

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

CRIMINAL APPLICATION (BA) NO.48/2020

Mayur s/o Devidas Bhagat

..VS..

State of Mah., thr. PSO PS Khadan, Akola, 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 A.M.Tirukh, Counsel for the Applicant.
Shri M.K.Pathan, Addl.P.P. for the State.

CORAM : V.M.DESHPANDE, J.

DATED : FEBRUARY 10, 2020.

1. Heard learned counsel Shri A.M.Tirukh for the applicant and learned Additional Public Prosecutor Shri M.K.Pathan for the State. Also, perused reply filed on behalf of the State.

2. The applicant is arrested on 15.12.2019 in connection with Crime No.689/2019 registered with Khadan Police Station, Akola for offences punishable under Sections 354, 354(A), 354(D), and 342 read with Section 34 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act, 2012.

3. Learned Additional Public Prosecutor Shri M.K.Pathan for the State, primarily opposed the application on the ground that investigation is in progress and chargesheet is yet to be filed. However, he fairly submits that though chargesheet is yet to be filed, entire

investigation is almost over and formality of filing of chargesheet is remained to be done.

1. First Information Report is lodged by victim herself in which she stated her as 17 years. As per the First Information Report, the applicant gave his cellphone number on a chit and asked her that she should contact on the said cellphone. Accordingly, there was contact between them. As per the First Information Report, on 13.12.2019 at about 5:30 to 6:00 a.m., complainant met the applicant who asked her that she should elope with him. Reply on behalf of the State shows that subsequently the complainant gave a message in night at 11:30 that she will be leaving her house at 4:30 a.m.. Accordingly, as per the First Information Report, on 15.12.2019 at 6:30 a.m., she went outside and the applicant took her on motorcycle and as per the First Information Report she was asked to sit in a garage which was locked from outside. After 3-4 hours, her father came and she stepped outside of the said garage. According to the First Information Report, since last 2 years the applicant is following victim.

2. The applicant is in jail since 15.12.2019. In view of fact that victim was aged about 17 years and it would be obligatory on the part of the prosecution to prove her age that she was child at the time of commission of offence within the provisions of the POCSO Act, in my view, when the applicant is not having past criminal record at his discredit, discretion can be exercised in his favour. That

leads me to pass following order:

ORDER

(1) The criminal application is allowed.

(2) Applicant-Mayur s/o Devidas Bhagat, in connection with Crime No.689/2019 registered with Khadan Police Station, Akola for offences punishable under Sections 354, 354(A), 354(D), and 342 read with Section 34 of the Indian Penal Code and under Section 8 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 shall attend the Police Station once a week i.e. on every Sunday, till filing of chargesheet, and shall be with Investigating Officer from 11:00 a.m. to 3:00 p.m..

(4) After filing of chargesheet, the applicant shall attend the police station once a month i.e. on 3rd Sunday of every month, till culmination of trial.

With this, the criminal application stands disposed of accordingly.

JUDGE

!! BRW !!

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