

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

Criminal Application (BA) No. 379 of 2019

Sujay Bachad

Vs.

State through P.S. Mulchera

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

Court's or Judge's orders

Mr. R.H. Rawlani, Advocate for applicant.
Mr. H.R. Dhumale, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JUNE 26, 2019

The applicant herein has approached this Court for grant of bail. The case against the applicant is that he kidnapped the victim i.e. grand-daughter of the complainant and since the victim was a minor and he had sexual relations with her, he was alleged to have committed an offence of rape, as also offences under the provisions of the Protection of Children from Sexual Offences Act, 2012.

2. On 17/09/2018, FIR was registered against the applicant by the complainant, alleging that his grand-daughter i.e. the victim was missing since 16/09/2018 and the applicant had taken her away.

3. It is the case of the applicant that he and the victim were in a relationship with each other and that they used to talk to each other on mobile phones and

they used to meet frequently. It is further submitted that the victim voluntarily joined the company of the applicant and both of them left the place of their residence and that they were together for about 3½ months until the applicant was arrested by the Police in Hoshangabad (M.P.). The applicant was arrested 08/01/2019 and he has been behind bars since then.

4. Chargesheet in the present case was filed whereby the applicant has been charged with having committed offences under Sections 363, 366, 376(2) (n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

5. It is contended on behalf of the applicant that since the investigation is over and chargesheet has been filed, no further purpose would be served by continuing the custody of the applicant. It is submitted that this was not the case of the applicant having forcibly taken away the victim and there was sufficient material on record to indicate that the applicant and the victim were in relationship and that they left their usual place of residence in order to live with each other.

6. The learned counsel for the applicant has invited attention of this Court to the fact that there were no signs of any forcible intercourse with the

victim and further that the call details record of the mobile phones used by the applicant and the victim demonstrate that the victim had been in touch with the applicant much before the date when she joined his company and they left their usual place of residence. On this basis, it is contended that the present application deserves to be allowed.

7. The learned APP opposed grant of bail in the present case by pointing out that the victim was about 16 years and 11 months old and that this was a case of statutory rape and that the applicant could not claim any relief on the ground that the victim had voluntarily joined his company. It is submitted that there was possibility of the applicant influencing the witnesses and, therefore, the application deserved to be rejected.

8. Having heard the learned counsels for rival parties and upon perusal of the material brought on record, it appears that the applicant and the victim had been living together away from their places of residence for about 3½ months, till the police arrested the applicant on 08/1/2019. It is gathered from the material on record that the victim used to remain in touch with the applicant on mobile phone and she used to meet him when she left for college and that they had developed intimacy. It has also come on record that although the applicant and the victim had lived

together for a long period of time, there is no specific grievance about the applicant having forcibly taken away the victim or committed sexual intercourse with her forcibly. This appears to be a case where the victim and the applicant developed intimacy and that they left their usual place of residence together. It is noted that now a days, youngsters, particularly young girls between the age group of 15 to 18 years old, under the influence of social media and other such influences have developed enough independence and means of communication to enter into such relationships. In such a situation, it would be futile to insist upon incarceration of the accused during entire period of trial, particularly in the backdrop of some material, prima facie, to show that the victim and the applicant were in a relationship with each other. Therefore, in the present case the applicant can be enlarged on bail by imposing specific conditions.

9. Accordingly, the present application is allowed and the applicant is directed to be released on bail on following conditions.

- a) The applicant shall furnish PR bond of Rs.25,000/- and surety of like amount.
- b) The applicant shall attend before the Trial Court on each and every date.
- c) The applicant shall not tamper with the evidence or influence the witnesses.
- d) During pendency of the trial, the applicant shall

not enter the jurisdiction of village Sundar Nagar Tah. Mulchera Dist. Gadchiroli.

10. Needless to say that if the applicant violates any of the conditions stated above, bail granted to him shall stand cancelled.

11. It is further made clear that the observations made in this order are limited to the question of grant of bail to the applicant.

JUDGE