

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

Criminal Application (BA) No. 208 of 2021

(Sitaram Mahdeo Dahikar ..vs.. The State of Maharashtra through P.S.O. of P.S. Dharni,
Dist. Amravati)

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

Court's or Judge's orders

Mr. Parvez Mirza, Advocate for the applicant
Ms. T. H. Udeshi, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 05-07-2021

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 connection with Crime 389/2020 registered with Police Station, Dharni, District Amravati for the offences punishable under Sections 363, 376(2)(n) and 506 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act (POCSO Act).

3. The first submission of the learned counsel Mr. Mirza is that there is inconsistency between ocular evidence and medical evidence.

4. The second submission of Mr. Mirza is that statements recorded under Sections 161 and 164 of Code of Criminal Procedure (Cr.P.C.) are inconsistent.

5. The third submission of Mr. Mirza is that sexual relationship, if at all, was consensual.

6. The fourth submission is that the applicant is in custody since 6-8-2020, the charge is not framed as yet and there is no possibility of early trial.

7. The final submission of Mr. Mirza is that the applicant has no criminal antecedent.

8. While, *prima facie*, there does appear some substance in the submission that the relationship may as well be consensual, since according to the birth certificate, and which will have to be taken into account at least, at this stage, the prosecutrix was 15 years and 5 months, her consent would be irrelevant.

9. Mr. Mirza is again right in the submission that there is inconsistency between 161 Cr.P.C. and 164 Cr.P.C.

statements. But then, the inconsistency is again indicating, *prima facie* of a consensual relationship.

10. Considering that the applicant is related to the prosecutrix/victim inasmuch as the wife of the applicant and the mother of the prosecutrix/victim are sisters, the apprehension of the prosecution that if released on bail, the applicant may be in a position to influence the victim, is not baseless.

11. The medical evidence *prima facie* indicates that sexual relations were established.

12. Considering the provisions of the POSCO Act, particularly, the presumptions provided, and the relationship between the applicant and the victim, at this stage, it would not be possible to release the applicant on bail. However, the submission that since the charge is not framed, the trial may be prolonged will have to be addressed.

13. The trial Court is requested to frame the charge and expeditiously conclude the trial, in any event, within

the next nine months. If there is no significant progress in the trial in the next four months, the applicant shall be at liberty to renew the request for bail.

14. The application is disposed of.

JUDGE

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