

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

CRIMINAL APPLICATION (BA) NO. 538 OF 2020

Sunil s/o Bhura Sawalkar

..vs..

State of Maharashtra, thr. P.S.O

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

Court's or Judge's orders

Shri P.R. Agrawal, Advocate for applicant.
Shri S.D. Sirpurkar, A.P.P. for respondent-State.

CORAM : VINAY JOSHI, J.
DATED : 11/12/2020

Heard.

2. The applicant is claiming bail in Crime No. 311 of 2019 registered at Dharni Police Station, District Amravati for the offence punishable under Sections 376(2)(N), 504, 506 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"). It is the submission of applicant that there was love affair in between him and victim out of which they had physical intimacy. The applicant was always ready to marry with the victim and as on date also he is ready. It is submitted that the victim and a new born baby are presently residing at the house of the applicant and they are desirous to marry. Moreover, the applicant has disputed the age of victim as stated in the police papers.

3. The State has resisted the bail by pointing out that the offence is of serious nature and if, the applicant is released on bail he may tamper the prosecution witnesses.

4. The victim's age is 17 years has lodged the report on 24.07.2019 stating entire episode from the month of March 2016. Precisely, it is the contention that the applicant was of her acquaintance and their casual relationship turned into love affair. They had physical relations on several occasions during the period of three years post March 2016. All the time, the applicant promised her for marriage and had enjoyed sexual pleasures. Moreover, she stated that she had conceived from the applicant during the meantime. Finally, she stated that on 23.07.2019, the applicant refused to marry, hence, the report.

5. Bare reading of F.I.R. discloses that the entire episode erupted out of love affair. The girl is at the verge of majority as well as the applicant also disputed her age. There is no dispute that the applicant never applied force or compulsion while committing the act. It is a case of consent. In order to establish that consent vitiates by mis-representation of fact, it requires to be shown that since inception the applicant had deceitful intention. As stated and pleaded in the application, at present victim and new born baby stays with the applicant. Moreover, already investigation is complete and charge-sheet has been filed. In the circumstance, there is no difficulty in releasing the applicant on bail, therefore following order is passed :

- (a) The applicant-accused namely Sunil s/o Bhura Sawalkar is released on bail in Crime No. 311 of 2019 registered with Dharni Police Station, District Amravati on his

furnishing P.R. bond of Rs.25,000/- with one or two sureties in the like amount.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise tamper or pressurize the prosecution evidence.

The Criminal Bail Application is disposed of accordingly.

JUDGE

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