

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

Criminal Application (BA) No. 326 of 2021

(Bablu S/o. Mohan Kathote ..vs.. The State of Maharashtra through P.S.O., P.S. Jaripatka, Nagpur)

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

Court's or Judge's orders

Mr. Sheikh Sabhat Ulla, Advocate for the applicant
Mr. N. R. Rode, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 14-07-2021

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

2. The applicant is arraigned as accused in Crime 980/2020 registered with Police Station, Jaripatka, Nagpur for the offences punishable under Sections 366, 376(2) read with Section 34 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act.

4. The prosecution case is that the applicant and the co-accused took advantage of the child victim who is intellectually challenged, took her on their motorcycle to a secluded forest area and gang raped her.

5. The learned counsel for the applicant Mr. Sheikh Sabhat Ulla invites my attention to the recitals in the report lodged by the victim to buttress the submission that she did have the opportunity to escape or of raising alarm when the applicant and co-accused allegedly stopped at a Chinese food stall. The other submission is that absence of external injuries is not consistent with the version of the prosecutrix that she was raped by the accused, one after the other in a forest area.

6. I have perused the material available in the charge-sheet. The medical examination report makes a reference to hymeneal tear at 5 O'Clock and 7 O'Clock positions. Even if it is assumed, there was no other injury, considering that the victim is an intellectually challenged child, aged 14 years, absence of injury other than hymeneal tear may not be decisive.

7. The applicant and the co-accused are captured in the CCTV footage. There is more than ample material on record to link the applicant with crime. The crime is

heinous inasmuch as the victim is not only a child, she is intellectually challenged.

8. No case is made out for exercise of discretion.
The application is dismissed.

JUDGE

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