

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

CRIMINAL APPLICATION (BA) NO.389 OF 2022

(THAWAJI DEVAJI BHOYAR....VS.. STATE OF MAH. THR. PSO PS CHAMORSHI, DIST.
GADCHIROLI & ANR.)

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

Court's or Judge's orders

Shri A.C.Jaltare, Advocate for Applicant.
Shri T.A. Mirza, A.P.P. for Non-applicant No.1/State.
None for Non-applicant No.2.

CORAM : ANIL S. KILOR, J.
DATED : AUGUST 05, 2022.

1. Heard.
2. By this application under Section 439 of the Code of Criminal Procedure the applicant is seeking bail in Crime No. 305 of 2020, registered with Police Station, Chamorshi, District: Gadchiroli for the offences punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.
3. Shri Jaltare, learned counsel for the applicant submits that the applicant is in jail from last two years and in this case no offence attracts as the victim completed her age of 18 years on 25/08/2019, whereas the complaint was lodged on 29/05/2020 when her age was 18 years and 9 months. It is submitted that on the date of lodging of the complaint she was carrying pregnancy of 23 weeks. Even

considering the said period of 23 weeks, it can be said that she conceived after attaining the majority.

4. The learned counsel for the applicant submits that after completion of the investigation charge-sheet has been filed. He further points out that earlier application was rejected by this Court vide order dated 4th May 2021. However, liberty was granted to the applicant to move application for bail afresh if the trial is not commenced in next nine months. He submits that after rejection of the said application, till date even charges are not framed. Accordingly, he prays for grant of bail.

5. On the other hand, the learned A.P.P. strongly opposed the application and he submits that as the offence is serious and in DNA Test the Doctor has opined that the applicant is the biological father of the child-in-womb, he prays for rejection of this application.

6. I have perused the charge-sheet and the F.I.R.

7. In this case, certain dates are relevant, which are as follows:

- i) Date of birth of the victim : 25/08/2001
- ii) Complaint lodged on : 29/05/2020 and
- iii) As per MLC the Victim was : 29/05/2020
carrying pregnancy of 23 weeks.

8. The above referred three dates further make it clear that on the date of the complaint the victim was major and her age was 18 years 9 months and on the said date she was carrying pregnancy of 23 weeks i.e. about 5 months. It further makes it clear that the victim conceived after attaining the majority.

9. In the said backdrop, if the statement of the victim is considered, which was recorded on 29/05/2020, it appears that on a missing report by the parents of the victim, the police arrested the applicant and the victim on 28/05/2020 and thereafter on 29/05/2020 the offence was registered. Thus, the victim lodged complaint after she was arrested.

10. In the above referred backdrop and further considering the fact that the applicant is in jail from last two years and the charge-sheet has already been filed in this case, I am of the opinion that further custody of the applicant is not necessary. As far as the apprehension expressed by the learned A.P.P. that if the applicant is released on bail he may pressurize the prosecution witnesses, I am of the opinion that the same can be addressed by imposing certain stringent conditions. Accordingly, I pass the following order:

- i) The application is **allowed**.
- ii) It is directed that the applicant shall be released on bail in Crime No. 305 of 2020,

registered with Police Station, Chamorshi, District: Gadchiroli for the offences punishable under Sections 376(2)(n) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, on his furnishing P.R. Bond of Rs.25,000/- with a solvent surety of like amount.

iii) The applicant shall not enter into the territorial jurisdiction of Chamorshi, District : Gadchiroli till culmination of the trial, except to attend the trial.

iv) The applicant shall provide his address along with name of the nearest Police Station, which he shall attend on every first day of each month between 09:00 a.m. and 10:00 a.m., till culmination of the trial.

v) The applicant shall not pressurize the prosecution witnesses and shall not tamper with the prosecution evidence.

The criminal application is **disposed of** in the above terms.

JUDGE

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