

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

CRIMINAL APPLICATION (BA) NO.65/2020

Nitin Mahadeorao Bhalerao .vs. State of Maharashtra through PSO P.S.
Dahihanda, Tq. Akot, Dist. Akola

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

Court's or Judge's orders.

Mr. Anil Mardikar, Senior Advocate assisted by
Mr. S. G. Joshi, Advocate for applicant.
Mr. S. M. Ghodeswar, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : FEBRUARY 6, 2020

Heard Mr.Mardikar, learned Senior Counsel for applicant and Mr. Ghodeswar, learned A.P.P. for non applicant-State. Also perused the charge-sheet.

The applicant is arrested on 28.09.2019 in connection with Crime No.231/2019, registered with Police Station Dahihanda, Akola for an offence punishable under Sections 376 (1) (2) (N) (i), 506 of the Indian Penal Code (IPC) and Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act.

The investigation is over and charge-sheet is already filed.

The report is lodged by victim herself and in the report, she disclosed her age as 16 years. Even as per the FIR, first sexual intercourse between applicant and victim took place on 04.02.2019 and continued till 01.05.2019.

From the FIR, after May-2019, i.e. from June-2019 till filing of the FIR i.e. 28.09.2019, brother of the applicant by name Anil used to have sexual intercourse with her.

Of course, it will always open for the prosecution to explain delay during the course of trial. However, the fact remains that there is considerable delay in lodging the FIR.

The applicant is being prosecuted for the provisions of the POCSO Act. Therefore, it will be obligatory on the part of the prosecution to prove during trial that victim was "Child" at the relevant time. As per the Ossification Test, the victim is more than 17 years and less than 19 years. The birth certificate, which is part and parcel of the charge-sheet, shows that date of birth of the victim is 20.08.2003.

In view of these two documents, the prosecution will have to prove strictly in accordance with law, the age of the victim. Further Anil, against whom allegations of sexual intercourse similar to that of the present applicant are there in the FIR, is released on bail by the learned Additional Sessions Judge, Akot on 07.12.2019. Further, the applicant is not having any past criminal record.

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

ORDER

- (i) The application is allowed.
- (ii) Applicant-Nitin s/o Mahadeorao Bhalerao be released on bail in connection with Crime No.231/2019, registered with Police Station Dahihanda, Akola for an

offence punishable under Sections 376 (1) (2) (N) (i), 506 of the Indian Penal Code (IPC) and Sections 4, 8 and 12 of the Protection of Children From Sexual Offences Act, 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 twice a month i.e. on first and third Saturday of each month till culmination of the trial.

(iv) The applicant shall not try to pressurize the victim or any of the prosecution witnesses.

The application is disposed of.

JUDGE

kahale