placed on record by the Investigating Agency does not support the case of the prosecution.

The order passed by this Court on Criminal Application (BA) No. 908/2018 on 08/10/2018 records that the advocate for the applicant had sought permission to withdraw the application, after it was argued for sometime. The learned advocate for the applicant has not been able to

point out any change in the circumstances except that the trial has not commenced.

In the facts of the case, I am not inclined to consider the prayer made in this application.

The criminal application is **dismissed**.

Copy of this order be sent to the learned Principal District and Sessions Judge, Washim for taking up the matter on administrative side to ensure that regular full time Presiding Officer / Sessions Judge is available at Mangrulpir.

JUDGE

Ansari