

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

Criminal Application (BA) No. 461 of 2019

Dilip Kotangale

Vs.

State Through P.S. Pulgaon Dist. Wardha

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

Court's or Judge's orders

Mr. R.R. Vyas, Advocate for applicant.
Mr. V.P. Maldhure, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JULY 2, 2019

The applicant has approached this Court for grant of regular bail in respect of offences registered against him under Sections 354 and 354-B of the Indian Penal Code and Sections 7, 8, 9 and 10 of the Protection of Children from Sexual Offences Act, 2012.

2. The allegation against the applicant in the present case is that on 04/12/2018, he had taken the victim, a six year old girl to his hut and undressed her, at which point of time, some ladies of the neighbourhoold saw him in the said act, leading to registration of FIR against the applicant for the said offences at the behest of the mother of the said child.

3. The applicant was arrested on 04/12/2018 itself and since then he is behind bars. The learned counsel for the applicant has submitted that even if the

description of the incident, as claimed by the prosecution is taken into account, offence only under Section 11 of the POCSO Act could be alleged and registration of offences under Sections 7, 8, 9 and 10 of the POCSO Act in the present case is wholly misplaced. It is pointed out by the learned counsel for the applicant that punishment for the offence punishable under Section 11 of the POCSO Act is upto three years of imprisonment. It is also pointed out that the present case is a case of false implication because against one of the key witnesses, the son of the applicant had submitted a complaint in the year 2009, pursuant to which non-cognizable report had been registered against the said witness and her husband. It was alleged by the son of the applicant that the said persons had been indulged in gambling in the neighbourhood, which was causing inconvenience and upon the said persons being asked to stop such activities they had threatened the son of the applicant. It is submitted that the very same witness claims to have seen the applicant with the minor victim, leading to registration of FIR.

4. The learned APP has opposed grant of bail on the ground that the victim is a minor girl, aged about six years and that there is clear possibility of the victim and other witnesses being threatened and influenced by the applicant if he is released on bail. On this basis, it is submitted that the application deserves to be dismissed.

5. Heard learned counsel for the rival parties and perused the material on record. A perusal of report, leading to registration of FIR and statements of the witnesses show that the applicant is alleged to have undressed the victim minor girl, at which point of time, he was caught in the act by some ladies in the neighbourhood and that the offences were registered against the applicant. As to whether the applicant could be held guilty for having committed offences under Sections 7, 8, 9 and 10 of the POCSO Act, would be a matter of trial. But, there appears to be substance in the submission made on behalf of the applicant that at present, considering the material on record only Section 11 of the POCSO Act could be invoked in the instant case.

6. Apart from this, the existence of non-cognizable report registered against one of the co-witness and her husband at the behest of son of the applicant assumes significance, as it is claimed by the applicant that present case is a case of false implication. Although, the non-cognizable report was registered as far back in the year 2009, it does indicate that there was some difference of opinion amongst residents of the locality where the said incident is said to have occurred, whereby the aforesaid offences were registered against the applicant.

7. It is an admitted position that investigation in the present case is completed and chargesheet has been filed on 12/01/2019 itself. In view of the material on record, this Court is of the opinion that conditional bail can be granted to the applicant in the present case.

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

- a) The applicant shall furnish PR bond of Rs.25,000/- and surety of like amount.
- b) The applicant shall attend the proceedings before the Trial Court on each and every date.
- c) The applicant shall not enter Pulgaon Town during pendency of the trial.

9. Needless to say that in the event the applicant violates any of the conditions, bail granted to him shall stand cancelled.

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

JUDGE