

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

CRIMINAL APPLICATION (BA) NO.310/2022

Gelo @ Prakash s/o Punjabrao @ Ajabrao Wadave

...Versus...

The State of Maharashtra, through its Police Station Officer, Police Station
Hinganghat, Hinganghat, District Wardha

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

Court's or Judge's orders

Shri Abdul Subhan, Advocate for applicant
Shri A.R. Chutke, APP for non-applicant/State

CORAM : AVINASH G. GHAROTE, J.

DATE : 28/04/2022

1. Heard Shri Subhan, learned Counsel for the applicant and Shri Chutke, learned Additional Public Prosecutor for the non-applicant/State.

2. The applicant, who has been arraigned for the offence punishable under Sections 354, 504, 506 of Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, 2012 in Crime No.313/2015 registered with Police Station Hinganghat, District Wardha was released on bail by an order dated 19/04/2016 (pg.17) passed by the learned Additional Sessions Judge, Wardha. The charge was framed on 05/01/2019, however, thereafter, since the

applicant remained absent, a warrant was issued, which came to be cancelled. Thereafter, also due to the absence of the applicant, the matter could not be proceeded, as a result of which, a non-bailable warrant was issued on 04/02/2021 and the applicant has been arrested on 10/02/2021 and is behind bars since then, as the application to release him at Exh.29 has been rejected by the learned Sessions Court by the order dated 07/08/2021.

3. Shri Subhan, the learned Counsel for the applicant submits that there was no intention on part of the applicant to delay the trial and in spite of the bail having been granted to him, merely on account of delay of the trial, he is languishing in prison since 10/02/2021. It is further submitted that the applicant is a poor person and could not afford a lawyer and therefore, application has been filed in September, 2019 for providing a Counsel from the Legal Aid Panel, which has not been decided. Due to change of lawyer and miscommunication, the applicant could not attend and therefore, the applicant be enlarged on bail.

4. Shri Chutke, the learned Additional Public Prosecutor for the non-applicant/State opposes the application and submits, that the conduct of the applicant does not warrant his release on bail.

5. It is not disputed that by the order dated 19/04/2016, the applicant was enlarged on bail for the aforesaid offences. The applicant due to his conduct of remaining absent before the learned Trial Court has suffered the issuance of non-bailable warrant and has been incarcerated since 10/02/2021 till date, which is more than a period of one year.

6. Shri Subhan, the learned Counsel for the applicant, on instructions, makes a statement that if the applicant is released on bail, he will attend the learned Trial Court on each and every date and shall ensure that the trial is not protracted on his behalf, accepting which statement and considering the fact, that the applicant has already suffered incarceration for more than a year on account of his default in attending the Court, in my considered opinion, the applicant is entitled to be enlarged on bail. Hence, the following order.

ORDER

(i) The applicant/Gelo @ Prakash s/o Punjabrao @ Ajabrao Wadave be released on bail for the aforesaid offences on the same terms and conditions, as were imposed by the learned Sessions Court vide order dated 19/04/2016.

(ii) It is, however, made clear that in case the applicant does not attend the Sessions Court on the dates, on which the matter is listed, then the learned Sessions Court would be fully justified in issuing appropriate directions for securing the presence of the applicant. The learned Sessions Court is also directed immediately to decide the application for grant of appropriate Counsel from the Legal Aid Panel as early as possible and in any case on 11/05/2022, on which date the proceedings are said to be listed before the learned Sessions Court.

(iii) The applicant shall place a copy of this order before the learned Sessions Court to bring to its notice what has been stated above.

(AVINASH G. GHAROTE, J.)

Wadkar