

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

CRIMINAL APPLICATION (BA) NO.491 OF 2020

(Rupchand s/o Dilip Shende Vs. State of Maharashtra thr. PSO PS Bhandara, Tah. &
Dist. Bhandara)

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

Court's or Judge's orders.

Shri K.S. Motwani, Advocate for Applicant.
Shri J.Y. Ghurde, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 21st SEPTEMBER, 2020.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2] Heard.

3] The applicant is seeking regular bail in Crime 344/2019 registered with Bhandara Police Station, Bhandara for offence punishable under sections 376(3), 376(2)(n) of the Indian Penal Code read with section 4, 6, 5 (j)(ii)(l)(q) and 10 of the Protection of Children from Sexual Offences Act, 2012.

4] The learned counsel Shri Motwani would submit that the sexual relationship was clearly consensual. Relying on a decision rendered by a learned Single Judge

(S.K. Shinde, J.) in Criminal Bail Application 234/2020. The learned counsel submits that the case of the applicant is similarly situated and the observations in the said judgment apply with equal vigour to the present case.

5] The submission is noted only for rejection. While considering grant of bail, the orders passed in unconnected matters serve extremely limited, if any, purpose. Moreover, in the said decision it is made amply clear that bail is granted in the peculiar facts (*emphasis supplied*).

6] Adverting to the facts of the case, the D.N.A. report which is placed on record opines that the applicant is the biological father of the child born to the prosecutrix. The prosecutrix was a minor when the applicant established sexual relationship with her, promising marriage. The prosecutrix conceived. The case of the prosecution is that even when the minor prosecutrix was carrying her child, she was subjected to sexual intercourse. When the family members of the minor confronted the applicant, he straight away refused to marry the prosecutrix.

7] At this stage, at least *prima facie*, there is ample material in the form of D.N.A. report to show that the applicant established sexual relationship with the minor prosecutrix and that he is the biological father of the child. The submission that the sexual relationship was consensual

merits rejection. Considering that the prosecutrix was a minor, the question of consent, even if it is assumed that there was consent, is immaterial. The material in the charge-sheet is sufficient to at least *prima faice* come to a conclusion that the prosecution case that the minor was induced to have sexual relationship with the promise to marry, and which promise the applicant never intended to fulfill, is supported by sufficient material.

8] The allegations are grave and the punishment is extremely stringent.

9] No case is made out for grant of bail.

10] The application is dismissed.

11] However, the trial Court is requested to expedite the trial and to conclude the same as soon as possible, after the resumption of regular court functioning.

JUDGE