

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

CRIMINAL APPLICATION (BA) NO. 1098 OF 2021

(Nilesh s/o Madan Warkhede ..vs.. State of Maharashtra, through PSO, PS Paratwada, Amravati and another)

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

Court's or Judge's orders

Mr. M.P. Kariya, Counsel for the applicant,
Mr. N.S. Rao, Addl.P.P. for the non-applicant/State,
Ms. Jaya Mishra, Counsel appointed for non-applicant 2-victim.

CORAM : ROHIT B. DEO, J.

DATED : 03-12-2021

The applicant is seeking bail in connection with Crime 12/2021 registered at Paratwada Police Station, District Amravati for offences punishable under Sections 376(2)(n), 327, 324 and 323 of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act.

2. The accusation is that the applicant accosted the minor girl "D" at 7-30 p.m. on 08-1-2021 when she was returning to her residence from the work place which is a Saree Centre located at Sadar Bazaar, Paratwada.

3. In a nutshell, the accusation is that the applicant caught hold of the minor victim's throat, assaulted her on the head with stone and then dragged the semiconscious victim to a nearby agricultural field. The victim regained consciousness at 12-00 p.m. or thereabout. The applicant demanded sexual favour, the victim did not

oblige and she was subjected to forcible sexual intercourse multiple times.

4. I have heard the learned Counsel for the applicant Mr. M.P. Kariya, the learned Additional Public Prosecutor for the non-applicant/State Mr. N.S. Rao and the learned appointed Counsel for the victim Ms. Jaya Mishra and have perused the material on record, and having done so, I am satisfied that a strong *prima facie* case to link the applicant with the alleged crime is made out.

5. Both, the victim and the applicant were medically examined. The injuries which are seen on the person of the applicant are consistent with the version of the victim that she resisted. The victim herself has suffered several injuries and the opinion of the doctor is that the stone seized could cause the injury noticed on the forehead of the victim. The hymen is torn at 6'O clock and 8'O clock position and there are multiple small tears. Moreover, the victim also alleged that the applicant took away her mobile phone and cash of Rs.400/-(Rupees Four Hundred). Notably, the mobile phone is recovered pursuant to disclosure statement of the applicant recorded under Section 27 of the Indian Evidence Act.

6. The learned Counsel for the applicant Mr. M.P. Kariya would submit that as of now there is no birth certificate on record and what is relied on by the

prosecution is the school leaving certificate. Whether the victim was a minor or not, is a matter to be decided by the trial Court and at this stage, there is no reason to disbelieve the school leaving certificate. Even otherwise, granting every latitude to the learned Counsel, even if it is assumed that the victim was not a minor, the severity of the offence is in no way diminished.

7. I see no reason to exercise discretion. The application is dismissed.

8. The fees of the learned appointed Counsel Ms. Jaya Mishra be quantified and paid as per rules.

JUDGE

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