

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

CRIMINAL APPLICATION (BA) NO.763 OF 2021

(Parag s/o Vijay Bawane Vs. State of Maharashtra thr. PSO PS Wadki, Tq. Ralegaon,
Dist. Yavatmal)

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

Court's or Judge's orders.

Mr. Yuvraj Dhande, Advocate for Applicant.
Mr. N. R. Rode, APP for Non-Applciant/State.
Mr. M. P. Kariya, Advocate for victim.

CORAM: ROHIT B. DEO, J.

DATE: 17th SEPTEMBER, 2021.

The applicant is seeking bail in connection with Crime 211/2019 registered with Police Station Wadki, Tahsil Ralegaon, District Yavatmal for offences punishable under sections 376, 376 (a)(b) of the Indian Penal Code and sections 4, 6 and 10 of the Protection of Children from Sexual Offences Act (POCSO Act).

2. The applicant earlier preferred Criminal Application (BA) 956/2020 which was heard by Mrs. Swapna Joshi, J. on 01.02.2021. The learned Judge was not inclined to grant bail and the learned counsel Mr. Dhande sought permission to withdraw the application, which accordingly was dismissed as withdrawn.

3. This successive application is preferred on the ground of change in circumstances. In response to a specific

query, the learned counsel submits that the receipt of the forensic report is a change as would warrant a re-look at the entitlement to bail.

4. I have scrutinized the material in the chargesheet, and having done so, I am satisfied that there is overwhelming material in the chargesheet as would connect the applicant with the crime, and the forensic report, supports the version of the prosecution substantially.

5. The allegation is that the applicant raped a five years old child. The incident occurred at 04:00 p.m. or thereabout on 21.10.2019. The applicant allegedly induced the child to come to his house by promising chocolate and at the house he removed her clothes and subjected her to forcible sexual intercourse. The child went to her home weeping and disclosed the incident to her mother. The mother of the child noticed swelling on the private part of the child. The medical examination revealed that the child suffered lacerated wound on the fourchette. Coming to the forensic report, which according to the learned counsel is a change in circumstances, the clothes which were worn by the accused at the relevant time revealed semen and blood stains, which is confirmed to be of human origin in the forensic report.

6. The applicant is seeking to make a capital out of the finding in the forensic report that no trace of vegetable

oil is detected on the clothes of the victim or the accused. The five year old child appears to have told her mother that before manipulating her private part vegetable oil was rubbed. The fact that clothes do not disclose traces of vegetable oil is absolutely irrelevant. Even otherwise, in view of the formidable material against the accused, the so called change in circumstances, is not sufficient to have a re-look at the entitlement to bail. Similarly, absence of semen on the clothes of the child victim is absolutely irrelevant.

7. The alleged offence is heinous. A five years old child is sexually assaulted. I do not see any reason to re-visit the entitlement to bail.

8. However, the learned trial Judge is requested to conclude the trial as expeditiously as possible and preferably within the next nine months.

9. The application is dismissed.

JUDGE