

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

CRIMINAL APPLICATION (BA) NO. 206 OF 2022
Suhas Shnalikramji Musale...Versus...State of Maharashtra and anr

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

Court's or Judge's orders

Mr. M.B.Naidu, Advocate for the applicant.
Ms. Shamsi Haider, APP for Respondent No.1/State
Mrs. S.P.Giratkhar, Advocate (appointed) for Respondent No.2/Victim

CORAM : AVINASH G. GHAROTE, J.
DATE : 17/03/2022

1] Heard Mr. Naidu, learned counsel for the applicant, Ms. Haider, learned APP for respondent No.1/State and Mrs. Girtatkar for Respondent No.2/victim.

2] The applicant is arraigned for the offence punishable under Sections 376(AB), 376(2)(N), 506 of the IPC and Sections 4, 6 and 21 of the POCSO Act in Crime No. 546/2021. The FIR is dated 24.9.2021. The applicant has been arrested on the same day. The charge-sheet has been filed on 17.11.2021.

3] Mr. Naidu, learned counsel for the applicant submits that the applicant has been falsely implicated, the medical report is totally contrary to the allegations made in the complaint. The statement of the victim herself under

Section 164 of Cr.PC is tendered across the bar, which is taken on record and marked as “X” for the purpose of identification, indicates that the victim has totally resiled from the allegations made in the complaint and therefore, the applicant is entitled to bail.

4] Ms. Haider, learned APP opposes the application contending that the allegations are serious and the victim is a minor.

5] Ms. Giratkar learned appointed counsel for the victim also opposes the application.

6] Though the oral report raises serious allegations by the victim who is the daughter of the applicant having established sexual relations with her since she was in 6th standard which has continued from time to time and even when the victim was in the 9th standard, alleging that the applicant used to perform sexual intercourse with her, the medical report of the examination of the victim is totally contradictory inasmuch as the examination of the victim by the Medical Officer dated 24.9.2021, indicates that the hymen is intact and there are no injuries of whatsoever nature. That apart, the statement of the victim herself under Section 164 of Cr.PC recorded before the JMFC Court No. 1, Wardha, indicates that she has totally resiled from the

allegations made in the complaint. Mrs. Giratkar, learned appointed counsel has had a dialog with the victim and submits that the complaint was lodged by the victim upon a misconception and due to rage in her mind against the applicant. This is an unfortunate case, in which prima facie the material on record indicates the misuse of the POCSO Act surprisingly by the daughter against her father which is an alarming situation.

7] Considering the material in the charge-sheet, the material on record, though the provisions of the POCSO Act are applied, since the medical report is totally contradictory to the allegations made in the complaint, I deem it to be an appropriate case to enlarge the applicant on bail. Hence the following order.

O R D E R

- i. The Criminal Application is allowed.
- ii. Applicant Suhas Shalikramji Musale be released on bail in Crime No. 546/2021, registered at Police Station Sewagram, District Wardha, for the offence punishable under Sections 376(AB), 376(2)(N), 506 of the IPC and Sections 4,6,21 of the POCSO Act, on his furnishing PR. Bond in the sum of Rs.50,000/- (Rupees Fifty Five Thousand) with one solvent surety

of the like amount.

- iii. The applicants shall not tamper with the evidence of the prosecution witnesses in any manner or try to influence them directly or indirectly.

8] Pending application/s, if any, shall stand disposed of accordingly.

9] Appropriate fees be paid to the appointed counsel Mrs. S.P. Giratkar, learned counsel for the complainant/victim.

JUDGE

Rvjalit