

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

Criminal Application (BA) No. 426 of 2019

Anand Gajanan Sardar

Vs.

State of Maharashtra through P.S. Nandura Dist. Buldhana

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

Court's or Judge's orders

Mr. S.V. Sirpurkar, Advocate for applicant.

CORAM : MANISH PITALE, J.

DATED : JUNE 07, 2019

The applicant herein is one of the four accused in a case wherein FIR was registered on 02/02/2018, in Police Station Nandura Dist. Buldhana pertaining to offence under Sections 376, 452, 506 and other provisions of the Indian Penal Code as also under the provisions of the Protection of Children from Sexual Offences Act, since the complainant in the present case is a minor.

2. The FIR in the present case is registered on 02/02/2018, on a report lodged by the victim on the said date, pertaining to incident of sexual assault on her on 01/09/2017. A perusal of oral report leading to registration of FIR shows that only accused No.1 and 2 were named by the victim, as a result of which the name of applicant did not figure in FIR dated 02/02/2018.

3. But, thereafter, on 22/02/2018, the victim submitted a supplementary statement before the police about the very same incident, but, on this occasion she specifically named the applicant herein and other accused along with original accused No.1 and 2. In this supplementary statement the victim attributed role of the applicant also in the alleged incident of forcible sexual assault on her.

4. The applicant had filed applications for grant of bail on earlier occasions also but the same were disposed of with liberty to the applicant to approach the Court for grant of bail after DNA report was received in the present case. The victim was found to be pregnant. It is an admitted position that DNA report after collection of blood sample of the applicant, the victim and fetus shows that the applicant is not found to be biologically and genetically connected with the fetus. This has a crucial bearing on the present case.

5. After DNA report was received, the applicant had approached the Sessions Court for grant of bail, but the same stood rejected. As a consequence, the applicant has filed the present application. Upon notice being issued this Court has heard the learned counsel for rival parties.

6. The relevant facts in so far as the present application is concerned are that while even according to the victim the incident allegedly took place in September, 2017, she approached the police authorities on 02/02/2018, after substantial time period. In this initial report submitted to the police dated 02/02/2018, the victim admittedly did not name the present applicant at all. The entire role was limited to the accused No.1 and 2 with regard to the alleged sexual assault suffered by the victim in September, 2017. It was after 20 days i.e. on 22/02/2018 that the victim placed a supplementary statement before the police and on this occasion for the first time named the applicant as one of the perpetrators of act of sexual assault on her. This is a relevant consideration. Apart from this, DNA report that has come on record and it does not show any connection of the applicant with the fetus.

7. These admitted facts on record make out a strong prima facie case in favour of the applicant and, therefore, this Court is of the opinion that since charges have been already framed and this is the stage of the beginning of the trial, in view of the material that has come on record the applicant deserves grant of bail.

8. Accordingly, the present application is allowed. The applicant is directed to be released on

bail on furnishing PR bond of Rs.50,000/- (Rs. Fifty Thousand) and surety of like amount. The applicant is directed not to influence witnesses in any manner whilst the trial is underway. The applicant is directed to attend the Trial Court on each and every date.

9. The application stands allowed in above terms.

JUDGE

MP Deshpande