

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

CRIMINAL APPLICATION (BA) NO. 1191/2019

Akash S/o Gautam Ingle Vs. State of Maharashtra through P.S.O. P.S. Balapur, Tq.
Balapur, District Akola.

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

Court's or Judge's orders.

Shri A.R. Londhe, learned counsel for applicant.
Shri N.R. Rode, learned Additional Public Prosecutor for non
applicant/State

CORAM : V. M. DESHPANDE, J.

DATED : 15th JANUARY , 2020

Heard Shri A.R. Londhe, learned counsel for applicant and Shri N.R. Rode, learned Additional Public Prosecutor for non applicant-State. Also perused the reply.

The applicant is arrested on 12.08.2019 and since then he is in jail. Investigation is over. Charge-sheet is already filed. The entire charge-sheet is placed on record. The report was lodged by father of the victim on 26.07.2019 that on 25.07.2019, applicant enticed the victim, aged about 17 years and 5 months. Initially, the crime was registered for an offence punishable under Section 363 of the Indian Penal Code (IPC) with Police Station Balapur, District Akola. During investigation, it was noticed that the applicant took the victim to Hyderabad and has committed sexual intercourse with her on the pretext of marriage. Thereafter, Sections 366, 376 (2)(N) read with Section 34 of the IPC and Sections 3, 4, 16 and 17 of the Protection of Children

from Sexual Offences Act, 2012 were added. Co-accused Vivek Huse is already released on bail.

Statement of victim was recorded on 12.08.2019. Her statement would show that the victim was knowing the applicant since her 9th standard and when she took admission in 10th standard, there was love affair between her and the applicant. When this fact came to the knowledge of her parents, she stopped talking with the applicant. After 10th standard, she took admission in I.T.I. and again started talking with the applicant. Therefore, when this fact was known to her parents, her parents started search for her matrimonial alliance. On 25.07.2019, as per the statement of victim, applicant met in front of her College and proposed her and thereafter, she went away with the applicant. According to her statement, co-accused Vivek Huse sent them to Hyderabad and at Hyderabad, there took sexual intercourse with the victim at Hyderabad.

From the statement of victim, it is clear that there was sexual intercourse between applicant and victim. As per the statement of victim, her age is 17 years and 6 months.

Looking to the nature of the statement made, it is clear that the victim was consenting party. However, consent of minor is of no use, therefore, primarily, the prosecution will be required to prove the age of victim that she was "Child" within the meaning of the Protection of Children from Sexual Offences Act by adducing evidence.

Presently, the entire investigation is over. Charge-sheet is already filed. Applicant is also aged about 20 years

and he has no criminal past record to his discredit. Therefore, in my view, he need not to continue his jail presence with the hardened criminals. Hence, I pass the following order:

ORDER

- 1) The application is allowed.
- 2) Applicant – Akash Gautam Ingle be released on bail in connection with Crime No.303/2019 dated 25.07.2019 registered with Police Station, Balapur, Tq. Balapur, District Akola for an offence punishable under Sections 363, 366, 376 (2) (N) read with Section 34 of the Indian Penal Code and Section 3, 4, 16, 17 of the Protection of Children from Sexual Offences Act, on he executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- 3) The applicant is directed to attend police station, Balapur, District Akola once in a month i.e. on third Sunday of every month and shall be with investigating officer from 03.00 p.m. to 05.00 p.m. till the culmination of trial.

The application is disposed of.

JUDGE