

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

CRIMINAL APPLICATION (BA) NO.151 OF 2022

Sheikh Nazir Sheikh Usman @ Daula **Versus** State of Maharashtra, thr. PSO, Umarkhed, Dist. Yavatmal and another.

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

Court's or Judge's Order

Shri S.P. Bhandarkar, assisted by Shri Ganesh Mate, counsel for the applicant.

Shri Ashirgade, APP for the non-applicant No.1/State.

Shri M.N.Ali, counsel for non-applicant No.2/Victim.

CORAM : ANIL S. KILOR, J.
DATED : 18/08/2022

1. The applicant is seeking bail in connection with Crime No. 325/2021, registered with Police Station Umarkhed, Tq. Umarkhed, District-Yavatmal, for the offences punishable under Sections 376, 376(AB) of the Indian Penal Code, 1860 and Sections, 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act")

2. Learned counsel for the applicant submits that, in this case, there is a delay of 15 days in lodging the FIR. It is submitted that two eye witnesses made the video recording of the incident but they did not report the incident to the Police Station or not even prevented the applicant from committing such alleged heinous crime, thus, it creates doubt about the veracity of the complaint.

3. It is submitted that, the applicant is aged 62 years and there is no past criminal record to the discredit of the applicant.

4. He lastly submits that a doctored video has been made viral and thereby the applicant was being defamed in the society. Accordingly, he submits that, as the applicant is in jail from last about one year and since the investigation is completed and charge-sheet has been filed, custody of the applicant is no more required. Accordingly, he prays for grant of bail.

5. On the other hand, learned APP strongly opposed the present application and submits that, the offence is serious and considering the material collected by the Investigating Officer during the investigation, this Court may not grant bail to the applicant.

6. The learned counsel for the non-applicant No.2/Victim, reiterates the submission of the learned APP and prays for rejection of the present application.

7. I have perused the Charge-sheet and the FIR.

8. It is the case of the prosecution that, on 08/05/2021, Syyed Afsar Syyed Kasam and Sheikh Asif Sheikh Pasha had been to the house of the complainant and told him that on 08/05/2021, at around 06.00 p.m., when they were going from Murtizanagar Road, they have seen that, one minor girl is going to the cattle-shed of the present applicant and when they went their, they saw that the

present applicant is putting his private part in the mouth of that minor girl, which they videographed.

9. It appears from the Case-diary that, Syyed Afsar Syyed Kasam and Sheikh Asif Sheikh Pasha are the eye-witnesses as both were present at the spot and in front of them the alleged incident took place.

10. It is shocking that, they were mute spectator to such a heinous crime.

11. It appears that, they both were more interested in videographing than going to rescue the minor girl from being sexually abused.

12. In a situation in which Sayyad Afsar and Sheikh Asif, videographed the incident, no responsible and sensitive person would have acted so irresponsibly. In such a situation any sensitive and responsible person in normal circumstances would have first escaped the girl from the clutches of the applicant and then handed over the accused to the Police.

13. Though the alleged incident was videographed and made viral and further the incident was informed to the father of the victim on 08/05/2021, the offence was reported and registered on 26/05/2021 with the Police i.e. after 15 days, at the instance of father of the victim.

14. Under Section 21 of the POCSO Act, punishment is provided on failure to report and record the case. In this case, both the eye-witnesses neither rescued the

girl nor informed the incident to the Police Station immediately.

15. The above referred facts, thus, *prima-facie*, creates doubt about veracity of the complaint.

16. The applicant is 62 years of old and there are no criminal antecedents to his discredit.

17. Furthermore, in this matter the learned APP and the learned counsel for the victim were requested to see the video recorded by the eye-witnesses, particularly in the backdrop of the submissions of the applicant that it is a doctored one. Accordingly, they have seen it and made a submission that the said video *prima-facie* is not of much help to arrive at any positive conclusion.

18. In the above referred circumstances and as the investigation is completed and the applicant is in jail from last about one year, I am of the opinion that by imposing certain stringent conditions, the applicant should be released on bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicant in Crime No. 325 of 2021, registered with Police Station Umarkhed, District: Yavatmal, for the offences punishable under Sections 376, 376(AB) of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, the applicant shall be released on bail on

furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

- c) The applicant shall not enter into the territorial jurisdiction of Tahsil-Umarkhed, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with name of the nearby Police Station and shall attend the concerned Police Station on 1st and 16th day of each month between 10.00 a.m. to 11.00 a.m., till the culmination of the trial.
- e) The applicant shall not tamper with the prosecution witnesses.
- f) The Registry is directed to return the Pen-drive to the learned counsel for the applicant, which was attached with the application.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]