

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

CRIMINAL APPLICATION (BA) 677 OF 2021

(Vishal s/o. Baburao Dabhade..vs.. State, thr PSO, PS Sarmaspura, Dist. Amravati)

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

Court's or Judge's orders.

Ms. Parita Lakhani, counsel for applicant.
Mr. N.R. Rode, APP for non-applicant /State.
Ms. Sneha Dhote, counsel appointed to assist the victim.

CORAM: ROHIT B. DEO, J.

DATE: 05.10.2021.

Heard.

2. The prosecution case is that on 23.11.2019, in the evening, the applicant induced the 16 years old victim to accompany him on the pretext that her parents were quarreling and that she was summoned by her father, the victim was taken to a cattle-shed and sexually assaulted.

3. While the accusation is extremely serious, I am inclined to grant bail, for reasons briefly spelt out, hereinafter.

4. Perusal of the statements of the witnesses, particularly, those of mother and sister of the victim,

suggest that they alongwith others tried to locate the victim and from the cattle-shed, the voice of the victim was heard. The applicant allegedly fled and the victim came out with the version which is noted supra. The submission of the learned counsel for the applicant that in every probability, the victim accompanied the applicant of her free will and panicked when her relatives located her at the cattle-shed, cannot be brushed under the carpet at this stage, although, it would be for the trial Court to come to an appropriate conclusion. The medical evidence of penetrative sexual assault is blurred. The hymen is intact. The redness on labia minora is not decisive of sexual intercourse or penetration, although, such possibility cannot be ruled out, and again, it would be for the trial Court which would have the benefit of the evidence, to come to an appropriate conclusion.

5. The investigation is complete and the chargesheet is filed and the applicant, who otherwise has no criminal antecedents, has already suffered detention of nearly two years.

6. The apprehension expressed by the learned appointed counsel Ms. Sneha Dhote that the applicant may pressurize the witnesses or tamper with the evidence since he, victim and the witnesses reside in the same village can be allayed by directing that till the conclusion of the trial, the applicant shall not enter the territorial limits of village Badegaon, Tal. Achalpur, unless he is specifically permitted to do so by the jurisdictional Court, for just and exceptional reason.

7. The Application is allowed subject to the following condition:

(i) The applicant be released on bail in connection with Crime 130/2019, registered with Police Station, Sarmaspura, Dist. Amravati, for offences punishable under sections 376(2)(J)(J) of Indian Penal Code and section 4 of the 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 village Badegaon, Tal. Achalpur, till the

conclusion of trial. Any breach of this condition may *ipso facto* entail cancellation of bail, if an appropriate motion is moved by any interested person;

(iv) The applicant shall, within 48 hrs of release, furnish to the Investigating Officer his phone numbers and residential address and keep the Investigating Officer posted of any change;

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

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

8. Fees of the appointed counsel Ms. Sneha Dhote be quantified and paid as per Rules.

Judge