

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO. 274/2020

Ishwar S/o Ganpat Pawar,

..VS..

State of Maharashtra, through P.S.O., Police Station Ramnagar, 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. Wahane, Advocate for applicant.

Mr. H. D. Dubey, A.P.P. for non-applicant.

CORAM : N. W. SAMBRE, J.

DATED : 06.07.2020

1. Hearing was conducted through Video Conferencing and all the learned Advocates agreed that the audio and visual quality was proper.

2. Heard Mr. S. Wahane, learned Advocate for the applicant and Mr. H. D. Dubey, learned A.P.P. for the prosecution.

3. Applicant is seeking regular bail in Crime No.1232 of 2019 for offence punishable under Sections 376(2)(n) and 376 (3) of Indian Penal Code and Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012. The incident in question alleged to have taken place in between to 07.01.2019 to 31.01.2019.

4. The applicant is maternal uncle of the victim girl and it is the case of the prosecution that the applicant has committed an offence punishable under

Sections 376(2)(n) and 376 (3) of Indian Penal Code and Section 4 and 8 of Protection of Children from Sexual Offences Act, 2012.

5. From the record, it would be inferred that the victim girl was minor on date of the incident.

6. Mr. S. Wahane, learned counsel for the applicant submits that the applicant is falsely implicated in the crime. So as to establish his case, he would invite my attention to the complaint lodged by the victim on 10.09.2019 naming one Sandesh as an accused responsible for the aforesaid offence.

7. For the purpose of deciding the application, the nature of allegations are required to be appreciated. The applicant and mother of the victim are cousins and the said relation has prompted the applicant to visit the place of the victim girl on various occasions. Initially it was the case of the prosecution as reflected in the complaint dt. 10.09.2019, that victim was residing with her cousin sister, some time in January 2019 when a boy by name Sandesh who was operating a catering agency, developed illicit relations with her and raped her, resulting it, she getting pregnant out of the said relationship. As a consequences of above, she delivered a female child on 10.09.2019.

8. Subsequent to above, victim girl on

05.10.2019 with same set of allegations replaced Sandesh with that of applicant.

9. In the aforesaid background, Mr. S. Wahane, learned counsel for the applicant would urge that the role attributed to Sandesh in first complaint is not investigated. According to him, the prosecution story that the applicant has committed the offence in the residential place of the victim girl particularly when her parents were present is not reposing faith. He would further claim that if investigation in the matter of role attributed to Sandesh would have been verified, the story would have resulted in somewhat different result about D.N.A. test.

10. Mr. S. Wahane, learned counsel for the applicant would harp upon the unexplained delay in lodging First Information Report so as to demonstrate innocence of the accused in crime in question.

11. While countering the submissions of Mr. H. D. Dubey, learned APP would urge that the investigation carried out till date, including that of the statement of victim and the other witnesses reflect prima facie involvement of the applicant. According to him, the D.N.A. report speaks voluminous about the prima facie involvement of the applicant crime in question.

12. Considering the nature of allegations against

the applicant, Mr. H. D. Dubey, learned APP would urge that there is strong evidence available against the applicant and as such, the application is liable to be rejected.

13. Considered the rival submissions.

14. Mr. S. Wahane, learned counsel for the applicant has invited attention of this Court to the initial complaint dated 10.09.2019 so as to falsify the case of the prosecution as reflected against the applicant in the complaint dated 05.10.2019. However it can be inferred from the record that the victim girl at the instance of the applicant has tried to misled the prosecution there by naming one Sandesh. Which fact is explained by her in the said statement.

15. Apart from above, this Court cannot be oblivious to the fact that the applicant is closely related to the victim girl (cousin brother of mother of victim) and has derived undue advantage of said relationship in the commission of crime. The statement of Lodge owner at Gondia and Dongargarh and extract from the Customer Register demonstrate that applicant has visited these hotels with victim on number of occasion.

16. The *prima facie* involvement of the applicant can be easily inferred from the D.N.A. report which is placed on record.

17. As such, the statement of the victim girl and the investigation carried out till date as reflected in the charge-sheet, *prima facie*, demonstrates the direct involvement of the applicant in the crime.

18. In the aforesaid background, in my opinion, no case for grant of bail is made out. The application as such stands rejected.

19. This order be communicated to the counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

Kirtak