

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

CRIMINAL APPLICATION (BA) 988 OF 2021

(Vikesh @ Kaka s/o. Bhaiyyalal Gavranee..vs.. State, thr PSO, PS Gangazari, Dist. Gondia)

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

Court's or Judge's orders.

Mr. N.R. Tekade, counsel for applicant.
Mr. N.S. Rao, APP for non-applicant /State.

CORAM: ROHIT B. DEO, J.

DATE: 05.10.2021.

Heard.

2. The applicant and two others, including a juvenile-in-conflict ("juvenile") are implicated in Crime 222/2018, registered with Police Station, Gangazari, Tahsil and District Gondia, for offences punishable under sections 341, 342, 354(a)(b), 376(d), 385, 397, 504, 506 read with section 34 of Indian Penal Code and sections 66(e), 67(a), 67(b) of Information Technology Act.

3. The report is lodged by Mr. Mangesh Shyam Anjanikar on 16.11.2018, alleging that when he and his girlfriend had gone to Bodalkasa on 29.8.2018, three, then unidentified youth, riding a Hero Honda motorcycle

stopped them, assaulted them, relieved the girl of Rs. 8,000/- and mobile phone and then compelled the girl and Mr. Mangesh to indulge in certain sexual acts. It is alleged that two of the three assailants touched the private part of the girl and video recorded the entire episode. Report was not immediately lodged since the informant and the girl were petrified in view of the threat issued to make the video viral. However, the said video was as a fact made viral and was received on WhatsApp by witness Mr. Durga, who is a friend of Mr. Mangesh. In view of the persistent extortion demands, Mr. Mangesh decided to lodge report.

4. The juvenile was arrested on 17.11.2018 at 2.22 p.m. and, an hour thereafter, the applicant was arrested. The mobile sets are recovered from the house of the juvenile on the basis of information disclosed by the juvenile to his father.

5. In so far as the incriminatory material pressed in service against the applicant, the first is the alleged recovery of a scarf which according to the victims was worn by one

of the perpetrators of the crime. This is an extremely fragile piece of incriminating material, if at all. The second incriminating material is the statement of Mr. Durga, who has disclosed that he received the video from WhatsApp number of the juvenile and when he contacted the juvenile, the juvenile admitted to have recorded the clip with the active participation of the two co-accused including the applicant.

6. It appears from the chargesheet that Mr. Durga's statement is recorded on 22.11.2018 i.e. after the juvenile and the applicant were arrested. At this stage, the said disclosure, assuming the disclosure to have any probative value, must be scrutinized on the anvil of the fact that the juvenile and the applicant were already in custody on 17.11.2018. It appears, that the applicant is arrested an hour after the juvenile was arrested, presumably on the basis of the disclosure made by the juvenile during the interrogation. Other than the said hypothesis, there is nothing in the chargesheet to show the basis of the arrest. In this backdrop, the fact that Durga's statement, which is

the only incriminating material other than the recovery of the scarf, was belatedly recovered on 22.11.2018, may assume some significance. All these observations are prima facie and are made only for the purpose of deciding the entitlement to bail. It shall ultimately be for the trial Court to, on the basis of evidence, arrive at an appropriate conclusion.

7. I am satisfied that a case for bail is made out. It is not the case of the prosecution that the applicant has criminal antecedents or that he is a flight risk. The applicant is already in custody since 17.11.2018. Further incarceration would only be a pre-trial punishment.

8. The Application is allowed subject to the following conditions:

(i) The applicant be released on bail in connection with Crime 222/2018, registered with Police Station, Gangazari, Tahsil and District Gondia, for offences punishable under sections 341, 342, 354(a)(b), 376(d), 385, 397, 504, 506 read with

section 34 of Indian Penal Code and sections 66(e), 67(a), 67(b) of Information Technology Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount;

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

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

Judge

Belkhede