

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

CRIMINAL APPLICATION [BA] NO. 745/2020.

Indrajitsingh Jogasingh Zagade.

-VERSUS-

The State of Maharashtra.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.R. Agrawal, Advocate for the Applicant.
Shri S.D. Sirpurkar, A.P.P. for Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : DECEMBER 09, 2020.

Heard.

2. The applicant is arrested by the police of Ballarshah Police Station, District Chandrapur in connection with Crime No. 72/2020 for the offence punishable under Section 376[2][n], 506, 323 of the Indian Penal Code, Sections 4 and 8 of the Protection of Children from Sexual Offences Act, and Section 67[a] of the Information Technology Act.

2

3. The applicant/accused had applied for regular bail in Sessions Court after filing of the charge sheet, which came to be rejected vide impugned order dated 27.08.2020. Before arrest, the applicant/accused had applied for pre-arrest bail, however, he could not succeed, hence, he surrendered. This is first bail application before this Court after filing of the charge sheet.

4. The applicant/accused has claimed bail on the ground of innocence, false implication, delay in lodgment of FIR, inadequacy of evidence etc. Besides that, the learned counsel for the applicant would submit that it is a clear case of consensual sex out of love affair. He has disputed the date of birth of the victim. Moreover it is submitted that though the alleged occurrence took place first time in the month of November, 2017 the report has been lodged after three years. It is the submission that at the time of first alleged occurrence, the applicant/accused was below 18 years of age. According to the applicant, now

3

investigation is complete and charge sheet has been filed. Trial would take its own time, therefore, he requested to release the applicant on bail.

5. The State has resisted this application by filing reply affidavit. Learned A.P.P. has serious objection for releasing the applicant on bail, primely on the ground that the offence is of serious nature and there is every likelihood that if the applicant is released on bail, he would pressurize the prosecution witnesses. Moreover, it is contended that the applicant gave continuous threat to a minor girl and had sexually exploited her, therefore, he does not deserves any bail.

6. On the basis of report dated 22.01.2020, lodged by the victim aged 16 years, a crime was registered. The victim stated her date of birth as 05.05.2003. She narrated that in the year 2017, she got acquainted with the applicant/accused and they were in talking terms. First time in the month of November, 2017 the accused

4

called her at the house of his friend under the pretext to introduce her with his friends' wife. At that time, some intoxicant substance was administered to her and accused took her nude photographs. On the basis of these photographs, he had threatened her to make it viral and sexually exploited her. The accused again called her within three days, beaten her and had forcible sexual intercourse.

7. The victim stated that in the year 2019, her marriage was arranged with one person, however, the accused by giving threats had sexual intercourse and her marriage was unsettled. On 09.12.2019, the accused shown the nude video of victim to her mother and extorted a sum of Rs.50,000/- from them. The last incident quoted is that of 21.01.2020, when the accused again threatened the victim to make viral her nude photographs and therefore, a report.

8. As per the FIR, the episode started in the month of November, 2017 when the accused

5

had allegedly forcible sexual intercourse with the victim by giving threat to make viral her nude photographs. Apparently, though such incidence took place in the month of November, 2017 no report has been lodged. As per FIR, on 09.12.2019, nude photographs of the victim was shown to her parents on the basis of that they were compelled to pay some amount, still parents of victim have not lodged report. During the course of investigation, no material is collected to show that the accused had snapped nude photographs of victim or made her nude video viral on app known as "Ticktok", as per the allegations leveled in the FIR.

9. Perusal of statement of witnesses namely Sahil Bano, Radha Bano, Sandeep Rajkumar, reveals that the accused allegedly took victim at their house and in their presence took her into the room and remained for some time. Prima facie, it indicates that the accused did not took the victim to secluded place, but, at the house where

6

families were very much staying. Though the first instance was of November, 2017 for three years no grievance was put, which prima facie supports the case of consensual sex out of love affair.

10. The defence has seriously challenged the date of birth of victim by canvassing that during the course of evidence, the defence would point out that the birth certificate is incorrect. The learned defence counsel took me through the birth certificate to impress that the name of victim was corrected in the year 2018, which is an attempt to shatter worth of birth certificate. Of course this is not the stage to make any comment about the genuineness of the birth certificate. However, it will be subject to scrutiny at the time of trial.

11. By and large, prima facie it appears that this is a case of consensual sexual intercourse. Despite alleged serious acts took place in the month of November, 2017 the matter has not been reported to the police. Moreover, parents were made aware prior to one year from the date of

7

occurrence, still there was no report. The allegations about taking nude photographs does not have any foundation in the form of evidence.

12. Learned A.P.P. would submit that mobile hand set of the accused is sent to forensic lab of which report is awaited. However, as on date prima facie there is no material to support the allegations of taking nude photographs and video. Of course it is open in the trial to establish the said fact by adducing necessary evidence. The accused is a young boy of 20 years. Admittedly there are no antecedents. Prima facie it appears that the entire episode is an outcome of love affair. True there may be possibility of pressuring the prosecution witnesses, however, care can be taken by imposing stringent conditions. Certainly the trial will take its own time for disposal according to law.

13. Having regard to the age of the accused, it may have adverse effect if he is incarcerated for long period, particularly on the

8

background of above facts. Inview of that the accused had made out a case for grant of bail. Hence, the following order.

- (i) Criminal Application is allowed.
- (ii) The applicant /accused Indrajitsing Jogasing Zagade be released on bail on his furnishing solvent surety to the tune of Rs.50,000/- with one surety in the like amount.
- (iii) The applicant/accused shall not enter the territorial limits of Ballarpur/ Ballarshah till the conclusion of the trial.
- (iv) The applicant/accused shall not tamper or pressurize the prosecution witnesses in any manner.
- (v) Criminal Application is disposed of accordingly.

JUDGE

Rgd.