

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

CRIMINAL APPLICATION (BA) 1028 OF 2021

(Amit s/o. Anil Adhikari..vs.. State, thr PSO, PS Dhantoli, Dist. Nagpur and anr)

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

Court's or Judge's orders.

Mr. A.K. Bhangde, counsel for applicant.
Mr. M.K. Pathan, APP for non-applicant/State.

CORAM: ROHIT B. DEO, J.
DATE:27.10.2021.

Heard.

2. The applicant is seeking bail in connection with Crime 37/2021, registered with Police Station, Dhantoli, Nagpur, for offences punishable under sections 376, 323 of Indian Penal Code ("IPC") and section 4 of Protection of Children from Sexual Offences Act, 2012 ("POCSO Act").

3. The victim lodged report dated 5.2.2021 alleging that she was subjected to forcible sexual intercourse by the applicant. She further alleged that she was forcibly dragged to the bushes near the railway track, she raised hue and cry and was silenced by the applicant, who gagged her mouth. She further alleged that when she resisted, she was slapped.

The incident allegedly occurred between 12.00 noon and 12.45 p.m. on 5.2.2021.

4. The learned counsel for the applicant Mr. A.K. Bhangde has twin submissions to canvas. The first submission is that while the victim claims to be 17 years old, there is no authentic documentary material collected by the Investigating Officer to substantiate that the victim is a minor. The radiological test opines that the age of the victim is between 18 to 20 years. Extension of the submission is that the provisions of the POCSO Act are not attracted. The other submission is that the medical examination findings are not consistent with forcible sexual intercourse, or for that matter intercourse.

5. In rebuttal, the learned APP Mr. M.K. Pathan points out that the victim was subjected not only to a radiological test but also to dental examination test and forensic test and the estimate of the age, in the final forensic report is 16 to 17 years.

6. At this stage, it is not necessary to make any

positive observation on the likely age of the victim. However, the medical examination report does, prima facie, appear to be inconsistent with the version of physical assault and then forcible sexual intercourse. There is absolutely no external injury to genitalia or at any other place on the person of the victim.

7. The applicant has no criminal antecedents and does not appear to be a flight risk.

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

(i) The applicant be released on bail in connection with Crime 37/2021, registered with Police Station, Dhantoli, Nagpur, for offences punishable under sections 376, 323 of Indian Penal Code and section 4 of the Protection of Children from Sexual Offences Act, on executing PR bond of Rs. 16,000/- (Rupees Sixteen Thousand) with one solvent surety of the like amount.

(ii) The applicant shall scrupulously attend every

date of hearing. Default may entail cancellation of bail, unless the default is condoned by the trial Judge.

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

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

Judge

Belkhede