

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

CRIMINAL APPLICATION (BA) NO. 999/2019

Avinash s/o Ganesh Gajbhiye .vs. State of Maharashtra through PSO P.S.
Andhalgaon, Dist. Bhandara.

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

Court's or Judge's orders.

Mr. C. N. Anjankar, Advocate for applicant.
Mr. P. S. Tembhare, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 7, 2019

Heard Mr. Anjankar, learned counsel for applicant and Mr. Tembhare, learned A.P.P. for non applicant-State.

The applicant is arrested in connection with Crime No.110/2019 registered with Police Station, Andhalgaon, District Bhandara for an offence punishable under Sections 376 (3), 376 (2) (f) and 506 of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act).

The investigation is over. In the charge-sheet, applicant is shown as accused along with co-accused Jaipal Bagde.

The prosecution case as it could be seen from the perusal of the charge-sheet would reveal that Police Station, M.I.D.C. Nagpur City, received MLC 471 from Lata Mangeshkar Hospital, Wanadongari, Nagpur about

admission of the victim as an indoor patient. Thereafter, social worker Smt.Medha Patil, PSI Jayashri Gire and Police Constable Shubhangi went to the hospital and they recorded statement of the victim. On the basis of her statement, crime was registered with Police Station, M.I.D.C. Nagpur vide Crime No.315/2019 for an offence punishable under Sections 376 (3), 354, 506 of the Indian Penal Code and Sections 6 and 8 of the POCSO Act against husband of the victim's cousin sister and present applicant. As per the statement, prior to two years, victim had been to village Kandri, Tahsil Mohadi, District Bhandara, which falls under the jurisdiction of Police Station, Andhalgaon, to attend marriage ceremony. After the marriage was over, reception took place and in the night of the reception, in between 10.00 p.m. to 11.00 p.m., husband of the victim's cousin sister, Amrapali, asked her to accompany him for eating water pancakes (*panipuri*), and took her on motorcycle. However, instead of taking to the place of eatable, she was taken in the graveyard and there she was sexually assaulted by him by committing sexual intercourse. However, she did not disclose the said to anybody. She further states that in the year 2018, to celebrate festival of Pola, she again had been to Kandri and when she was sleeping in hall along with others, the present applicant at 12.00 O'clock in the night, came and he took her along with him in the bathroom. When she resisted, it is the submission of the victim that the applicant stated that since she has enjoyed sex with brother

in law, she should enjoy sex with him and thereafter took her in the bathroom. According to the statement, the applicant inappropriately touched her body and also touched his private part with her private part. It is her statement that due to tension, she did not disclose these facts to anybody. It is also stated in the statement that prior to 2-3 months of her statement, due to tension, she tried to cut her veins. At that time, when her brother asked, she disclosed that the atrocities committed on her by co-accused as well as present applicant. It is further stated in the statement that on 29.05.2019, there was house warming ceremony of her house at Wanadongri and DJ was being played and on that count there was a quarrel between her brother and her cousin and thereafter due to tension she fell unconscious and she was taken to the hospital, firstly at Hingna and from there she was admitted at Lata Mangeshkar Hospital, Wanadongri.

Charge-sheet further shows that on 01.06.2019, the Deputy Commissioner of Police, Nagpur, after examination of the entire papers, found that since the offence was committed within jurisdiction of Andhalgaon Police Station, he passed an order to transfer the crime to Andhalgaon and accordingly papers were sent to Andhalgaon Police Station and Crime No. 110/2019 was registered with Police Station, Andhalgaon.

The charge-sheet shows that incident attributed to the present applicant has occurred in the year 2018 at the

time of Pola festival. Thus, obviously there is a delay in lodging the FIR. However, merely because there is a delay, the prosecution case need not be viewed with tainted glasses inasmuch as it is always open to explain the delay during the course of trial by the prosecution.

Be that as it may. The investigation papers would show that the victim was admitted in Lata Mangeshkar Hospital, Wanadongri on 30.05.2019 and on the next day she was discharged. The discharge card is available on record. Diagnosis shows that Dimorphic Anaemia. As per the Butterworths Medical Dictionary, meaningn of Dimorphic Anaemia is as under:

“Anaemia in which there is a combined macrocytic and microcytic hypochromic anaemia on account of multiple deficiencies. The marrow is not megaloblastic and there is reputed to be poor response to liver extracts, folic acid and vitamin B12.”

The blood reports of victim which are part and parcel of the victim shows that her hemoglobin was much below the required standard and platelet count was up to the mark.

Insofar as the present applicant is concerned, the allegation against him is that he has inappropriately touched body of victim and also touched private part of the victim by his private part.

In my view, such touching is obviously with sexual intent. The victim does not state that the applicant

has committed sexual intercourse with her. Prima facie, act on the part of the applicant will be a sexual assault as envisaged under Section 7 of the POCSO Act and for that punishment is prescribed in Section 8 of the POCSO Act. The maximum punishment for the said is 5 years.

The applicant is in jail since 08.07.2019. The investigation is over. The victim is resident of Nagpur whereas from the charge-sheet itself, the applicant is resident of Kandri, Taluka Mohadi, District Bhandara.

In that view of the matter, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Avinash s/o Ganesh Gajbhiye, be released on bail in connection with Crime No.110/2019 registered with Police Station, Andhalgaon, District Bhandara for an offence punishable under Sections 376 (3), 376 (2) (f) and 506 of the Indian Penal Code and Section 6 of the Protection of Children From Sexual Offences Act, 2012, on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) The applicant is directed to attend Police Station, Andhalgaon, twice a month i.e. on third Tuesday and fourth Wednesday till culmination of the trial and he shall be in the Police Station between 03.00 p.m. to 05.00 p.m.
- (iv) Applicant is directed not to enter the jurisdiction of Police Station, M.I.D.C. Nagpur until culmination of trial.

(v) The applicant shall not try to contact the victim by any mode.

(vi) The applicant shall attend the Court on each and every date.

(vii) All the observations made in this order are prima facie in nature and made only for the purpose of deciding present application for bail. The learned trial Judge shall not get influenced by any of the observations at the time of the trial.

The application is disposed of.

JUDGE