

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

CRIMINAL APPLICATION (ABA) NO. 754 OF 2019

Sanjay alias Nago Ramdas Wandhare .Vs. State of Maharashtra,through
P.S.O, P.S. Shegaon, Tq. Warora, 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. S.V. Sirpurkar, Advocate for applicant.

Mr. P.S. Tembhare, A.P.P. for non applicant- State.

CORAM : V. M. DESHPANDE, J.

DATED : NOVEMBER 29, 2019

This is an application for pre-arrest bail.

Applicant is apprehending his arrest in connection with Crime No.421/2019 registered with Police Station, Shegaon, Tq. Warora, Dist. Chandrapur for an offence punishable under Section 376(2)(n) of the Indian Penal Code.

Heard Mr. S. V. Sirpurkar, learned counsel for applicant and Mr. P. S. Tembhare, learned Additional Public Prosecutor for the non applicant-State. Also perused the reply filed on behalf of the prosecution.

A crime is registered on the basis of the oral report lodged on 27.09.2019 by the victim herself. Date of birth is disclosed by the victim herself in the report. It is 20.12.2000. She states that her age is 19 years, thus victim is not a "Child" within the meaning of the provisions of the Protection of Children from Sexual Offences Act. As per the report, applicant – Sanjay alias Nago is a resident of

Wadgaon (Aab) whereat the victim resides. He works on agricultural field. As per report, when victim had been for immersion of Durgadevi and when she was returning that time cousin of the applicant came there and asked her cellphone number as it demanded by applicant since applicant was intending to talk with the victim. The victim states in her report that she gave her cellphone number. On the next day, she received phone call from the applicant in which he disclosed that he loves on her and also asked as to whether she loves him. The report states that the victim replied that she will give her response after two days considering his proposal. On 3rd day again victim received phone call from applicant and that time applicant asked what is her response. Upon that as per report, victim stated that she also loves on him. Thereafter there were regular telephonic conversations in between them resulting into love affair. As per report, he used to take victim on his motorcycle here and there and also reached to her college. However she states that during this period at no point of time there were physical relations between them. The report states that applicant informed the victim that only after finishing her education, they will marry. As per report about six months prior to lodging of the report she went along with applicant at a room of applicant's friend wherein the applicant, as per report, asked for sexual relation. Upon that, as per report, the victim states if he is ready to marry then only she will permit to have sexual intercourse. As per the report, the applicant replied in affirmative and thereafter

sexual intercourse took place in between them. According to the report, thereafter in the house of the applicant there were sexual relations. However, according to report, now applicant is not ready to marry with her and therefore the report is lodged.

From the recitals of the aforesaid, it is clear that sex between the victim and applicant was consensual one. It will be open for the prosecution to prove that firstly there was a promise on the part of the applicant and thereafter alone took sexual intercourse. The recital in that behalf made will have to be tested during the course of the trial. Further, in my view looking to the aforesaid nature of the accusation in the first information report the custodial presence of the applicant is not at all warranted.

This Court (Coram : Rohit B. Deo, J.) on 28.10.2019 protected the applicant on a condition that he shall attend the police station on the dates specified in the said order. The applicant did attend the police station and has already joined the investigation is the statement of the learned Additional Public Prosecutor on the the basis of the instructions received from the investigating officer. Consequently, I pass following order:

ORDER

- (i) The criminal application is allowed.
- (ii) In the event of arrest in connection with Crime No.421/2019 registered with Police Station, Shegaon, Tq. Warora, Dist. Chandrapur for an offence punishable under Section 376(2)(n) of the Indian Penal Code, applicant –

Sanjay alias Nago Ramdas Wandhare, be released on bail 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, Shegaon, Tq. Warora, Dist. Chandrapur once in 15 days till filing of the charge-sheet.

The application is disposed of.

JUDGE

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