

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

CRIMINAL APPLICATION (BA) NO.1115/2019

Shri Sagar Gulab Girhe

..VS..

State of Mah., thr. Channi Police Station, Taluka Patur and District Akola

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

Court's or Judge's Order

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Shri Z.Z.Haq, Counsel for the Applicant.
Shri N.B.Jawade, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : DECEMBER 19, 2019.

1. This is an application for grant of bail.
2. Heard learned counsel Shri Z.Z.Haq for the applicant and learned Additional Public Prosecutor Shri N.B.Jawade for the State.
3. The applicant is arrested on 22.8.2019 in connection with Crime No.226/2019 registered with Channi Police Station, Akola for offences punishable under Section 376(2)(J)(N) of the Indian Penal Code and under Sections 3(A), 4, 5(L), and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, "**the said Act**").
4. Investigation is over and chargesheet is already filed.
5. Report is lodged by victim herself. It is dated 22.8.2019. In the said report, she disclosed her age as 17 years. In the report, it is disclosed that the applicant belongs

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to caste to which she belongs to and resident of the very same village. Recital of the First Information Report shows that both were in contact with each other and as per the report, by extending promise of marriage, he committed sexual intercourse, however he ultimately refused. Therefore, on 9.8.2019 victim tried to commit suicide by consuming pesticide. She was admitted in a hospital and after discharge from hospital, the report was lodged.

6. *Prima facie* it appears, as it could be gathered from chargesheet, that sexual intercourse was on promise of marriage, which presupposes that it was not with force. The prosecution will be required to prove the fact during trial that firstly there was promise of marriage and believing the said promise, victim extended her consent for sex.

7. Be that as it may, the prosecuting agency applied provisions of the said Act. If the girl is child within meaning of the said Act, consent is irrelevant. To show that victim is child, chargesheet contains school leaving certificate. Birth certificate given by authority under the Births and Deaths Registration Act is not available in chargesheet. The prosecution agency will have to prove date of birth of victim in accordance with law to reach to a conclusion that victim was child within meaning of the said Act.

8. As on today, investigation is over and chargesheet is already filed. The applicant's age is also 22 years and his past record is absolutely clean. It is submitted

before this Court that as on today in sessions trial even charge is not framed. Therefore, it is clear that in near future trial will not be decided. In such circumstances, I am of view that the applicant can be released on bail on certain conditions. That leads me to pass following order:

ORDER

- (1) The criminal application is allowed.
- (2) Applicant-Sagar Gulab Girhe, in connection with Crime No.226/2019 registered with Channi Police Station, Akola for offences punishable under Section 376(2)(J)(N) of the Indian Penal Code and under Sections 3(A), 4, 5(L), and 6 of the Protection of Children from Sexual Offences Act, 2012, be released on bail on his executing a P.R.Bond in the sum of Rs.10,000/- with one solvent surety of the like amount.
- (3) The applicant is directed not to enter territorial jurisdiction of village Sasti falling under Channi Police Station, Akola, till culmination of trial.
- (4) The applicant is directed to furnish his residential address to learned Judge of Court below, before whom bail bonds will be executed, so also to Investigating Officer.
- (5) Learned Judge of Court below before whom bail bonds will be executed shall direct the applicant to attend the

police station once in a week to nearest police station of his residence, till culmination of trial.

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!