

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

Criminal Application (BA) No.324/2022

Sadjid Khan Mobin Khan Pathan V State of Maharashtra thr PSO PS Risod, Wathim and
 others

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

Court's or Judge's Orders

Mr. M.N. Ali, Advocate for applicant.

Mr. S.D. Sirpurkar, APP for State.

CORAM : ANIL S. KILOR, J.

DATE : 28-07-2022

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.0681/2021 registered with Police Station Risod, District Washim for the offence punishable under Section 363 of the Indian Penal Code.

2. Learned Counsel for the applicant submitted that, if the allegations made against the applicant in the FIR are considered, it can be seen that he was in love with the victim who was major on the date of incident and therefore, no provision under the Protection of Children from Sexual Offence Act (POCSO Act), will attract against the applicant.

3. He further points out that the applicant was the person

who took the victim to the Police Station Washim and informed the Police about the alleged incident and there from they both were taken to Risod and after reaching Risod, the victim lodges the complaint. It is submitted that as there was a love affair and the victim herself accompanied the applicant, case under Sections 363 and 366 of the IPC does not make out against the applicant. It is further submitted that the conduct of the applicant that he himself had taken the victim to the Police Station is sufficient to show that there was no ill intention as alleged.

4. He lastly submits that the applicant is in jail from last one year and in the above referred backdrop keeping the applicant in jail particularly, when his further custody is not necessary and when the chargesheet has been filed, it would amount to pre-trial punishment. Accordingly, he prays for grant of bail.

5. Whereas, learned APP strongly opposed the application and submits that the applicant and his friend who is the accused no.2 both have kidnapped one minor girl along with the other victim who is major. He, therefore, submits that the offence against accused no.1 i.e the applicant and the accused no.2 is inseparable.

6. It is further submitted that the offence is very serious, and as the minor victim is involved in the alleged offence, the offence under the provisions of POCSO Act is also registered against both the accused. Accordingly, he prays for rejection of the present application.

7. I have perused the chargesheet and the First Information Report (FIR).

8. After going through the statement of victims recorded by the IO and the allegations made against the accused persons it can be seen that, the offence is inseparable against both the accused and therefore, the applicant cannot ask for benefit of the fact that the other victim who is major was with the applicant and not the minor girl. The both the accused and the victims went together by Car and all the time they were together. Thus, considering the language of Sections 363 and 366 of the IPC and the character of evidence collected along with the severity of punishment which conviction will entail, I am of the opinion that it is not a fit case where pre-arrest bail should be granted to the applicant.

9. In that view of the matter, I pass the following order:-

ORDER

Application is rejected.

(Anil S. Kilor, J.)