

1**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
NAGPUR BENCH, NAGPUR.**CRIMINAL APPLICATION [BA] NO. 180/2021.**

Surya Bansilal Sawalkar

-VERSUS-

The State of Maharashtra

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

Court's or Judge's Orders

Shri D.S. Khushalani, Advocate for the Applicant.
Ms. S.S. Jachak, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.**DATE : MARCH 25, 2021.**

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

2. The applicant is seeking bail in terms of Section 439 of the Code of Criminal Procedure in connection with Crime No. 572/2020 registered at Dharni Police Station, District Amravati for offence punishable under Sections 363, 376[2][n] of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3. The learned Counsel for the applicant would submit that the prosecutrix was of the age of

2

understanding and at the most at her instance both of them eloped. According to the applicant, this special feature has to be taken into account while dealing with the present application.

4. The State has resisted the bail by filing reply affidavit. It is submitted that the date of birth of the applicant is 02.08.2005, meaning thereby on the date of incident, she was 15 years of age, and therefore a minor. According to the State, minor's consent assumes no significance in the eyes of law, therefore, the offence being serious, the applicant is not entitled for bail.

6. At the instance of mother of the victim girl, the police initially registered an offence of kidnapping on 01.11.2020. The informant stated that on 30.10.2020 in the evening, she came to know that her daughter i.e. victim was missing. On enquiry, it was learn that the applicant who is a villager was also missing, hence, both might have ran away. The police have recorded statement of the victim on 04.11.2020. The victim girl stated that she as well as accused were doing labour work. She had acquaintance with the accused and they had friendship. On 30.10.2020, the

3

victim informed to the accused that she was scolded by her mother as she was in talking terms with him. After learning the things, the accused gave proposal that both should run away, to which the victim consented. Thereafter both of them went to another village and stayed in a hut for 4 days, during which they had physical relation. The victim stated that after 4 days, father of the accused took them on motor cycle and finally dropped her at her house.

7. The medical report discloses that there were no injuries on the genitals of the victim, as well as she had stated that at her own will, she had relations with the accused.

8. No doubt minors consent is no consent in the eyes of law, however, it appears that the victim was grown up girl aged 15 years, while accused was also barely 20 years of age. Both had acquaintance with each other and out of relationship they ran away, and stayed for 4 days at different place. The entire incident as is revealed from the police paper discloses that the accused had not used any force, nor the victim was compelled to do any act. The accused is young boy in his 20's. Already investigation is complete and

4

charge sheet is filed. The anticipated angle of pressurizing the prosecution witness as can be taken care of by imposing stringent conditions.

9. Having regard to the above facts and circumstances, following order is passed.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant / Surya Bansilal Sawalkar, be released on bail in connection with Crime No. 572/2020 registered with Dharni Police Station for offence punishable under Sections 363, 376[2][n] of the Indian Penal Code read with Section 4 of the POCSO Act, on his furnishing P.R. Bond of Rs.25,000/- with one or two sureties in the like amount.
- (iii) The applicant/accused shall not enter within the territorial limits of Dharni Taluq of Amravati District till the conclusion of the trial.
- (iv) The applicant/accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

5

- (v) The applicant/accused shall provide his residential address and cell number to concerned Investigating Officer and shall not change his place of residence without prior intimation to the concerned Investigating Officer.
- (vi) The applicant accused shall attend each hearings on the scheduled date before the concerned Court.

JUDGE

Rgd.

**Rakesh
Dhuriya**

Digitally signed
by Rakesh
Dhuriya
Date: 2021.03.26
12:53:40 +0530