

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

CRIMINAL APPLICATION (BA) NO.669 OF 2021

(Mohammad Shoyeb Sheikh s/o Sabir Sheikh Vs. State of Maharashtra thr. PSO PS
Yashodhara Nagar, Nagpur)

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

Court's or Judge's orders.

Mr. Mahesh Rai, Advocate for Applicant.
Mrs. K. R. Deshpande, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 22nd SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 78/2018 registered with Police Station Yashodhara Nagar, Nagpur for offences punishable under sections 376 (2)(g) and 506 of the Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. The crime is registered on the basis of report lodged by the child victim on 17.03.2018. The gist of the report is thus:

The child victim is a student of 10th Std. at the Government Secondary School, Chikhlabad, Rampayali, District Balaghat, Madhya Pradesh and her date of birth is 15.08.2002. Her age was less than 16 years, as on the date of incident, which is 16.03.2018. The child victim left her village, reached Tumsar and stayed at the residence of one

Raju Uikey. She took a train to Nagpur on 16.03.2018 and de-boarded at the railway station at 04:00 p.m. She walked till Rani Jhansi square and sat down near the petrol pump. At 08:00 p.m. she was approached by two men, whom she described with particularity. Under the pretext of reaching her to Isasani, she was forcibly taken to a secluded spot on the Kamptee road near the railway bridge, in an auto. The two men and the victim de-boarded and then she was forcibly taken to the railway track and the two men raped her one after the other. The victim was also assaulted and threatened. Grabbing an opportunity, she left her clothes behind and sought shelter in a nearby residential locality. She was given clothes to wear by the residents and a report was lodged at the Yashodhara Nagar Police Station the next day.

3. The child victim has identified the applicant in the test identification parade held on 18.05.2018. According to the prosecution, the slight delay has occurred since the child victim was being treated at the Mental Hospital. Mr. Rai would submit that the delay in conducting the test identification parade opens up the possibility of the accused being shown to the child victim. These aspects will have to be gone into by the trial Court on the basis of evidence on record.

4. I note that apart from the test identification parade, there is overwhelming material on record to

connect the applicant with the heinous crime. The circumstances in which the applicant was arrested, is in itself, a strong material. The applicant was arrested on 17.03.2018 by the police squad which was looking for the perpetrators of the crime on the basis of the description given by the child victim. The applicant was driving his auto and one Sheikh Adil was also in the auto. Sheikh Adil's statement, which is recorded on 18.03.2018, is that the applicant had confessed to have raped the child victim along with the co-accused at the railway track and that the applicant had further disclosed that the rape victim fled leaving her clothes behind. Noticing the police squad, the applicant tried to evade them and when Sheikh Adil asked him not to drive rashly, he responded by telling Shaikh Adil that the police would arrest him. It is under these circumstances, that the applicant is arrested on 18.03.2018.

5. The extra judicial confession is reflected in the statement dated 18.03.2018, of Sheikh Adil. This, coupled with the circumstances of the arrest, constitute strong *prima facie* material.

6. The statement of the mother of the victim is also recorded and there is sufficient corroboration to the version of the child victim in the form of disclosure of the incident.

7. The report of the medical examination of the child victim is that the hymen is ruptured. The tentative report

that there are no signs of use of force is irrelevant in the context of the version of the child victim that she was gang raped by the two accused who also threatened her with death.

8. The applicant has criminal antecedents and is already facing two prosecutions for offence punishable under section 392 of the Indian Penal Code.

9. Considering that the alleged offence is heinous, and a child is sexually exploited, and a child who appears to be slightly intellectually challenged, and considering the formidable material on record and the criminal antecedents, no discretion can be exercised in favour of the applicant.

10. The application is dismissed.

11. It is made clear that the observations in this order are strictly limited to the bail application and shall not prejudice the accused in the trial.

JUDGE