

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

Criminal Application (BA) No.471 of 2019
(Umesh @ Varshpal s/o Moreshwar Meshram .vs. State of Maharashtra
through PSO PS Mankapur, Nagpur.)

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

Court's or Judge's orders.

Mr. S.G. Karmarkar, Advocate for Applicant
Mr. M.J. Khan, APP for Non-applicant/State.

CORAM : Manish Pitale, J.
DATED : July 3, 2019.

In this application, notice was issued on 11.06.2019. The learned APP has handed over copy of reply, which is taken on record.

2. In the present case, an FIR dated 05.03.2019 was registered on a complaint lodged by a minor girl, claiming that between 01.07.2018 and January, 2019, the accused persons had indulged in sexual intercourse with her. On this basis, offences against four accused persons were registered under Sections 376(2)(n), 376(2)(i), 376-D and 377 of the IPC and Sections 4,5 and 6 of the Protection of Children from Sexual Offences Act, 2012. It is the case of the applicant that he is not even named in the FIR. Later the complainant has given a statement that the person named as accused no.4 i.e. Ajay is in fact the applicant herein.

3. It is contended on behalf of the applicant that FIR was registered on 05.03.2019 and it was considerably delayed because even according to the complainant, the incident had occurred between

01.07.2018 and January 2019. It was also pointed out that after investigation was complete and the charge-sheet was filed on 13.04.2019, no material was brought on record either in the form of test identification parade or otherwise to even *prima facie* show that accused Ajay was none other than the applicant herein.

4. The learned counsel for the applicant also invited attention of this Court to the statement given by the complainant herself before the Police. In the detailed statement, it is repeatedly stated by the complainant that she had voluntary sexual intercourse with all the four accused persons.

5. Although the learned APP has strongly opposed grant of relief in the present application, pointing out that the victim i.e. complainant is a minor, who was about 15 years old when the incidents occurred, looking to the material on record, particularly the statement of the complainant herself and absence of material, at this stage, to show that the said accused Ajay was indeed the applicant Umesh himself, this Court is of the opinion that the present application deserves to be allowed.

6. Hence 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 a surety in the like amount.
- (b) The applicant shall attend the proceedings before the trial Court on each and every date.
- (c) The applicant shall not influence the witnesses.

(d) The applicant shall not enter the area at Nagpur where the complainant resides i.e. Yashodhara Chowk, Pavan Nagar, Nagpur, during the pendency of the trial.

JUDGE

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