

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

Criminal Application (BA) No.157/2022

Swapnil Gawai V State of Maharashtra thr PSO PS Old City, Akola

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

Court's or Judge's Orders

Shri A.S. Londhe, Advocate for applicant.
Mrs. Shamsi Haider, APP for State.
Ms Sonali Saware, Advocate for non-applicant no.2.

CORAM : ANIL S. KILOR, J.
DATE : 15-06-2022

The applicant has approached to this Court by filing the present application under Section 439 of the Code of Criminal Procedure for grant of bail in connection with Crime No.0297/2019 dated 31-07-2019 registered with Police Station Old City, District Akola for the offences punishable under Sections 363, 366-A, 376(2)(n), 376(2)(i) read with Section 34 of the Indian Penal Code and Sections 3, 4, 7 and 8 of the Protection of Children from Sexual Offences Act.

2. The learned Counsel for the applicant submits that co-accused Zayeda bee Mohd. Hasham was released on bail and, therefore, the applicant is entitled for parity. It is further submitted that after completion of investigation, the chargesheet has been filed and no further custody of the applicant is necessary. The learned Counsel for the applicant, accordingly, prays for grant of bail.

3. On the other hand, learned APP strongly opposed the application and she submits that the offence is very serious and if the applicant is released on bail, there is every likelihood that he will repeat the offence. It is pointed out that three co-accused persons are absconding and there is every possibility that the present applicant will not be available for trial, if he is released on bail.

4. Ms Saware, learned Advocate appearing for the victim pointed out that the victim was 14 years old on the date of offence and ample material is collected by the Investigating Officer to show the involvement of the applicant in the alleged offence. She reiterates the submission of the learned APP that the offence is serious and prayed that the applicant may not be released on bail.

5. I have perused the chargesheet, First Information Report (FIR) and reply of the prosecution. There is no dispute that the offence is very serious. From the chargesheet, it is revealed that ample incriminating material is available to connect the applicant with the alleged offence. Considering the nature of offence and severity of punishment and further the fact that three accused persons are absconding, I am of the opinion that there is every likelihood that the applicant may not be available for trial, if he released on bail. Furthermore, there is every

possibility that he may pressurize the prosecution witnesses of tamper with the prosecution evidence and creates hurdle in the trial. Accordingly I pass the following order :-

Order

- i. Application is rejected.
- ii) Fees of Ms. Sonali Saware, learned Advocate (appointed) who representing the non-applicant no.2, be quantified as per rules.

(Anil S. Kilor, J.)