

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

CRIMINAL APPLICATION (BA) 663 OF 2021

(Dilip s/o. Tukaramji Supare..vs..State, thr PSO, Pulgaon, Dist. Wardha)

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

Court's or Judge's orders.

Mr. D.R. Bhoyar, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant/State.
Mrs. Jaya Mishra, counsel (appointed) for victim.

CORAM: ROHIT B. DEO, J.

DATE:27.10.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 140/2020, registered with Police Station, Pulgaon, Tahsil Deoli, District Wardha, for offences punishable under sections 377, 506 of the Indian Penal Code ("IPC") alongwith sections 4 and 6 of Protection of Children From Sexual Offences Act, 2012 ("POCSO Act").

3. The crime is registered on the basis of report dated 12.3.2020, lodged by the father of the 10 years old alleged victim. The gist of the report is that on 9.3.2020, when the informant was celebrating Holi, at 10.00 p.m. or thereabout, Mr. Devidas Punjam informed him that the

applicant is sexually exploiting the victim. The father of the victim states in the report that since 10.3.2020 was the day of Rang Panchami, he did not make enquiry with the victim – male child. The inquiry was made on 11.3.2020 and the victim allegedly revealed that four days prior to Holi, the applicant took him near bushes on the pretext of searching money fallen in the drainage, and subjected the victim to oral sex and attempted anal sex. The incident was seen by witness “S”.

4. The learned counsel for the applicant has invited my attention to the statement of witness “S”, who is also a minor. In the statement of witness “S” which is recorded on 18.3.2020, the witness states that the incident occurred on 11.3.2020. According to the witness, he and his two friends were playing cricket and they happened to go near the bushes to fetch the cricket ball and witnessed the incident. The two minor friends of witness “S” whose statements are recorded under section 164 of the Code, however, do not support the version of witness “S”. One friend disclaims knowledge of the incident and the other claims that the incident was narrated to him by witness “S”. The learned

counsel for the applicant would emphasize that there is a marked variance between the statements recorded under section 161 and 164 of the Code. Further, the witnesses have stated that the incident occurred on 11.3.2020. It is also emphasized that there is no corresponding injury to substantiate prosecution version of an attempt of forcible anal intercourse. The learned counsel for the applicant would further emphasize that the applicant has no criminal antecedents and that he is ready to reside beyond the territorial limits of Pulgaon till the conclusion of the trial.

5. Considering that the applicant has already suffered detention of more than 1 year and 7 months, I am inclined to grant bail, particularly, since the applicant has assured that he would not enter the territorial limits of Pulgaon till the conclusion of the trial, which would allay the apprehension of the prosecution and the victim that the applicant may attempt to subvert the trial.

6. The application is allowed subject to the following conditions:

(i) The applicant be released on bail in connection

with Crime 140/2020, registered with Police Station, Pulgaon, Tahsil Deoli, District Wardha, for offences punishable under sections 377, 506 of the Indian Penal Code alongwith sections 4 and 6 of Protection of Children From Sexual Offences Act, 2012, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

(ii) The applicant shall not enter the territorial limits of Pulgaon, Tahsil Deoli, District Wardha till the conclusion of trial. Any breach of this condition may *ipso facto* entail cancellation of bail, if an appropriate motion is moved by the prosecution or the complainant.

(iii) The applicant shall not, directly or indirectly, make any attempt to influence the witnesses or otherwise tamper with the evidence.

(iv) The applicant shall not leave the country without the permission of the trial Court.

7. The fees of the learned appointed counsel be quantified and paid as per Rules.

Judge

Belkhede