

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

CRIMINAL APPLICATION (BA) NO.1204/2019

Sameer alias Ali Amjat Ali Pathan .vs. State of Maharashtra through PSO
P.S. Andhera, Dist. Buldhana.

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

Court's or Judge's orders.

Mr. K. P. Sadavarte, Advocate for applicant.
Mr. N. B. Jawade, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.

DATED : JANUARY 10, 2020

Heard Mr. Sadavarte, learned counsel for applicant and Mr. Jawade, learned A.P.P. for non applicant-State. Perused the investigation papers.

Applicant is arrested in connection with Crime No.309/2019, registered with Police Station, Andhera, District Buldhana on 26.11.2109 and since then he is in jail. The learned A.P.P. primarily opposed the application on the ground that the investigation is in progress and charge-sheet is yet to be filed. However, he fairly makes a statement that on the basis of the papers available with him, it could be said that the investigation is almost over and formality of only filing of charge-sheet is remained to be done.

Initially, the crime was registered only for the offence punishable under Sections 363, 324 read with Section 34 of the Indian Penal Code (IPC) against the applicant in view of the report lodged by Sangeeta, mother of the victim. Subsequently, Sections 354 (A) and (B) of the

IPC and Sections 8, 9 and 10 of the Protection of Children From Sexual Offences Act came to be added. Further, after recording statement of the victim under Section 164 of the Code of Criminal Procedure, Section 376 of the IPC was also added.

So far as statement concerning offence punishable under Section 376 of the IPC, as made by the victim, is concerned, prima facie it appears to be not supported by the medical evidence. Of course, even in the absence of any medical evidence, if version of the prosecutrix is found to be trustworthy, the applicant can be convicted but it is a matter of trial.

Presently, entire investigation is over. Further, looking to the fact that there is no criminal record against the applicant, in my view, the applicant can be released on bail inasmuch as it will be the duty of the prosecution to prove the age of the victim to show that she was “Child” within the meaning of the provisions of the POCSO Act as, according to the prosecution, she has shown her age as 17 years.

In that view of the matter, I pass following order.

ORDER

- (i) The application is allowed.
- (ii) Applicant-Sameer alias Sameer Ali Ajmat Ali Pathan be released on bail in connection with Crime No. 309/2019 registered with Police Station, Andhera for an offence punishable under Sections 363, 323, 354(A) (B), 376 read with Section 34 of the Indian Penal Code and

Sections 8, 9 and 10 of the Protection of Children From Sexual Offences Act, on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.

(iii) The applicant is directed to attend Police Station, Andhera, Dist. Buldhana, twice a week till i.e. on every Monday and Saturday and shall be with the investigating officer from 11.00 a.m. to 03.00 p.m. till culmination of trial.

(iv) The observations made in this order are purely prima facie in nature. They are made only for the purpose of deciding present application and the trial Court shall not get influenced by any of the observations made in this order.

The application is disposed of.

JUDGE