

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

Criminal Application (BA) No. 534 of 2019

Deepak Bawane

Vs.

State Through P.S Saoner Dist. Nagpur.

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

Court's or Judge's orders

Mr. A.A. Pannase, Advocate for applicant.
Mr. M.J. Khan, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : JULY 29, 2019

The applicant has approached this Court for grant of bail as he stood arrested on 22/06/2018, in connection with FIR dated 19/06/2018. Although, initially, FIR was registered for offence under Section 363 of the Indian Penal Code since the victim, a minor girl, aged about 16 years was missing and the complainant being her mother had approached the police.

2. Later, the victim reported to her mother i.e. the complainant that she had left Saoner and gone to Wardha to meet the applicant, who gave false promise of marriage and then took her to the forest and committed sexual intercourse with her. As noted above, the applicant stood arrested on 22/06/2018 and since then, he has been behind bars. The investigation in the present case was completed and

charge-sheet was filed on 17/08/2018. Statements recorded during investigation show that the victim has described the incident in the same manner in which she described the incident to her mother i.e. the complainant.

3. A perusal of the documents pertaining to medical examination of the victim show that in her statement to the Doctor the victim had stated that there was sexual intercourse with the applicant with her will on the date and time of the incident. The papers pertaining to medical examination of the applicant also show that he has stated that he had consensual sex with the victim and further that he had given promise of marriage to the victim before the sexual act.

4. The learned counsel for the applicant has invited attention of this Court to school leaving certificate dated 24/09/2018, issued in favour of the applicant showing that his date of birth is 26/07/2000. On this basis, it is contended by the learned counsel for the applicant that on the date of the incident, even the applicant was yet to turn major because he was about one month short of turning 18 years of age. On this basis and on the basis of material on record indicating consensual sex between the applicant and the victim, it was contended by the learned counsel for the applicant that the present application deserved to be allowed,

particularly when the applicant did not have any criminal antecedents.

5. The learned APP has opposed the present application on the ground that the applicant himself has conceded to the fact that he did give promise of marriage before the sexual act, thereby showing that the grievance raised by the victim was supported by the material on record. It was further submitted that the applicant may influence the witnesses and, therefore, it was necessary that he was kept behind bars during the course of trial.

6. A perusal of material on record shows that in the statement given by the victim, it has been stated that she herself left Saoner and went to Wardha to meet the applicant, who had been calling her on her mobile and he stated that he wanted to marry her. It was also recorded in the medical papers concerning the victim that the actual act of sex was not forced upon her by the applicant. The document relied upon by the learned counsel for the applicant pertaining to the date of birth of the applicant would have to pass the test of trial before the Trial Court, but at this stage, prima facie, it does indicate that the applicant himself may have not turned a major at the time of incident. As regards the apprehension expressed by the learned APP regarding the possibility of the applicant influencing the victim and other witnesses, appropriate conditions

can be imposed on the applicant.

7. In view of the above, this Court is of the opinion that the present application can be allowed by imposing stringent conditions.

8. Accordingly, the application is allowed and the applicant is directed to be released on bail in Crime No. 341 of 2018, registered at Police Station Saoner, Dist. Nagpur on the following conditions.

a) The applicant shall furnish PR bond of Rs.25,000/- (Rs. Twenty Five Thousand) and surety in the like amount.

b) The applicant shall attend proceedings before the Trial Court on each and every date.

c) The applicant shall not contact the victim (prosecutrix) in any manner and he shall not influence the witnesses.

9. Needless to say that if the applicant violates any of the aforesaid conditions, the 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