

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

CRIMINAL APPLICATION (BA) NO. 1238 OF 2021

(Ankarash s/o Sukharam Ambade ..vs.. State of Maharashtra, through PSO, PS Tahsil, Nagpur)

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

Court's or Judge's orders

Mrs. S.D. Wankhede, Counsel for the applicant,
Mr. N.S. Rao, Addl.P.P. for the non-applicant/State,
Ms. S.H. Bhatia, Counsel appointed for the victim.

CORAM : ROHIT B. DEO, J.

DATED : 20-12-2021

The applicant is seeking bail in connection with Crime 286/2020 registered with Tahsil Police Station, Nagpur for offences punishable under Sections 376(2)(n) (i) and 354-B read with Section 34 of the Indian Penal Code (IPC).

2. The victim is aged seven years and the crime is registered on the basis of report dated 15-5-2020 lodged by the mother of the victim.

3. According to the informant, the applicant is acquainted with her family. While the husband of the informant was asleep, the applicant came to the house of the informant at 9-30 p.m. on 14-5-2020 and made himself comfortable in the front room. At 9-40 p.m. the informant left the house to pay a visit to her sister who resides in the same locality and returned at 10-00 p.m. The applicant was not seen in the front room. The

informant saw the victim running from the kitchen and then crying. The victim was semidressed. The applicant was in the kitchen and he followed the victim. The informant confronted the applicant and the response was that he did nothing wrong. The informant woke up her husband and told him that the leggings and the knicker of the child were pulled down. The victim was taken into confidence and she disclosed that the applicant slapped her, took her in the kitchen and then inserted his private organ in her vagina. The victim disclosed that the applicant had similarly sexually misconducted three to four times when the victim had gone to the house of the applicant's brother to watch TV. The victim further disclosed that she did not reveal the sexual misconduct as she was threatened and was mortally afraid of the applicant.

4. The statements of the victim and the informant are recorded under Section 164 of the Code of Criminal Procedure and are consistent with the report. The medical examination of the victim which is immediately conducted, reveals that the hymen is torn and there is localized inflammation. The medical evidence, therefore, supports the allegation of penetrative assault.

5. The learned Counsel for the applicant would argue that there is no injury suffered by the victim and, therefore, her version is doubtful. The submission is noted only as a courtesy to the learned Counsel. A seven

years old victim is not expected to put a resistance of such nature as would cause injuries on her person. The fact that the victim suffered tear of the hymen with inflammation is sufficient material, at least at this stage, to presume the commission of a heinous crime.

6. Considering the nature of the accusations, the fact that the applicant was acquainted with the family and he violated the trust reposed by sexually assaulting the child who used to call him “uncle”, no case is made out to exercise discretion.

7. The application is dismissed.

8. The fees of the learned appointed Counsel Ms. S.H. Bhatia be quantified and paid as per the rules.

JUDGE

adgokar