

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

CRIMINAL APPLICATION (BA) NO. 399 OF 2022

Gaurav Sanjay Tayde **Versus** State of Maharashtra, thr. PSO. PS Ajni, Nagpur 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 S.D.Chande, counsel h/f Ms Sunita S.Kulkarni, counsel for the applicant.

Shri T.A.Mirza, A.P.P. for the non-applicant No.1/State.

Shri H. Dhumale, counsel for the non-applicant No.2.

CORAM : ANIL S. KILOR, J.

DATED : 02/08/2022

1. The applicant is seeking bail in connection with Crime No.30/2021, registered with Police Station, Ajni, District Nagpur for the offences punishable under Sections 376 and 313 of the Indian Penal Code.

2. The learned counsel for the applicant submits that even if the allegations in the FIR are taken on its face value, it can be seen that there was a love affair and even there was consent of the family members of the victim to such relation. It is pointed out that, the FIR itself speaks about a incident when the applicant took the victim from the lawful custody of her mother, with her consent. It is pointed out that, in the FIR there is a mention that the applicant had expressed his wish to marry with the victim to her mother.

3. He therefore, submits that considering the nature of allegations, further custody of the applicant is not necessary, as the charge-sheet has already been filed in this case.

4. It is further pointed out that, the victim had stayed for long period with the family of the applicant, this fact was known to the family of the victim. However, no objection was raised, at the relevant time.

5. It is further argued that the victim is 19 years of age and had understanding of consequences. Thus, he submits that the applicant may be released on bail.

6. On the other hand, learned APP strongly opposed the present application and submits that on the date of the incident, the victim was minor and considering the nature of offence, this Court may not grant bail to the applicant.

7. Shri Dhumale, learned counsel for the victim submits that, there are also allegations of termination of pregnancy which is also a serious offence.

8. I have perused the Charge-sheet and the FIR.

9. The contents of the FIR, *prima-facie*, show that the applicant had expressed his wish to marry with the victim, to her mother and he took away the victim from the custody of her mother. The contents of the FIR further shows that, the victim stayed with the applicant and his family for sufficient period and thereafter the complaint came to be lodged.

10. In the above referred backdrop I am of the opinion that after filing of the charge-sheet, the custody of the applicant is no more required. Further the applicant has already undergone substantive period in jail and there is no possibility that in near future, the trial will commence. Thus, I am of the opinion that in view of the judgment in the case of *Union of India V/s K.A. Najeeb*¹, the applicant is entitled for grant of bail. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in the event of arrest of the applicant in Crime No. 30 of 2021, registered with Police Station Ajni, District Nagpur for the offences punishable under Sections 376 and 313 of the Indian Penal Code, the applicant shall be released on bail on furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.
- c) The applicant shall not enter into the territorial jurisdiction Nagpur City, till the culmination of the trial, except for trial.
- d) The applicant shall provide his address along with the name of nearby Police Station and shall attend the said Police Station on 1st day of each

1 (2021) 3 SCC 713

month between 10.00 a.m. to 12.00 noon, till culmination of the trial.

- e) The applicant shall not tamper with the prosecution witnesses.

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

[ANIL S. KILOR, J.]