

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL APPLICATION (BA) NO. 107/2021
(Haribhau Gosai Chapade vs. State of Maharashtra :Th.PSO PS
Chamorshi, Dist. Gadchiroli)

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

Court's or Judge's order

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 Mr.Yash Venkatraman, Advocate for the applicant
 Mr. Amit Chutke, APP for respondent-State

CORAM : MRS.SWAPNA JOSHI, J.

DATED : 22nd February, 2021

1. The applicant has filed the present Application under Section 439 of the Cr.PC. seeking regular bail, for offence punishable u/ss. 376(2)(J), 376(3), 376(2)(L), 506 of the Indian Penal Code, as well as Sections 4, 5(J)(2), 6 of the POCSO Act, 2012, registered at Police Station Chamorshi, Dist. Gadchiroli, in respect of Crime No.583/2020.

2. I have heard learned counsel for the respective parties. Perused the case papers.

3. The prosecution case in brief is that the mother of victim, aged about 14-years, was taken to hospital by the complainant and she realised that her daughter was four months' pregnant. On making enquiry with her daughter, the complainant came to know that when the complainant and her husband were out of the town for their work, in the evening, the applicant entered inside the house of the victim and forcibly committed sexual intercourse with her. In this manner, for about 2 to 3 times, the applicant committed forcible sexual intercourse with the

victim. On 21.10.2020, the complainant lodged the report against the applicant.

4. Learned Advocate for the applicant contended that investigation is over and charge-sheet has been filed in the matter. He contended that the applicant has been falsely implicated and the said aspect has been proved by DNA report which indicates that the applicant is excluded to be biological father of dead fetus and the victim was concluded to be the biological mother of the fetus.

5. Learned Advocate for the applicant placed reliance upon the order passed by this Court viz., Criminal Bail Application No.2567/2017 and the judgment in Criminal Appeal No. 537/2020 arising out of SLP (Cri) No.2844/2020, wherein the DNA report showed that the accused was not the biological father of the child born. Therefore on that count, the accused was enlarged on bail. In the backdrop of the above-referred facts and law, the learned Advocate for the applicant requests for grant of bail.

6. Learned APP opposed the Application.

7. After hearing both sides and on a perusal of the case-papers and the reply filed by the prosecution and considering the peculiar facts and circumstances of the case and based on the aforesaid position of law, I am of the opinion that no purpose would be served by keeping the applicant behind the bars. Hence the order :-

ORDER:

The applicant-Haribhau Gosai Chapade, be released on bail for offence punishable u/ss.376(2)(j), 376(3), 376(2)(L),

506 of the Indian Penal Code, as well as Sections, 4,5(J)(2), 6 of the POCSO Act 2012, registered at Police Station Chamorshi Dist. Gadchiroli, in respect of Crime No.583/2020, on his executing a PR bond in the sum of Rs. 20,000/- (rupees twenty thousand) with one or two solvent sureties in the like amount, on the following conditions :-

- (i) He shall attend the concerned Police Station, on every 1st and 3rd Saturday of each month, between 11.00 and 2.00 pm, till conclusion of trial.
- (ii) He shall attend the trial on each and every date.
- (iii) He shall provide his residential address and cellphone number to the concerned Investigating Officer and shall not change the same without prior intimation to the Investigating Officer.
- (iii) He shall not tamper with the prosecution witnesses in any manner.
- (iv) He shall keep himself away from the limits of area where the complainant and other witnesses are residing.
- (v) Two consecutive absence without reasonable cause will entail the prosecution to move for cancellation of bail.
- (vi) Any observations made in this order are only for granting bail to the applicant and it shall not come in the way of the trial Court, during trial.

Criminal Application stands disposed of.

JUDGE