

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

CRIMINAL APPLICATION (BA) NO.735/2019

Sheikh Sameer Abdul Jabbar .vs. State of Maharashtra, through PSO P.S.
Frezarpura, Amravati.

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. J. Y. Ghurde, A.P.P. for non applicant.

CORAM : V. M. DESHPANDE, J.

DATED : SEPTEMBER 5, 2019

This is an application for regular bail. Heard Mr. Ali, learned counsel for applicant and Mr. Ghurde, learned A.P.P. for non applicant-State. Also perused relevant portion of charge-sheet for disposal of present application.

Applicant is arrested in connection with Crime No.473/2019, registered with Police Station, Frezarpura, Amravati for an offence punishable under Sections 363, 376 of the Indian Penal Code read with Section 4 of the Protection of Children From Sexual Offences Act.

Applicant is arrested on 28.04.2019 and after completion of entire investigation, final report is filed by investigating officer before the Court on 25.06.2019.

Mother of victim approached to Police Station, Frezarpura on 24.04.2019 and gave her oral report. As per oral report, victim aged about 17 years could not pass her matric examination in the last year. Therefore, she is attempting to clear the said examination this year. As per

report, on 24.04.2019 at about 01:00 p.m. when she, her husband and victim were present in the house, victim without intimating anybody, left the house. Since, she failed to return to the house, mother of the victim approached to police station and gave intimation and also gave description of her daughter. In report, suspicion was raised against present applicant, who is her neighbour. On the basis of report, an offence was registered vide Crime No.473/2019 punishable under Section 363 of the IPC.

Search of girl was made and ultimately, the girl/victim was found to be residing in Jaripatka area of Nagpur, along with applicant. Her statement was recorded on 28.04.2019. As per her statement, one Bablu Cablewala is her neighbour and present applicant is his brother-in-law. He used to come to Bablu's house, resulting into love affair between them. As per statement of victim, on 24.04.2019, present applicant came to Amravati and made a phone call to her and proposed that he wishes to marry with her. Therefore, victim, at about 01:00 p.m. left her house and reached to Congress Nagar locality of Amravati. There, she took a phone from Smt. Kavita and from said cell phone, she made a phone call to applicant and called him at that place. From there, they left to Nagpur and started residing at Jaripatka. According to the statement, at Jaripatka, against wish of the victim, there was sexual relation.

In the charge-sheet, investigating officer has filed the school leaving certificate of victim. Perusal of said shows that the date of birth of victim is 09.10.2002.

Since applicant is arrested in connection with penal provision of the the POCSO Act, the prosecution will have to prove in strict manner the date of birth of the victim.

From report of mother of victim, and from statement of victim, it is clear that victim was not enticed to leave her house and on her own, she left her house. Therefore, in my view, law laid down by the Hon'ble Apex Court in **S. Varadrajana Vs. State of Madras**, reported in **AIR 1965 SC 942** will apply in the present case with its full force.

The investigation is over. Charge-sheet is already filed. The applicant, who is also aged 21 years, need not to continue his jail presence further during the pendency of the trial. Hence, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Sheikh Sameer Abdul Jabbar be released on bail in connection with Crime No.473/2019, registered with Police Station, Frezarpura, Amravati for an offence punishable under Sections 363, 376 of the Indian Penal Code read with Section 4 of the Protection of Children From Sexual Offences Act, on he executing P.R. Bond in the sum of Rs.10,000/-with one solvent surety in the like amount.
- (iii) Applicant shall not enter territorial jurisdiction of Amravati Municipal Corporation till culmination of trial, except on the date when the case is fixed before the Court at Amravati.

(iv) Applicant shall attend Police Station, Jaripatka once in a month i.e. on last Sunday of every month between 02:00 p.m. to 05:00 p.m., till culmination of the trial.

(v) Observations made in this order are purely prima facie in nature and those are made for consideration of this application. Learned trial Judge shall not get influenced by these observations at the time of trial.

The application is disposed of.

JUDGE