

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

Criminal Application (BA) No. 1219 of 2021

(Zaidabi w/o Mohammad Hasham ..vs.. State of Maharashtra through P.S.O., P.S. Old City, Akola)

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

Court's or Judge's orders

Ms. Jyoti Damodar with Mr. A. S. Londhe, Advocates for the applicant
Mrs. K. R. Deshpande, APP for the State/non-applicant

CORAM : ROHIT B. DEO, J.
DATED : 18-12-2021

Heard.

2. The applicant is arraigned as accused 6 in Crime 297/2019 registered with Police Station, Old City, Akola for offences punishable under Sections 363, 366(A), 376(2)(n)(I), 376(3), 370(1)(4) and 323 read with Section 34 of the Indian Penal Code and Sections 3, 4, 5(L), 6, 7 and 8 of the Protection of Children from Sexual Offences Act. She is arrested on 31-7-2019 and is in custody since then.

3. The applicant - woman made several attempts to secure bail from the Sessions Court, which failed. The applicant approached this Court twice albeit unsuccessfully and the latter order dated 27-9-2021 in

Criminal Application (BA) 843 of 2021 permitted the applicant to withdraw the bail application with liberty to approach the trial Court.

4. While rejecting the second bail application, this Court observed thus :

“6. It is made clear that the trial Court shall examine the case for bail, on merits as well as on medical grounds, since some additional documents are sought to be produced by the learned counsel for the applicant and according to him, the said documents were not earlier brought to the notice of the trial Court.”

5. The applicant then approached the learned Sessions Judge who rejected the bail application by order dated 28-10-2021.

6. In so far as the ailment ground, which is that the applicant woman is suffering from cancer, the learned Sessions Judge records that the applicant failed to produce convincing documentary proof to substantiate her claim to be a cancer patient. However, reading of paragraph 7 of the order rendered by the learned

Sessions Judge does indicate that the applicant woman was referred by the Jail Authority, Akola to the Government Hospital, Akola and then to the Government Hospital at Nagpur. It is, therefore, sufficiently clear that the applicant did need medical assistance.

7. While learned Additional Public Prosecutor Mrs. Deshpande does state that the charge is framed and the trial is fixed for evidence, I note from the order of the learned Sessions Judge that the trial is halted due to the absence of accused 1 Vicky who was released on temporary bail during the Covid pandemic.

8. The role of the applicant woman is that she accompanied the victim till Akola Railway Station and then de-boarded and it was accused Vicky who took the victim initially to Madhya Pradesh. It is not necessary to refer to the events which transpired thereafter since even according to the prosecution, the role of the applicant woman ended when she de-boarded at Akola Railway Station.

9. The learned Sessions Judge is right in observing that the accusations are serious. However, the fact that the offence is grave and the accusations are serious are not the only considerations nor is the discretionary power fettered. Considering that the applicant is a woman, that she is in custody since 31-7-2019, that she is suffering from some ailment, that there is no likelihood of she tampering with evidence and it is not even the case of the prosecution that she would not be available to face the trial, I am inclined to grant bail.

10. The application is allowed subject to the following conditions.

(i) The applicant be released on bail on executing PR bond of Rs. 15,000/- (Rupees Fifteen Thousand) with 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

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