

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

Criminal Application (BA) No. 909 of 2021

[Dhananjay Keshao Khadse ..vs.. The State of Maharashtra through its P.S.O., PS. Ramtek, Nagpur]

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

Court's or Judge's orders

Mr. Mir Nagman Ali, Advocate for the applicant (appointed)
Mr. M. K. Pathan, APP for the State/non-applicant
Ms. Radha Mishra, Advocate for the victim (appointed)

CORAM : ROHIT B. DEO, J.

DATED : 28-10-2021

The applicant is seeking bail in connection with Crime 21/2021 registered with Police Station, Ramtek, District Nagpur for offences punishable under Section 376(2)(f) of the Indian Penal Code and Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act.

2. In brief, the accusation is that two victims "A" and "B", aged 13 and 14 years respectively, are the daughters of "C".

3. The families of "A" and "B" and the accused are well acquainted. The accused asked "C" to send "A" and "B" to his house to participate in the birthday celebration of his wife. Accordingly, "A" and "B" accompanied the

accused to his house on 15-1-2021. The parents of the victims also attended the birthday celebration on 15-1-2021 and then returned to their village. "A" and "B" however, stayed overnight in the house of the accused.

4. In the night intervening 15-1-2021 and 16-1-2021, the accused allegedly raped "A". The next day, "C" went to the house of the accused and "A" returned home along with him. However, "B" continued to stay at the house of the accused.

5. It is alleged that at 9.00 a.m. or thereabout on 18-1-2021, the accused raped "B". The incident was disclosed by "B" to a neighbour who arranged a telephonic conversation between "B" and her mother. In the interregnum, "A" also disclosed that she was sexually assaulted by the accused.

6. The family of the victims then visited the house of the accused and confronted him who denied any wrongdoing and then the report was lodged.

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

8. The narrative of the prosecution has too many grey areas for this Court to continue the incarceration. “A” alleges that the entire family including her elder sister “B”, the wife of the accused and the son of the accused were sleeping on the floor when the accused removed her clothes and committed penetrative sexual assault. She, however, goes home with her father leaving her elder sister behind. She does not disclose the incident then to her father nor does she warn her elder sister that the accused is a sexual predator.

9. Both the victims are medically examined. Victim “B” is medically examined within 24 Hours of the alleged rape. The medical examination does not reveal any external or other injury to the genitalia or for that matter on the person of the victim. The hymen is torn but then the tears are old and healed. My attention is invited by learned counsel Mr. Ali to Modi’s Medical Jurisprudence to substantiate the submission that it is not possible that

within 24 hours of such assault, the tear shall heal. I am conscious of the law to which Mr. Pathan and learned appointed counsel for the victim invited my attention, which is, that medical evidence may not be decisive in the face of confidence inspiring version of the victim. This aspect is best left to the trial Court to adjudicate on the basis of evidence on record. At this stage, a *prima facie* case is made out considering that the medical evidence does not show any fresh injury.

10. I have also noted that while in the 161 statement, vivid description of the sexual assault is given, all that is said in the 164 statement is that the accused imposed himself on the victim (The word used in vernacular is “जबरदस्ती केली”). The accused is in custody since 19-1-2021. Nothing is brought to my notice that suggests that the accused poses a flight risk or that he would be in a position to influence the witnesses. The accused has no criminal antecedents.

11. The application is allowed.

12. The applicant be released on bail on furnishing PR bond of ₹ 16,000/- (Rupees Sixteen Thousand) with solvent surety of like amount subject to the following conditions.

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

(b) The applicant shall not leave the country without the permission of the jurisdictional Court.

13. Fees of the learned counsel, Mr. Mir Nagman Ali appointed for the applicant and Ms. Radha Mishra appointed for the victim, be quantified and paid as per the rules.

JUDGE