

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

CRIMINAL APPLICATION (BA) NO.721 OF 2021

(Vaibhav s/o Dnyaneshwar Ghodeswar Vs. State of Maharashtra thr. PSO PS Ajni,
Nagpur)

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

Court's or Judge's orders.

Mr. R. K. Tiwari, Advocate for Applicant.
Mr. N. R. Rode, APP for Non-Applicant 1/State.
Mrs. Jaya Mishra, Advocate appointed for Non-Applicant 2.

CORAM: ROHIT B. DEO, J.

DATE: 14th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 193/2021 registered with the Ajni Police Station, Nagpur for offences punishable under sections 363, 376 (D) and 377 of the Indian Penal Code (IPC) and section 4, 6, 12, 14, 15 and 17 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and section 66 (E) and 67 (B) of the Information Technology Act.

2. The case of the prosecution, in brief, is that on 22.04.2021 at 09:00 a.m. the child victim received a call from the applicant, inviting her for a joy ride on motor-cycle. The child victim was picked up by the applicant and co-accused Sumit. She was then taken to the railway quarter assigned to the maternal brother of Sumit. Co-accused Vasant was already present. The applicant made an attempt to seduce the child victim by telling her that he

had broken up with his girl friend. The applicant then took the child victim to a room, closed the door, started undressing her and attempted to subject her to forcible sexual intercourse, which attempt the child victim resisted. The applicant did not permit the child victim to wear her clothes and summoned co-accused Vasant, who forcibly raped the child victim and the applicant Vaibhav was holding her down to facilitate the act.

3. During the course of the investigation it transpired that the obscene video of the child victim was recorded. The video was shown to the child victim who then implicated one Amol alias Arvind as the person who video-graphed the crime. The supplementary statement of the child victim is recorded. Her statement is also recorded under section 164 of the Criminal Procedure Code, 1973 (Code).

4. An attempt is made by Mr. Tiwari to submit, on the basis of some history allegedly narrated by the child victim to the Doctor, to contend that the identity of the applicant is not established and his name in the history is recorded only as 'Vaibhav'. The submission is noted, if only for rejection. The applicant was a friend of the child victim. It is immaterial whether the friendship was old or relatively recent. In any event, there is no reason for the child victim to falsely implicate the applicant, if the actual perpetrator of the dastardly crime is some other Vaibhav.

5. The alleged offence is extremely heinous. A child victim is gang raped. The rape is video-graphed. In no view of the matter, can any discretion be exercised in favour of the applicant, against whom there is a formidable *prima facie* case.

6. The application is dismissed.

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

JUDGE