

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

CRIMINAL APPLICATION (BA) NO.659 OF 2021

(Mukesh s/o Ramaji Sarve Vs. State of Maharashtra thr. PSO PS Gondia City, Tah. &
Dist. Gondia)

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

Court's or Judge's orders.

Mr. S. S. Tambulkar, Advocate for Applicant.
Mr. N. R. Rode, APP for Non-Applciant/State.
Ms. Radha M. Mishra, Advocate appointed for minor victim.

CORAM: ROHIT B. DEO, J.

DATE: 16th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 329/2019 registered with Police Station Gondia City, Tahsil and District Gondia for offences punishable under sections 354, 376, 511 and 450 of the Indian Penal Code and section 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. The prosecution case is that the minor victim is residing with her parents, siblings and grand-parents at Bajpayee Ward, Gondia and she was 12 years and 8 months on the date of the incident which occurred in the night intervening 26.03.2019 and 27.03.2019. The minor victim was sleeping in the outer room of the house along with her grand-mother and at 12:30 a.m. or thereabout she sensed that somebody was pressing her breast and was attempting to remove the knicker. She raised a hue and cry and saw

that the perpetrator was the applicant, who fled.

3. On the basis of the report lodged by the mother of the minor victim, the police initially registered offence under sections 354 and 450 of the Indian Penal Code and section 8 and 12 of the Protection of Children from Sexual Offences Act. During the course of investigation, sections 376 and 511 are invoked on the premise that the applicant attempted to rape the minor victim.

4. I do not consider it appropriate to make any decisive observation on the penal provisions invoked. However, since brief reasons will have to be indicated for the ultimate order, I am constrained to observe that *prima facie* the prosecution contention that the material on record indicates attempt to rape, is extremely debatable.

5. The applicant is in custody since 27.03.2019 and has already undergone detention of two years and six months or thereabout. The charge is not framed as yet, although the mandate of the POCSO Act is that the trial shall be concluded, as far as possible, within one year. In my considered view, further incarceration would be in the nature of pre-trial punishment.

6. The applicant and the complainant as well as the witnesses are residents of the same locality. The prosecution apprehends some attempt to influence the witnesses, and

therefore, appropriate condition shall have to be imposed.

7. The application is allowed.

8. The applicant be released on bail on furnishing personal bond of Rs.16,000/- with one solvent surety of like amount.

9. Till the victim and her mother are examined in the trial, the applicant shall not enter the limits of the Gondia City except to attend the court hearing.

10. The applicant shall, within forty-eight hours of release, furnish to the I.O. his current address and phone numbers and shall update the I.O. of any change.

11. The applicant shall not make any attempt to influence the witnesses, directly or indirectly.

12. The applicant shall not leave the country without the permission of the trial Court.

13. The fees of the appointed learned counsel be quantified and paid in accordance with the rules.

JUDGE