

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (BA) NO.403 OF 2021

Pramod Ganpat @ Ganpati Thombre

Vs.

The State of Maharashtra through Police Station Officer, Police Station, Narkhed, Tahsil
Narkhed, District Nagpur

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

Court's or Judge's orders

Shri S. P. Bhandarkar, Advocate for applicant
Shri A. M. Deshpande, APP for non-applicant/State

CORAM : VINAY JOSHI J.

DATED : 22/06/2021

Hearing was conducted through Video
Conferencing.

2. The applicant is came to be arrested by the concerned police in Crime No.187/2020 for the offences punishable under Sections 354-A, 342, 376(2)(j), 376(3) and 376 AB of the Indian Penal Code and Sections 3, 4, 5(m), 6 and 8 of Protection of Children from Sexual Offences Act, 2012.

3. The learned counsel for applicant urged for bail by contending that there is material discrepancy in the statement of witnesses, the medical report does not

support the prosecution case. Now investigation is complete and charge-sheet has been filed, hence further detention of applicant is no more required.

4. The State resisted bail by filing reply/affidavit. Learned APP would submit that the offence is of heinous nature as a small girl aged 11 years has been sexually exploited. It is pointed out that in medical examination, hymen of minor was found to be torn. It is the submission that the minor victim has specifically stated the act of the applicant of inserting his finger into her vagina which is aggravated form of sexual assault. The last submission is that the applicant is resident of same locality and therefore, there are high chances of tampering.

5. With the assistance of both sides, I have gone through the necessary statements and other relevant papers from the charge-sheet. At the instance of FIR lodged by the maternal uncle of victim girl, the crime was registered. No doubt, the informant has narrated the facts which he learnt from the victim. He stated that,

on that day one of his acquainted person namely Dinesh Thete has informed that around 2.00 p.m. he found victim passing from the road by weeping. On enquiry the victim narrated that, when she went to the shop of accused for buying biscuits the later took her inside from back door, closed the door and made her to sit in his lap. It was further informed by victim that the accused kissed her, waved his hand on her chest and inserted his finger into her vagina. Near about the same story is stated by two other witnesses to whom the victim narrated the happenings. Particularly, the statement of victim was gone into, where the girl aged 11 years has narrated the similar facts to the investigating agency.

6. The applicant's learned counsel in the bid of impressing that it is a case of false implication, pointed certain inconsistencies in the statement of complainant and two eye witnesses. As per the complainant's version, his kin Dinesh came across the girl and after hearing the things Dinesh sent the victim at her uncle's place. Contextually, the statement of Dinesh was shown. It has come in his statement that after hearing the things he

went to the shop of accused, scolded him and sent the victim to her house. According to the applicant, witness Chanda Thakare has stated the third story in which after hearing the things from victim, she took her to the house of witness Dinesh Thete and narrated the things. True, there are certain variances as to what was happened soon after the actual incident. However, it should not be forgotten that all the statements are consistent on the point of alleged sexual assault made by applicant. It is a matter of trial to probabilise the false defence by elucidating the material through cross-examination.

7. Coming to the medical examination report, admittedly, there are no external injuries over the body and genitals of the victim. Medical Officer has opined that the sexual assault cannot be ruled out. The learned APP has pointed that on external examination of genitals hymen was found to be torn. To respond, applicant's learned counsel has reminded that there are variety of reasons for tear of hymen. There can be no dispute about said proposition, however it is to be appreciated in context with other material.

8. Pertinent to note that alleged occurrence took place around 2.00 p.m. on 29.04.2020 whilst the matter was reported to the police on the very day about 9.00 p.m. i.e. within few hours from the occurrence. *Prima facie* the quick lodgement of FIR with details, assumes significance. The victim is a minor girl aged 11 years. The charged offence is of aggravated form of penetrative sexual assault attracting punishment which shall not be less than 20 years of imprisonment. The victim and the applicant/accused are resident of the same locality. Even a feeling that the person who has sexually abused is roaming freely, may create terror and fear in the mind of minor victim. Certainly, that cannot be a conducive situation for fair trial. Having regard to the nature of allegations, gravity and seriousness of the offence and the punishment attached for the offence, it is not a case of bail.

9. In view of above, the following order is passed.

(6)

20.BA.403.2021

ORDER

The application stands rejected.

Other Criminal Applications, if any, stands
disposed of.

JUDGE

Sarkate