

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

Criminal Application [BA] No.101 of 2021

Mangal Bharat Rathod

vs.

The State of Maharashtra, through P.S.O. Umarkhed, Yavatmal

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

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Court's or Judge's Orders

*Miss Vijayshree Shende, Advocate for the Applicant.
Mrs. Shamsi Haider, A.P.P. for the Non-Applicant/State.*

CORAM : S.M. MODAK, J.

DATE : 9th JUNE, 2021

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

02] Heard the learned Advocate for the applicant and the learned A.P.P. for the State.

03] There is an allegation that the present applicant ravished the victim, aged about 5 years old, on 13/10/2019 at about 07:00 p.m. The applicant-accused is the son of Shilabai Rathod. The F.I.R. is registered on the complaint of one Radhibai Kisan Jadhav. Said Shilabai is the daughter of first informant Radhibai, whereas, the victim is the grand-daughter of the first informant.

04] The victim went to the house of Shilabai, the mother of the accused, for the purpose of giving some food. When she went there, the accused took her to hillock at village Pardi Churmura, Tahsil Umerkhed, District Yavatmal. Witnesses Surekha Vasanta Jadhav

and Ranjanabai Dashrath Jadhav heard the noise of crying. When both went to the roof of their house, they had seen a girl of 5-6 years old and a boy viz. Mangal running from a different direction. On being asked, the victim narrated the incident to these two ladies.

05] The incident was narrated to the first informant by one Tukaram Baddu Jadhav. The victim reiterated the incident to her grand-mother and accordingly, an offence came to the registered at Umarkhed Police Station on 13/10/2019 under Section 376A and 376(2)(f) of the Indian Penal Code and under Sections 4, 6 & 8 of the Protection of Children from Sexual Offences Act. The applicant was arrested. The victim as well as the accused were examined medically. The charge-sheet was filed. His prayer for bail came to be rejected by the District Court, Yavatmal.

06] Number of contentions were raised on behalf of the applicant including tutoring the victim considering her age and the dispute in between the family of the first informant and that of the applicant. A contention is also raised regarding the inconsistency in between the statements of the witnesses. Whereas, the said contentions are opposed on the ground that the medical evidence suggests commission of sexual intercourse and also on the ground that the girl is aged only five years old.

07] On perusal of the charge-sheet, it reveals that these two eye-witnesses have seen both the

victim and the accused. The medical evidence suggests tearing of a hymen. The inconsistency in between the statements cannot be considered at this stage and trial will be the proper stage. So also, the contention of false accusation cannot be considered now. The papers suggest involvement of the applicant in the offence. Hence, no case for bail is made out.

08] Being relatives, the possibility of tampering the victim cannot be ruled out. If, there is no progress in the case for one year, the applicant is at liberty to ask for a bail. This liberty is granted considering the age of the applicant. The trial Court is directed to expedite the matter and to frame the charge as early as possible.

09] The application is rejected accordingly.

JUDGE

**sandesh*