

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

CRIMINAL APPLICATION (ABA) NO.689 OF 2019

Ashok Brijkishor Jaiswal .Vs. State of Maharashtra,through P.S.O, P.S.
Nandanvan, Nagpur.

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

Court's or Judge's orders.

Mr. Adwait S. Manohar, Advocate for applicant.
Mr. S.S. Doifode, A.P.P. for non applicant- State.
Mrs. Smita Shingalkar, Advocate for complainant.

CORAM : V. M. DESHPANDE, J.

DATED : OCTOBER 17, 2019

Criminal Application (APPP) No. 1711 of 2019

1. This is an application filed on behalf of the complainant for permission to assist the prosecution.
2. Heard Mrs. Smita Singalkar, the learned counsel for the applicant-complainant.
3. For the reasons stated in the application, the application is allowed and disposed of.

Criminal Application (BA) No. 689 of 2019

1. Heard Mr.Manohar, learned counsel for the applicant and Mr.Doifode, learned Additional Public Prosecutor for the State along with Mrs. Smita Singalkar, learned counsel who has assisted learned Additional Public Prosecutor. Also perused the detailed reply filed on behalf of the prosecution.

2. The applicant is apprehending his arrest in connection with Crime No.704/2019 registered with Police Station, Nandanvan, Nagpur for an offence punishable under Sections 376, 354, 506 of the Indian Penal Code read with Sections 4, 6, 12 of the Protection of Children from Sexual Offences Act, 2012.

3. It is the submission of the learned counsel Mr. Manohar for the applicant that, applicant is falsely implicated in the crime inasmuch as according to his submission in order to save real culprit in Crime No.509/2019 registered with Police Station, Nandanvan, Nagpur, which was initially registered on the basis of report lodged by the mother of the victim in the said crime for the offence punishable under Section 363 and subsequently the offence registered against Darshan Dargave for the offence punishable under Sections 363, 376 (3) and Section 4 of the Protection of Children from Sexual Offences Act.

4. It is the submission of the learned counsel for the applicant that there is delay in lodging the first information report giving rise to the present crime inasmuch as according to the learned counsel for the applicant, perusal of the first information report would reveal that there are three incidents which are reported. The first incident is of the year 2016 and the second incident is of May-2019, which are in respect of the present victim, whereas the third incident is of May, 2019 which is in respect of the sister of the present

victim who is the victim in earlier crime i.e. Crime No.509/2019. He, therefore, submits that applicant who is having deep roots in the society be released on anticipatory bail.

5. Delay itself can never be a fatal to the prosecution. Merely because there is a delay that does not allow the Court to examine the prosecution case with tainted eyes. It is always open for the prosecution to explain the delay. The delay can be explained either during the course of enquiry/investigation or during the trial. Therefore, merely at the stage of consideration of the application for anticipatory bail, the delay itself cannot be the sole criteria to decide the application for anticipatory bail in favour of a person who is facing serious accusations.

6. From the reply as well as from the first information report, it is clear that present crime is not only registered against the present applicant, but against the mother of the victim also. It appears from the reply that the mother of the victim and the present applicant are having illicit relations and it appears that she is exposing her daughter to the lust of the present applicant.

7. The accusations in the first information report are very serious in nature. Therefore, *prima facie*, I am of the view that the investigator has rightly applied offence punishable under Section 328 of the Indian Penal Code.

8. This Court is of mindful that a very detailed examination and comment from this Court at this stage will not only cause prejudice to the prosecution but also the defence. At this stage the Court is required to see as to whether there are accusations against the applicant who is seeking pre-arrest bail and those allegations cannot be brushed aside very easily.

9. The submission of the learned counsel for the applicant that in order to save Darshan Dhargave in earlier crime the applicant is falsely implicated in the present crime, will be his defence and surely present stage is not the stage to consider the defence. It will always be open for the applicant to raise such defence during the trial.

10. The first information report would show that since last thirteen years the first informant along with her mother, her sister and her brother are residing in the agricultural field owned by the present applicant. The said statement is not at all disputed by the learned counsel for the applicant at the time of hearing of this application. That shows that the victim, her mother and sister are under the thumb of the present applicant and therefore, they are under the influence of the present applicant. Not only that the first information report shows that the mother of the victim has done certain acts facilitating the present applicant to commit heinous offence on her minor child.

10. In that view of the matter, I am of the opinion that present case is not the case wherein this Court should exercise its discretion in favour of such person.

The criminal application is rejected.

JUDGE

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