

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

CRIMINAL APPLICATION (BA) NO.95/2022

Roshan @ Dnyaneshwar Rameshrao Maske

...Versus...

State of Maharashtra Through Police Station Officer, Police Station, Lohara, Tq
and Dist. Yavatmal and another

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

Court's or Judge's orders

Mr. Y. K. Dhande, Advocate for applicant.
Ms Mayuri Deshmukh, APP for non-applicant no.1.
Ms Aarti Singh, Advocate for non-applicant no.2 (appointed counsel).

CORAM : AVINASH G. GHAROTE, J.

DATE : 15/03/2022

1. Heard Mr. Dhande, learned counsel for the applicant, Ms Deshmukh, learned Additional Public Prosecutor for the non-applicant no.1/State and Ms Aarti Singh, learned counsel (appointed) for non-applicant no.2/victim.

2. The applicant has been arrayed for the offence punishable under Sections 376, 376(2)(N), 376(3) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012, in Crime No.149 of 2021.

3. The date of the incident is 29.9.2021. The FIR has been registered on 30.09.2021. The applicant has been arrested on 16.10.2021. The charge-sheet has been filed on 25/11/2021.

4. Mr. Dhande, learned counsel for the applicant submits that there was love affair between the applicant and the victim, which was indicated from the complaint itself (page 22), which pointed out that the victim had herself gone to the room, where the applicant was residing. He further relies upon the statement of the victim under Section 164 of the Cr. P.C. to substantiate this contention. He, therefore, submits, that considering the material in the charge-sheet, the applicant is entitled for bail. He relies upon *Anirudha Radheshyam Yadav Vs. The State of Maharashtra, 2020 ALL MR (Cri) 1351* in support of his contention.

5. Ms Deshmukh, learned Additional Public Prosecutor for the non-applicant no.1/State opposes the application contending that there were criminal antecedents of the applicant as disclosed in para 7 of the reply. She further contends that the victim is lured by the applicant.

6. Ms Singh, learned counsel (appointed) for the non-applicant no.2/victim supports the contention of the learned Additional Public Prosecutor and submits that the

theory of love affair between the applicant and victim, who was 15 years of age, was an improbability.

7. The oral report (page 22) itself indicates, that there was a longstanding earlier relationship between the applicant and victim. Even the mother of the victim, considering her conversations with the applicant, started suspecting, not only the affair but also physical entanglement of the victim with the applicant. It is in this background that on 20.9.2021 when the victim on the pretext that she was going for tuition of Pojge Sir, had left the house, the mother, suspecting something, had called up the tuition teacher, enquiring whether the victim is at his tuition class, which was answered in the negative. The friend of the victim, who was called up, also answered in the negative. Suspecting that the victim was with the applicant, she along with her husband had been to the room of the applicant, whereupon they saw the cycle of the victim and therefore, went into the room of the applicant, where they saw the applicant and victim in a compromising position and the applicant, seeing the parents of the victim, got up and ran away. It is in this background that the complaint has been filed.

8. The narration of the incident, as stated above, would indicate that the conduct of the victim itself demonstrates that there was an affair between the applicant

and the victim and she had also established physical intimacy with the applicant, as is indicated, by the statement of the mother dated 29.9.2021 itself. That being the position, though Section 4 of the Protection of Children from Sexual Offences Act, 2012 has been invoked, and though the victim was a minor, considering that the act of 29.9.2021, was not a singular act, as is indicated from the statement of the mother, rather, the material on record would indicate that the victim was aware of her actions and the capacity to know the consequences thereof. The contention that because of the age difference between the applicant and the victim, the theory of love affair is obliterated, is one, which may not stand to reason *prima facie*. Considering the facts spelt out in the present matter, a case for bail is made out. Hence, the following order.

ORDER

(i) The criminal application is allowed. The applicant – Roshan @ Dnyaneshwar Ramesh Rao Maske be released on bail in Crime No.149/2021 for the offence punishable under Sections 376, 376(2)(N), 376(3) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 upon execution of P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with two solvent sureties of like amount.

(ii) The applicant shall not tamper with the prosecution evidence or try to influence the prosecution

witnesses.

(iii) The applicant shall not enter the territorial jurisdiction of Police Station Lohara, Taq. and District Yavatmal, till the completion of the trial.

(iv) The applicant shall attend each and every date before the learned Sessions Court and shall ensure that the trial is not protracted on his count.

(v) Fees of the learned Counsel, appointed for the non-applicant no.2/victim, be paid, as per rules.

JUDGE

Sarkate