

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

CRIMINAL APPLICATION (BA) NO. 965 OF 2019

Pawan Santosh Patil (Thorat) .Vs. State of Maharashtra,through P.S.O, P.S.
Mlkapur (City), Dist. Buldana.

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

Court's or Judge's orders.

Mr. R.D. Karode, Advocate for applicant.

Mr. N.B. Jawade, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 19, 2019

Heard Mr. Karode, learned counsel for the applicant and Mr. Jawade, learned Additional Public Prosecutor for non applicant-State.

The applicant is arrested on 12.07.2019 in connection with Crime No.299/2019 registered with Police Station, Malkapur (City), Dist. Buldana for an offence punishable under Sections 363, 366, 376 and 506 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act.

The investigation is over charge-sheet is already filed. Initially, offence was registered against the applicant for the offence punishable under Section 363 of the Indian Penal Code in view of the report lodged by Sau. Sangita, mother of the victim.

In the report it is specifically stated that victim sat on the motorcycle of the applicant and left the place.

After the registration of crime investigation has started. The victim gave her location to her uncle Gajanan. Accordingly he came and brought her from Ranjangaon to her home and thereafter she was brought to police station.

The statement of victim was recorded on 10.07.2019. Her statement would show that she is aged about 17 years 8 months and age of the applicant who is taking education in B.Sc. was about 21 years and they got acquainted with each other through Facebook. Victim started chatting with applicant on Facebook and continued for about 1 ½ month. She did not disclose this fact to any of her relatives. Her statement would show that in view of the chatting on the Facebook they fell in love with each other. Her statement would further show that in June-2019 one of her relatives was admitted at Rainbow Hospital, Buldhana therefore she came to Buldhana and this fact she intimated to the applicant on Facebook. Therefore, the applicant came to the said hospital and there in the hospital the applicant took one selfie photograph with the victim. The allegation subsequently in the statement is that on the said, applicant started blackmailing. According to statement, on 26.06.2019, victim along with her sister Sakshi went to one ATM. There applicant came and asked her that she should accompany for marriage and thereafter they left the place. The statement would show that thereafter the applicant took the victim at various places by various means of transportation and ultimately at Ranjangaon, sexual intercourse was established. It is also stated in the report

that the applicant also found job and was doing the job. On one day when the applicant went for his night duty she made a phone call to her uncle Gajanan.

From the statement of the victim it is clear that the photograph which was taken by the applicant was not in objectionable condition. It was a simple selfie photograph that too in the hospital. The recitals in the statement would clearly show that she appears to be a consenting party. However if her age is proved to be below 18 years and if she is found to be a “Child” within the meaning of Protection of Children from Sexual Offences Act (for short “POSCO Act”), there is no meaning for her consent. However, since the provisions of the POSCO Act are invoked by the prosecution, the prosecution is duty bound to prove the age of the victim with an unimpeachable evidence to show that she is child within the meaning of POSCO.

In the present case, the investigation is already over and charge-sheet is already filed. Though charge is already framed, the trial is not yet commenced. The applicant is also aged about 21 years. Therefore, in my view, looking to the statement of the victim, the applicant need not to continue his jail presence with the hardened criminals. That leads me to pass following order:

ORDER

- (i) The application is allowed.
- (ii) Applicant-Pawan Santosh Patil (Thorat), be released in connection with Crime No.299/2019 registered with Police Station, Malkapur (City), Dist. Buldana for an

offence punishable under Sections 363, 366, 376 and 506 of the Indian Penal Code and under 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 attend Police Station, Malkapur (City), Dist. Buldana once a month i.e. on last Sunday of every month and shall be with the investigating officer from 11.00 a.m to 02.00 p.m., till culmination of the trial.

(iv) The applicant shall not try to contact the victim in any manner whatsoever.

(v) The observations made in this order are prima facie in nature and they are made only for deciding present application. The learned Judge of the Court below shall not get himself influenced by the observations made in this order.

The application is disposed of.

JUDGE

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