

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

Criminal Application (BA) No.300 of 2019
(Akash Ashok Khode .vs. State of Maharashtra through PSO PS Patur, Dist.
Akola.)

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

Court's or Judge's orders.

Mr. K.H. Anandani, Advocate for Applicant.
 Mr. M.J. Khan, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : June 11, 2019.

The applicant herein is accused of having committed an offence under Section 377 of the I.P.C. The FIR in the present case was registered on 29.09.2018 for having committed offences under Section 377 of the IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. The complainant, the mother of the 9 years old victim, reported to the Police Station on 29.09.2018 in the afternoon that on the previous day i.e. 28.09.2018 at about 7 p.m., the applicant had allegedly lured the victim boy while he was playing with friends and committed the act leading to the aforesaid offences. The applicant was arrested on 03.10.2018 and he has been behind bars since then.

2. The learned counsel appearing for the applicant has invited attention of this Court to the medical examination of the victim boy. A perusal of the same shows that although the Doctor has opined that possibility of anal penetration could not be ruled out,

but it has also been found by the Doctor that there were no signs of recent physical force used over private part and that there were no signs of use of physical force over the body of the victim. Coupled with this, in the report it has been recorded that there has been no tear and no fresh injuries on the anus of the victim boy. The medical examination of the applicant has also revealed that there was no injury on his private part.

3. It is claimed by the applicant that he has been falsely implicated because there was some quarrel between his father and father of the victim on the question of return of certain loan amount allegedly advanced by the father of the applicant to the father of the victim boy. Although there is no material placed on record to support such an assertion, it is submitted on behalf of the applicant that the delay in registration of the FIR in the present case indicates that the allegations levelled against the applicant are not genuine.

4. Considering the aforesaid material on record, particularly the medical reports, a *prima facie* case appears to have been made out by the applicant. The fact that the FIR was registered on the next day of the incident, despite the victim boy reporting the acts suffered by him allegedly on the previous evening, also assumes relevance in the present case. The investigation is complete and charge-sheet has been already filed while the applicant has been behind bars from 03.10.2018.

5. The learned APP appearing on behalf of the non-applicant/State has emphasized that the final medical opinion and report of the analysis of the

undergarments of the victim boy are yet to be received and that if the applicant is released on bail, there is every possibility of the witnesses being influenced because the applicant and the victim are residents of the same village.

6. As noted above, *prima facie* case is certainly made out by the applicant, which is relevant for considering the question of grant of bail. The apprehension expressed on behalf of the non-applicant/State can be addressed by imposing appropriate conditions while allowing the present application.

7. In view of the above, the instant application is allowed. The applicant is directed to be released on bail on furnishing P.R. bond of Rs.50,000/- (Rs. Fifty Thousand) and a surety of like amount. The applicant is directed not to enter the jurisdiction of Police Station Patur during the pendency of the trial. He is further directed to attend the trial Court on each and every date of the proceedings.

8. It is made clear that the observations made in this order, are limited to the question of grant of bail.

9. The application is allowed in the above terms.

JUDGE