

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

Criminal Application (BA) No. 465 of 2021

(Gulab S/o Jairam Kadnaik **..vs..** State of Maharashtra through P.S.O. Andhalgoan, Tah. Tumsar,
Dist. Bhandara)

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

Court's or Judge's orders

Mr. Amol G. Hunge, Advocate h/f Mr. O. K. Masurke, Advocate for the
applicant
Ms. T. H. Udeshi, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.

DATED : 12-07-2021

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

2. The applicant is facing prosecution under Sections 376, 376(2)(n), 376-AB of the Indian Penal Code read with Sections 4 and 6 of the Protection of Children from Sexual Offences Act on the allegation that he sexually ravished his 4 years old niece.

3. Crime 202/2020 is registered on the basis of report dated 14-9-2020 lodged by the mother of the victim.

4. The informant alleges that on 8-9-2020, she found the child victim physically suffering after urination. The child victim disclosed that she was suffering from pain in the genitalia. She further disclosed that the applicant took her inside the house, manipulated her genitalia and inserted a pipe in the vagina. When the private parts of the child victim were inspected, the informant noticed redness and swelling.

The informant states that since the child victim disclosed the name of close relative, no report was lodged immediately. The child victim was then taken to Dr. Meenal Bhure on 10-9-2020. However, the family of the child victim did not disclose to Dr. Meenal Bhure that child victim was sexually assaulted. Dr. Meenal Bhure prescribed certain medicines and advised urine test. Since the pain and swelling aggravated on the next day, the child victim was taken to Dr. Misulkar who confirmed that the child victim was sexually ravished and insisted that the police be informed.

According to the first informant, on 12-9-2020, the applicant was summoned and confronted with the allegations. While the applicant denied guilt, the child victim persistently and consistently named the applicant as molester. Ultimately, the report is lodged on 14-9-2020.

5. The first submission of the learned counsel Mr. Hunge is that the report is delayed and, therefore, the applicant is entitled to bail.

6. In my considered view, there is absolutely no delay in lodging the report. Such submission ignores the realities of life. Sexual assault, particularly on the child, is still considered to be a stigma, and if, the molester is a close relative, the crime is, more often than not, reported only after due thought and deliberation. It is noticed from the record that the applicant-accused and the family of the child victim reside in Village Gonditola, Ambagad which is a small village in which hardly 4 families reside.

7. Considering the socioeconomic background of the family of the child victim, I do not think that there is any delay as such in lodging the report. In any event, even if, it is assumed that there is delay in lodging report, the delay is not necessarily fatal. It would be ultimately for the trial Court to consider the implication of the delay, if any.

8. At this stage, there is more than ample material on record to connect the applicant with the crime. I have perused the statements of the child victim which are confidence inspiring. The applicant-accused and the child victim are close relatives and there is no reason for the child victim to accuse her uncle of sexual misconduct of the nature alleged. The next submission of the learned counsel is that the pipe which was allegedly used to manipulate the private part of the child victim and which was sent to the medical officer has not been proved to be the instrument of sexual molestation. It is submitted that the opinion of the Doctor is inconclusive. It is well settled that the opinion of the Doctor in such matters is subservient to direct oral

evidence. Nothing can be read in the so called inconclusive opinion of the medical office who says that he cannot definitely state whether that pipe was inserted in the private part. This Court notes that the statements of the child victim are *prima facie* confidence inspiring and there is absolutely nothing on record to suggest the possibility of false implication. The learned counsel, is however, insisting that this Court take note of an affidavit dated 19-1-2021 which is sworn by the wife of the accused and which states that the house of the accused is constructed on land owned by the family of the child victim and that the insistence of the family of the child victim that the land be vacated has resulted in bad blood leading to the report of rape.

9. The submission that there is material to suggest false implication is noted only as a courtesy to the counsel.

10. I have perused the charge-sheet. There is absolutely nothing on record to suggest that prior to the incident or the report, there was any bad blood or that

there is any civil and criminal proceeding initiated and, if at all, the relationship appears to cordial and there is absolutely no reason why the family of the child victim would falsely implicate the applicant.

11. Needless to state, the observations are only *prima facie* and are made in view of the insistence of the learned counsel for the applicant that the submissions be that every submission be recorded and finding be given either way.

12. The allegation is extremely heinous and, if convicted, maximum punishment may be life sentence.

13. As observed supra, there is ample material on record to link the applicant with the crime.

14. The application is dismissed. However, the learned trial Court is requested to complete the trial as expeditiously as possible and, in any event, within the next six months.

JUDGE