

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

Criminal Application (BA) No.557 of 2019

Namdev Sitkura Chawre

Vs.

State of Maharashtra through P.S. Nagbhid, Dist. Chandrapur.

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

Court's or Judge's orders

Mr.M.N. Ali, Advocate for applicant
Mr.V.G.Maldhure, APP for non-applicant.

CORAM : MANISH PITALE, J.

DATED : AUGUST 7, 2019

The applicant has approached this Court for seeking bail as he stood prosecuted on 10.12.2018 in connection with FIR dated 9.12.2018 registered against him initially for the offences under Sections 376 (2) (f) and (j) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children From Sexual Offences Act 2012.

2. Upon investigation, charge-sheet was filed on 13.1.2019, wherein the applicant has been charged with offences under Sections 376 (2)(a), (f) and (j) of the Indian Penal Code. The allegations pertaining to the provisions of the Protection of Children From Sexual Offences Act 2012 have been dropped because although the complainant had claimed that she was 17 years old at the time of incident, the documents seized

during the course of investigation, including the birth certificate of the complainant demonstrated that she was more than 18 years old at the time of the incident.

3. The learned counsel appearing for the applicant points out that this is a case where the complainant, who is grand-daughter of the applicant, has made serious allegation of forcible sexual intercourse against her. Although, the allegation is alarming and the description of the incident has been given in detail by the complainant, the material on record indicates that the theory of forcible sexual intercourse, at present, does not appear to be *prima facie* supported by the material on record.

4. In the report leading to the registration of FIR, the complainant claimed that the applicant committed forcible sexual intercourse with her and that she was bleeding from her private part after the incident. But, a perusal of the medical examination report of the victim - the complainant shows that other than an injury on her forehead and hand, there was no injury found on the private part of the complainant. In fact, it was recorded that although the hymen was torn, it was an old tear and that there was nothing to show that there was a fresh injury on the hymen .

5. Apart from this, it is claimed on behalf of the applicant that he has been falsely implicated

because he had confronted the victim-complainant regarding her alleged involvement with a boy.

6. Taking into consideration the aforesaid material presently on record and the fact that the applicant is ordinarily resident of place at a distance from the residence of the complainant, this Court is of the opinion that the present application deserves to be allowed, subject to imposition of conditions.

7. Accordingly, the application is allowed and the applicant is directed to be released on bail in Crime No.489/2018 registered at Police Station, Nagbhid, District Chandrapur, on the following conditions:

- a) The applicant shall furnish PR bond of Rs. 25,000/- and surety in the like amount.
- b) The applicant shall not enter village Mithur, Tahsil Nagbhid, District Chandrapur, during the pendency of the trial.
- c) The applicant shall attend each and every date of the proceedings before the trial Court.
- d) The applicant shall neither tamper with the evidence nor influence the witnesses.

8. Needless to say that violation of any of the aforesaid conditions may lead to cancellation of bail granted to the applicant.

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

JUDGE

Ambulkar