

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

CRIMINAL APPLICATION (BA) NO.360 OF 2022

Sangita Sanjay Kale and another

Versus

State of Maharashtra, through P.S.O., P.S. Arvi, Dist. Wardha and another

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

Court's or Judge's Order

Shri Rajnish Vyas, Advocate for the applicants.

Ms A.M. Deshpande, A.P.P. for the non-applicant/State.

CORAM : ANIL S. KILOR, J.

DATED : 20/06/2022

1. The applicants are seeking bail in Crime No.25 of 2022, dated 09.01.2022, registered with Police Station Arvi, District: Wardha, for the offences punishable under Sections 376(3), 376(2)(n), 312, 313, 315, 341, 201 and 506 read with Section 34 of the Indian Penal Code and Sections 4, 6 and 21(1) of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act").

2. Shri Vyas, learned counsel for the applicants submits that the applicants are nurses working in the hospital of the main accused. It was their duty to follow the instruction of accused No.3/Doctor. It is further submitted that the applicant No.1 is in jail since 12.01.2022 and applicant No.2 is in jail since 13.01.2022. He further

submits that custody of the applicants, is not necessary, as on completion of investigation, the charge-sheet has already been filed.

3. He further submits that even considering the statement of witnesses, it can be seen that the applicants have not done anything on their own but it was on the instruction of the doctor. He therefore, submits that they being employee, it was the duty to follow the instruction.

4. He lastly argues that there is no possibility that in near future, the trial will commence and accordingly, he prays for grant of bail.

5. On the other hand, Shri Deshpande, learned APP opposes the present application and submits that there is ample evidence on record to *prima facie* show that it was the regular practice to dispose of the foetus and it can also be seen from the record that they were doing it since long. He accordingly, submits that the application may be rejected.

6. I have perused the charge-sheet and also the contents of the First Information Report (FIR).

7. From the charge-sheet, it can be seen that the applicants were working as nurses in the hospital of the

accused No.3. *Prima facie*, it appears that they were supposed to follow the instruction of the main accused No.3. *Prima facie* there is nothing to show that the applicants have treated the victim or disposed of the foetus without the instruction of the main accused.

8. Moreover, as the charge-sheet has already been filed, after completion of investigation, the custody of the applicants is not necessary. Furthermore, as there is no possibility that in near future, the trial will commence or it will conclude, I am of the opinion that the applicants are entitled for release on bail on some stringent conditions. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that the applicants shall be released on bail in Crime No.25 of 2022, registered with Police Station Arvi, District: Wardha, for the offences punishable under Sections 376(3), 376(2)(n), 312, 313, 315, 341, 201 and 506 read with Section 34 of the Indian Penal Code and Sections 4, 6 and 21(1) of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO Act"), on furnishing P.R. Bond of Rs.25,000/- each with one solvent

surety in the like amount for each of the applicants.

- c) The applicants shall attend the concerned Police Station as and when their presence is required.
- d) The applicants shall not tamper with the prosecution witnesses.
- e) The applicants shall not leave the jurisdiction of the concerned Police station without permission of the Court.
- f) The State is at liberty to file application for cancellation of bail in case, the applicants repeats the offence.

The criminal application is **disposed of**, accordingly.

[ANIL S. KILOR, J.]