

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

Criminal Application [ABA] No.19 of 2022

Roshan Devidas Waratkar

vs.

The State of Maharashtra, through P.S.O. Warora, District Chandrapur

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Mr. S.V. Sirpurkar, Advocate for the Applicant.
 Mr. V.A. Thakare, A.P.P. for the Non-Applciant/State.*

CORAM : SURENDRA P. TAVADE, J.
DATE : 13th JANUARY, 2022.

This is an application for releasing the applicant on pre-arrest bail in Crime No.957/2021, registered with Police Station Warora, District Chandrapur for the offences punishable under Section 354-A of the Indian Penal Code and under Sections 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO).

02] The victim has lodged F.I.R. on 13/12/2021, wherein it is alleged that she is 15 years of age and studying in Class-X. She knows the applicant, as he resides behind her house. She was having friendly relations with him till May, 2021. It is alleged that in the month of May, 2021, the applicant met father of the victim and disclosed him that the victim is pregnant from him. The parents of the victim made inquiry with her. She denied the said fact. Therefore, the parents of the victim had called the parents and uncle of the applicant and expressed displeasure to them that the applicant was defaming the victim. Thereafter, the parents

and uncle of the applicant had given assurance that the applicant will not harass the victim. Thereafter, the victim stopped talking with the applicant.

03] It is alleged that on 12/12/2021 at about 10:00 am, the victim was alone in the house. Her parents went to the field. The applicant came in front of the house and expressed his desire to have sexual relations with her. He was repeating the same for some time. The victim did not pay heed to him. Thereafter, he went away. It is contended in the F.I.R. that the victim had disclosed the said fact to her parents at about 06:00 pm on the same day. On the next day, she came along with her parents and lodged F.I.R. with Police Station Warora.

04] It is contended that the allegations made in the F.I.R. are false. It is contended that the offence under Section 354-A of I.P.C. is bailable and the offences under Sections 11 and 12 of the POCSO Act are non-bailable. The sentence prescribed for the said offence is up to three years. The applicant has reputation in the society. If he is taken into custody, his image will be lower down in the society. It is contended that as per the ratio laid down in the case of *Arnesh Kumar vs. State of Bihar and Another*, reported in *(2014) 8 SCC 273*, the custodial interrogation of the applicant is not required. Nothing is to be recovered from him. The investigation is almost completed. Therefore, it is prayed that the applicant be released on pre-arrest bail.

05] The State has also filed reply, wherein it is contended that the allegations made against the applicant

are serious in nature. The victim girl is a minor. There are two incidents narrated by the victim. There is a strong possibility of tampering of witnesses, if the applicant is released on bail. Therefore, the learned A.P.P. prays that the application be rejected.

06] Perused the F.I.R. It appears that there are two incidents narrated by the victim. It appears that the applicant was harassing the victim prior to May, 2021 and thereafter the second incident had taken place on 12/12/2021. Looking to the offences levelled against the applicant, it appears that the custodial interrogation of the applicant is not required. The learned Counsel for the applicant submits that to avoid tampering and pressurizing of witnesses, the applicant will leave the village so that the Investigating Officer can carryout investigation without any pressure of the applicant. The learned Counsel for the applicant also relied on the ratio laid down in the case of Arnesh Kumar (supra), wherein the Apex Court has given guidelines to the Police Officers as well as the Magistrate dealing with the remand of the offences punishable up to seven years. It is held that in the cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, the Police Officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically.

07] In the present case, the offences are punishable up to three years. Nothing is to be recovered at the instance

of the applicant. Therefore, the custodial interrogation of the applicant is not required, but at the same time, the interest of the victim is also required to be protected.

08] If the F.I.R. is read minutely, it appears that the applicant was harassing the victim since six months prior to the incident. Therefore, some stringent conditions are required to be imposed upon the applicant while releasing him on bail. With this, I pass the following order:

- i. The application is allowed.
- ii. In the event of arrest of the applicant in Crime No.957/2021, registered with Police Station Warora, District Chandrapur, the applicant is ordered to be released on bail on his executing a P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with a solvent surety in the like amount on the following conditions.

(a) The applicant is directed to attend the concerned Police Station everyday in between 10:00 am and 12:00 p.m. for 15 days from 17th January, 2022.

(b) After expiry of attendance period, the applicant is directed not to enter into village Jamni, Tahsil Warora, District Chandrapur till the period of six month after filing of the charge-sheet.

Signed by: SANDESH DAULATRAO
WAGHMARE
Private Secretary to the Hon'ble Judge
Signing Date: 15.01.2022 11:44

JUDGE

*sandesh