

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

CRIMINAL APPLICATION [BA] NO. 312/2021.

Manoj Lodba Borkar.

-VERSUS-

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 R. Nayak, Advocate for the Applicant.
Shri A.S. Ashirgade, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : JUNE 17, 2021.

Hearing was conducted through Video
Conferencing.

2. The applicant is seeking bail in connection with Crime No.296/2020 registered with Pusad Police Station, District Yavatmal for offence punishable under Section 376[3] of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act. The learned Counsel for the applicant would submit that it is a matter of love affair in between youths. According to him, no force or coercion was used, however, as both were found to be

2

in intimate relationship, the applicant has been falsely implicated in the case. It is contended that the medical report does not support the prosecution case at all. Lastly, it is argued that the applicant is in jail from 30.07.2020, and now after completion of the investigation, his detention is no more required.

3. The State has resisted the bail by filing reply-affidavit. It is contended that there is clear statement of the victim that the accused has administered some pills and had forcible sexual intercourse with her. The learned A.P.P. would submit that the victim being minor, there is no question of having consensual sex, as argued on behalf of the applicant. Having regard to the nature of accusation, bail is prayed to be rejected.

4. It is the prosecution case that the victim and accused who are in their young age, are residents of same village and have acquaintance with each other. On 28.07.2020, the accused called the victim, took her to a vacant tenement, closed doors and windows and then under threat had sexual intercourse with her. The victim further stated that on the same day, she had not disclosed the things to anybody, but,

3

on the following day, she made disclosure to her mother and then the report is lodged.

5. The statement of victim was also recorded by the Member of the Child Welfare Committee where the victim has additionally stated that at the time of occurrence, the accused administered a pill and then had sexual intercourse. On 30.07.2020, i.e. within two days of the occurrence the victim was medically examined, however, neither there is any evidence, nor there were marks of struggle. The medical officer has specifically opined that no evidence relating to use of force as well as no evidence of administering any drugs. Prima facie the medical report does not supports the statement of the victim.

6. The learned Counsel for the applicant would submit that the applicant as well as the victim belong to same community, and out of love affair there was intimacy. He has also shown some photographs of both of them to support his contention about intimate relationship.

7. Though the learned A.P.P. has pointed out that fresh tear present at hymen, however, the report also indicates that there was no injury suggesting

4

application of force, which needs consideration. Having regard to all these facts and as investigation is complete, no purpose would be served in keeping the applicant behind bars for indefinite period. The trial will take its own time for disposal according to law. The only aspect which needs consideration or is taken care of is about eliminating the chances of tampering of evidence. However, the same can be taken care of by imposing certain stringent conditions. Hence, the following order.

- (i) Criminal Application is allowed and disposed of.
- (ii) The applicant / accused – Manoj Lodba Borkar be released on bail in connection with Crime No.296/2020 registered with Pusad Police Station, District Yavatmal for offence punishable under Section 376[3] of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences 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 the territorial limits of Pusad City till the conclusion of the Trial.
- (iv) The applicant/accused shall not directly or indirectly make any inducement, threat or

5

promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(v) Breach of any of the above conditions would give liberty to the prosecution to move the Court for cancellation of bail.

(vi) Pending applications if any, stands disposed of.

JUDGE

Rgd.