

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

CRIMINAL APPLICATION (BA) NO.286 OF 2022

Sujit s/o Shriram Rathod

Vs.

State of Maharashtra, Through its Police Station Officer, Police Station, Mahagaon,
District Yavatmal and another

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

Court's or Judge's orders

Mr. S. M. Lodha, Advocate for applicant.

Mr. I. J. Damle, APP for non-applicant no.1 /State.

Mr. Pranit J. Vairagade, Advocate for non-applicant no.2/Victim (appointed).

CORAM : AVINASH G. GHAROTE, J.

DATE : 04/05/2022

Heard Mr. Lodha, learned counsel for the applicant and Mr. Damle, learned APP for non-applicant no.1/State along with Mr. Pranit Vairagade, learned counsel for the non-applicant no.2/victim.

2. The applicant has been arraigned for the offences punishable under Sections 363, 376(2)(i)(n) of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 in Crime No.399/2021.

3. On the basis of the missing complaint filed by the mother of the victim, the FIR was registered on 12.09.2021. The applicant along with the victim has been arrested on 13.09.2021 and the charge-sheet has been filed on 10.11.2021.

4. Mr. Lodha, learned counsel for the applicant, submits that the age of the victim is not demonstrable on record, and therefore, it cannot be said that the victim was a minor. He submits, that even otherwise, it would be apparent from the record that the entire action, was of a consensual nature, as a result of affair between the victim and the applicant, considering which, the applicant is entitled to bail.

5. Mr. Damle, learned APP for non-applicant no.1/State along with Mr. Vairagade, the appointed learned counsel for the non-applicant no.2/Victim, opposes the application and point outs that at the relevant time, the age of the victim was 13 years and 11 months, and therefore, the question of any consensus becomes immaterial. He therefore, submits that the application be rejected.

6. The charge-sheet which has been filed on 10.11.2021, indicates that there was long standing relationship between the applicant and the victim. Even the statement under Section 164 of the Cr.P.C. of the victim (page 88) indicates that there was an affair between the applicant and the victim. The incident is dated 12.09.2021, when the victim has eloped with the applicant. As a result of missing complaint, the resultant FIR came to be filed. Medical report (page 54) indicates old injuries and also the factum of affair. The affair is also substantiated by the statement of Fula Suresh Rathod (page 85). Though, it is correct that in law the

issue of consensus would be immaterial, however, considering the entire record, and the fact that the investigation is over, the charge-sheet has been filed, I do not see any reason to continue the further incarceration of the applicant, as nothing remains to be investigated and the applicant has already suffered incarceration from 13.09.2021 till date. Any apprehension can be addressed by putting the applicant to terms. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The applicant be released on bail in Crime No.399/2021 registered with Police Station, Mahagaon, District Yavatmal, for the offences punishable under Sections 363, 376(2)(i)(n) of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012, on his executing P.R. bond in the sum of Rs.75,000/- (Rupees Seventy Five Thousand) with two solvent sureties of the like amount.
- (iii) The applicant shall not, directly or indirectly make any attempt to influence the witnesses or otherwise tamper with the evidence, in any manner.
- (iv) The applicant during the course of the trial shall not enter the territorial jurisdiction of Tahsil Mahagaon District Yavatmal.
- (v) The applicant shall inform his place of residence and his mobile number to the Investigating Officer as well as the concerned Court and shall not change them without first intimating the change to the learned Sessions Court as well as the Investigating Officer.

(4)

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(vi) 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.

(vii) Violation of any of the above conditions shall result in cancellation of bail.

JUDGE

Sarkate