

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

LD-VC-BA NO. 1057 OF 2020

Ashish s/o Naresh Muley

vs.

State of Maharashtra through PSO Pulgaon, Tah. Deoli, District Wardha

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

Court's or Judge's orders

Shri. D. R. Bhoyar, counsel for applicant.
Shri. Damale, APP for non-applicant State.

CORAM : MANISH PITALE J.

DATED : 28/08/2020

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

2. Heard learned counsel for the applicant. This is an application for bail filed by the applicant in respect of FIR dated 29/01/2020 registered against him for offences under Section 354 and 354-D of the Indian Penal Code (IPC) read with Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POSCO). The applicant was arrested on the same day and he has continued to remain behind bars till date.

3. The learned counsel appearing for the applicant invited attention of this Court to the oral report on the basis of which the FIR was registered. It was

submitted that even if the description of the incident as given by the minor victim was to be taken into consideration, as also the nature of the offences registered against the applicant, it can be said that since the applicant had already remained behind bars for more than six months, his prayer for release on bail could be considered by this Court.

4. It was further submitted that the Sessions Court rejected the bail application of the applicant mainly on the ground that there was clear apprehension that the applicant would influence minor victim girl if he was released on bail.

5. In this context it was submitted that appropriate conditions could be imposed by this Court for grant of bail. It was further submitted that in the present circumstances of COVID-19 pandemic, there was no possibility of the trial being completed within a reasonable foreseeable time period. On this basis, the learned counsel for the applicant prayed for grant of bail to the applicant.

6. On the other hand learned APP opposed grant of bail, highlighting the fact that the victim is a minor girl of about thirteen years of age and there is every possibility of the applicant influencing her and other witnesses, if released on bail. It was submitted that there can be even danger to the life of the minor victim.

7. This Court has considered the contentions raised on behalf of the rival parties. The nature of incident is evident from the oral report on the basis of which the FIR was registered. Although there is no explicit sexual assault in the present case, the manner in which the incident is said to have been taken place, considering that the victim is a minor girl of about thirteen years of age, there is no doubt that this is indeed a serious incident. Yet, it is also a fact that barring Section 8 of the POSCO Act, for all the other offences, punishment prescribed is upto three years. It is also evident from the material on record that the trial may not be completed in a reasonable period of time, particularly in the backdrop of the COVID-19 pandemic crisis.

8. The applicant has remained behind bars since 29/01/2020, which means that he has remained behind bars for about eight months already. In these circumstances, the applicant is entitled for bail, subject to appropriate condition to take care of the genuine apprehension expressed on behalf of the non-applicant State that there is possibility of the victim and other witnesses being influenced by the applicant upon release on bail. The said apprehension can be taken care of by imposing appropriate conditions.

9. It is pointed out that the victim and her family are residents of village Vayfad, Tal. Deoli District Wardha, while the police station in which the offence has

been registered i.e. police station Pulgaon is about 20km. from the said village. In these circumstances, this Court can direct the applicant not to enter the aforesaid village and to report to the aforesaid police station periodically, during the pendency of the trial.

10. In view of the above, the present application is allowed in following terms :-

(A) The applicant is directed to be released on bail on furnishing PR bond of Rs.25000/- and surety in the like amount.

(B) The applicant shall not enter village Vayfad, Tal. Deoli, District Wardha, during the pendency of the trial.

(C) The applicant shall report to police station Pulgaon, District Wardha on every first and fourth Monday of each month between 10.00am. To 5.00pm.

(D) The applicant shall appear before the Trial Court on each and every date of the trial.

(E) The applicant shall not in any manner tamper with the evidence or seek to influence the witnesses.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable for cancellation of bail.

12. The application is disposed of in above terms.

13. The 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