

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

LD-VC-CRI. BAIL APPLICATION NO. 325/2020

Gajanan S/o Shivaji Gawai,
..VS..

The State of Maharashtra, through P.S.O., Police Station Channi, Tq. Patur, 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. N. R. Tekade, Advocate for applicant.
Mrs. S. V. Kolhe, A.P.P. for non-applicant.

CORAM : N. W. SAMBRE, J.

DATED : 09.07.2020

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

2. Heard Mr. N. R. Tekade, learned Advocate for the applicant and Mrs. S. V. Kolhe, learned APP for the non-applicant/State.

3. The applicant came to be charge-sheeted in Crime No.338 of 2019 for an offence punishable under Sections 376(2)(I)(J) and 506 of Indian Penal Code with Sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012.

4. As per the prosecution case, the incident took place some time on 27.11.2019. The applicant/accused, who is running a Grocery Shop has committed sexual assault on the victim girl aged about five years.

5. The submissions of Mr. N. R. Tekade, learned counsel for the applicant, is of false implication. According to him, there are neither any independent witnesses nor the medical evidence supports the case of the prosecution.

6. Mrs. S. V. Kolhe, learned APP while strenuously opposing the prayer for grant of bail would urge that, at this stage the Court is required to consider the incident happened and whether it was rightly reported. According to her, the Court need not appreciate the evidence. As such, she sought rejection of the application.

7. Perused the statement of the victim girl, recorded as per Section 164 of Code of Criminal Procedure, medical evidence available on record and the statements of other witnesses.

8. The incident claimed to have taken place at around 06.30 pm. on 27.11.2019, whereas the complaint came to be lodged on next date i.e. on 28.11.2019 at 06.00 pm. This delay of 24 hours is sought to be explained only on the ground that she was unable to travel in the same evening. However, for next entire day, no complaint was lodged which gives rise to suspicion as to occurrence of the incident.

9. Apart from above, the medical evidence speaks of an old heal hymen tear and no fresh injuries could be noticed on the private parts of the victim girl. There is no corroborating evidence to support that the allegations of sexual assault made against the applicant.

10. There are no other antecedent. The charge-sheet in the matter is already filed.

11. In the aforesaid background, in my opinion, the case for grant of bail is made out.

12. The applicant as such, is directed to be released on bail in Crime No.338/2019 for offence punishable under Sections 376(1), 376(A)(B)(J) and 506 of Indian Penal Code and Sessions 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 upon furnishing P.R. bond of Rs.25,000/- with one or more sureties in the like amount.

13. Till the charge is framed in the matter, the applicant shall not enter the village where the incident had occurred.

14. The applicant shall not influence the witnesses or tamper the evidence. The application stands **allowed** in above terms.

15. 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